

# ***Comparing the Cold War to the Present, Why Is International Law Increasingly Failing to Limit Nuclear Proliferation?***

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**Abstract:** Since the possession of nuclear weapons has always been a global issue, from the introduction of nuclear disarmament to its implementation, states have bound each other consistently through international law. However, is this the only effective way? Moreover, is it necessarily the best? From this question, this paper examines the nature of international law. It explores the problem of international law in stopping nuclear proliferation from three counterpoints: the refinement of the global economy, moral capital, and the subjective interpretation of the possession of nuclear weapons, concluding that nuclear proliferation is more likely to go unchecked from the Cold War onward.

**Keywords:** International law, Non-Proliferation Treaty, Moral capital

## **1. Introduction**

Although the Cold War is over and the arms race is in the past, the nuclear weapons situation in the international community today is still taut, and the nuclear Non-Proliferation Treaty looks increasingly ineffective [1]. In recent times 10 of the nuclear non-proliferation treaty (NPT) review conference, the UN secretary-general, Guterres, said speaking to the world about the nuclear threat is increasing. People from nuclear weapons to destroy the world only "a misunderstanding" or "a misjudgment" distance, the risk of nuclear threat to the world is spreading." [2]. To explain why the trend toward nuclear weapons under international law remains so tense today, we must discuss the nature of international law and what has changed since the Cold War to make proliferation more likely.

Essentially, we should clarify that the current international situation is anarchy. International law and organizations provide a platform and means for different countries to communicate. The term "international law" is somewhat misleading because it is different from domestic law as we generally understand it. The essential difference between the two is that domestic law is enforced by domestic law enforcement and judicial authorities. In contrast, international law is generally enforced by the state itself and cannot be enforced [3]. However, the failure to enforce almost makes it impossible for international law to play a decisive role in reducing the use of force. To get a complete answer, looking only at international law is far from enough because the trend of the nuclear Non-Proliferation Treaty has not changed since the Cold War.

In contrast, the international situation has changed dramatically. This upheaval among member states is bound to affect national attitudes towards nuclear weapons and the importance of the

nuclear Non-Proliferation Treaty. Three of these factors will be discussed as signs of a more significant loss of international law's grip on nuclear non-proliferation:

- First, most modern states are less likely to blame the global economic system.
- Second, states with nuclear weapons have no moral right to accuse other states of having nuclear weapons.
- The reasons why states possess nuclear weapons are varied and even subject to subjective interpretation.

## 2. More Related Interest

Analyzing the international situation from the Cold War to the present, the most significant change is the global economy. Since the end of the Cold War, the international economy has increased, growing multiple times. For example, when the Warsaw Pact was dissolved in 1991 and the Cold War ended, the global GDP was \$23.76 trillion; As recently as 2021, the world's GDP was \$96.1 trillion, more than four times what it was in 1991 [4]. This data means that the world is improving manufacturing capacity, a clear international division of labour, and close economic ties. However, because of this ever-closer bond between interests, there is more "unspeakable" between countries. From this point of view, it is not difficult to understand why governments are now more reluctