

communities and states are largely going to be left alone' (p. 243) can be countered effectively.

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Daniel H. Joyner, *Interpreting the Nuclear Non-Proliferation Treaty*, Oxford, Oxford University Press, 2011, 184pp., ISBN-13 9780199227358, €69.00/£55.00.  
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The current context of uncertainty regarding the sustainability of the global regime governing the use of nuclear technology, in both its civilian and military applications, together with the focus on actual (e.g., North Korea) or alleged (e.g., Iran) cases of non-compliance by states with their international commitments in this field, explain and justify sustained academic interest in the 1968 Treaty on Non-Proliferation of Nuclear Weapons (NPT).<sup>1</sup> The book under review adds a significant and, as we will see, somehow unconventional contribution to the already vast amount of legal literature devoted to the NPT.<sup>2</sup>

Dan Joyner, professor at the University of Alabama School of Law, has already presented a comprehensive analysis of legal questions relating to the NPT in his previous work entitled *International Law and the Proliferation of Weapons of Mass Destruction*.<sup>3</sup> He explains thus that the present volume is not *stricto sensu* a 'legal commentary on the NPT', but rather a 'thesis-driven monograph which will apply the rules of treaty interpretation in international law to produce . . . a "holistic interpretation" of the NPT' (p. 1). The thesis in question is unfolded at the outset:

The unifying thesis of this book is that the original balance of principles underlying the NPT, which can be distilled through an application of the principles of treaty interpretation contained in Articles 31 and 32 of the Vienna Convention on the Law of Treaties, has for over a decade been distorted particularly by nuclear-weapon-possessing governments, led by the United States, in favor of a disproportionate prioritization of non-proliferation principles, and an unwarranted under-prioritization of peaceful use and disarmament principles. . . . this distortion of principled balance by nuclear-weapons states has resulted in a number of erroneous legal interpretations of the NPT's provisions. (p. 2)

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1 Treaty on the Non-Proliferation of Nuclear Weapons, 1 July 1968 (entered into force on 5 March 1970), 729 UNTS 161. On current challenges facing the nuclear non-proliferation regime, see, e.g., the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Vol. 1 (NPT/CONF.2010/50), especially Part I ('Review of the Operation of the Treaty, as Provided for in Its Article VIII (3), Taking into Account the Decisions and the Resolution Adopted by the 1995 Review and Extension Conference and the Final Document of the 2000 Review Conference').

2 See, e.g., J. Goldblat, *Arms Control: The New Guide to Negotiations and Agreements* (2002), as well as Joyner's previous work mentioned *infra*, note 3.

3 D. H. Joyner, *International Law and the Proliferation of Weapons of Mass Destruction* (2009).

The book is very short (126 pages, structured in five parts, excluding the annexes) and pleasant to read despite some minor imperfections and errors.<sup>4</sup> The introductory part contains, first, a short but useful reminder on basic technical aspects of nuclear energy, emphasizing the ‘dual-use nature’ inherent to nuclear energy materials and technologies (pp. 3–6). It is followed by a concise overview of the development of international law in this field, from the very first resolution of the newly formed UN General Assembly on 24 January 1946, calling for establishment of a commission ‘to deal with the problems raised by the discovery of atomic energy’ – which was to become the International Atomic Energy Agency (IAEA) in 1957 (pp. 12 ff.), to the long negotiating process of the NPT (1961–68).

The second part exposes the ‘holistic’ method of legal interpretation that the author has chosen to apply to the NPT – in his words, ‘the correct interpretive method established in international law for the interpretation of treaties, as codified in the 1969 Vienna Convention on the Law of Treaties (VCLT)’ (p. 21). Rightly reminding us that the rules of treaty interpretation contained in VCLT Articles 31 and 32 are not only binding as a matter of treaty law upon all parties to the VCLT, but have also additionally been ‘consistently recognized by the International Court of Justice (ICJ) and other international tribunals as reflective of rules of customary international law’ (p. 22),<sup>5</sup> he summarizes the interpretive method prescribed by VCLT Article 31 in a way with which it is hard to disagree:

In essence, a treaty provision is to be interpreted according to the plain meaning of its terms, as those terms are informed by their situation within the context of the whole of the treaty itself and all of its other constituent provisions, with due regard being given in their interpretation to the object and purpose of the treaty within which they are situated. (p. 23)

The author contends that a misuse of the *travaux préparatoires* has led to misinterpretations of the NPT. More precisely, he points to overreliance on isolated statements by representatives of nuclear-weapon states (NWS) – on the part of some NPT commentators, ‘actually basing their analysis primarily upon this supplementary material instead of upon the process mandated by the general rule in VCLT Article 31’ (p. 25).

Joyner’s arguments in that respect are globally convincing; however, his conclusions, that the three pillars of the NPT – namely civilian use of nuclear energy, non-proliferation of nuclear weapons, and disarmament of nuclear weapons – ‘should be understood as presumptively juridically equal, i.e. none of the pillars should be presumed to be of higher prioritization in legal interpretation of the NPT’s provisions than any other’ (see pp. 33–4), would have been even stronger if grounded in a more substantial review of the diplomatic history and the preparatory work of the treaty.<sup>6</sup>

4 E.g., the ICJ case on *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia v. Malaysia)* is incorrectly referred to as the *India/Malaysia* case (at p. 22, note 3); the table of cases is incomplete (p. xi).

5 For comprehensive developments on the (progressive) recognition of the customary character of the rules of treaty interpretation contained in the VCLT, see R. Gardiner, *Treaty Interpretation* (2008), 12–19.

6 The reader left unconvinced by the 14 pages devoted to the topic by the author should refer to the sources quoted, mainly to the reference work of Ambassador M. I. Shaker, *The Nuclear Nonproliferation Treaty: Origin and Implementation 1959–1979* (1980).

The third part is a description, through an analysis of official statements made during the period 1998–2008 (the ‘target period’ chosen by the author, for reasons which remain unclear) by representatives of NWS (mainly, but not exclusively, Bush administration officials), of the shift towards prioritization of non-proliferation issues witnessed during the successive review conferences of the NPT. An update of such a review for the period 2008–10 forms the matter of Part 5 of the book; Joyner, while acknowledging that the Obama presidency has brought changes in US nuclear policies (p. 109), points out, however, a ‘significant continuity’ in the statements and actions of NWS since 2008 on some aspects of NPT Article IV interpretation and related policy (p. 124).

The crux of the matter (Part 4) lies in the discussion by the author, in light of his interpretive method applied to the NPT, of the legality of proposals and efforts by NWS aimed at ‘circumscribing and conditioning the right of NNWS [non-nuclear-weapon states] to nuclear fuel cycle technologies, and at changing the conditions under which supplies of nuclear technologies are made to NNWS by NWS and other supplier states’ (see pp. 79 ff.).

In our view, Joyner’s most sensitive argument is his challenge of the legal opinion according to which recognition of NPT’s Article IV(1) right to the use of peaceful nuclear technologies is conditional upon compliance with an IAEA safeguards agreement (pp. 87–94). He argues in particular that an IAEA determination of non-compliance with a safeguards agreement does not per se constitute a determination of a material breach of such agreement, nor does it constitute a breach of NPT Article III. In his view, in so far as the IAEA, according to its Statute, is confined – in the context of safeguards – to a ‘technical role of verifying the disclosures and accounting of nuclear materials and activities’ (p. 91) and is not entrusted with a judicial role, it may indeed make a determination of technical non-compliance with a safeguards agreement, but such determination does not ‘satisfactorily correlate to the standard for determining material breach [of the NPT], contained in VCLT Article 60’ (p. 91).<sup>7</sup>

This conclusion has been challenged by an early commentator on the book, who argued, without directly confronting Joyner’s point, that ‘[i]f a party [to the NPT] violates its safeguards agreement so the [IAEA] cannot determine if that party is fulfilling its NPT obligations, it is reasonable to assert that is a violation of the NPT’.<sup>8</sup> In our view, such criticism does not succeed in evidencing any default in Joyner’s reasoning.

The argumentation put forward by the author, if proved correct, would be rich in potential consequences. Indeed, only to mention the most sensitive current case of controversy over the interpretation of the NPT’s provisions, namely the case of the nuclear programme of Iran, Joyner’s argument contradicts the assertion by the UN Security Council that Iran has breached its obligations under the NPT, which

7 Material breach is defined in VCLT Art. 60 as ‘(a) a repudiation of the treaty not sanctioned by the present Convention; or (b) the violation of a provision essential to the accomplishment of the object or purpose of the treaty’.

8 See N. A. Wulf, ‘Misinterpreting the NPT’, Arms Control Association, September 2011, available at [www.armscontrol.org/2011\\_09/Misinterpreting\\_the\\_NPT](http://www.armscontrol.org/2011_09/Misinterpreting_the_NPT). Remarks formulated by Wulf on several other parts of Joyner’s book are noteworthy and shall be further weighed against Joyner’s arguments.

has formed the basis of action by the Security Council under Chapter VII of the UN Charter.<sup>9</sup> In that respect, the author's position echoes comments by Orakhelashvili, who recently argued that:

[The UN Security Council's] entire approach [on the Iranian nuclear programme] is framed as a legal argument, which is then used to justify further action under Chapter VII. However, while treating alleged violations of the Nuclear Non-proliferation Treaty (NPT) as a cause of action, it is not certain that the Council adopted the proper standard of proof in ascertaining the existence of a breach of that Treaty, relying on presumptive concerns instead of established facts.<sup>10</sup>

It remains, however, that, at this stage, such debate, while crucial from the point of view of the international-law issues involved, remains unsettled, in so far as no international court or tribunal has been asked to adjudicate this controversy. Joyner points to the potential involvement of the ICJ in the settlement of disputes arising from allegations of non-compliance with safeguards commitments, as provided for in the IAEA Statute (p. 91).<sup>11</sup>

To sum up, we hold that an understanding of the unsettled controversies surrounding interpretation of the NPT, and more generally of the balance between non-proliferation concerns and peaceful nuclear energy ambitions that the treaty's 'grand bargain' was supposed to achieve, absolutely requires the reading of Joyner's challenging work.

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John Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict*, New York, Cambridge University Press, 2010, 346 pp., ISBN-13 9780521151658, £17.99/\$27.99.

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'Never a dull moment in the Middle East', wrote Joseph Weiler last year in the *European Journal of International Law*,<sup>12</sup> referring to Palestine's UN membership application – and nothing illustrates the aptness of his remark better than the fact that there has already been a new development since then: Palestine's admission to the UNESCO as a member state. With Palestinian statehood once again in the limelight, one turns with anticipation to a book examining exactly this facet of the Arab–Israeli conflict.

John Quigley aims to demonstrate that Palestine became a state (albeit one without independence) in the mandate era and has retained its statehood ever since. To this end, the first three parts of his book follow through the history of

9 See UNSC Res. 1737 (2006), 1747 (2006), 1803 (2008), and 1929 (2010).

10 A. Orakhelashvili, *Collective Security* (2011), 25.

11 See IAEA Statute, Art. XVII. See also pp. 93–4 for a discussion of the jurisdiction of the ICJ to hear disputes arising under the NPT.

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12 J. H. H. Weiler, 'Editorial', (2011) 22 EJIL 621, at 623.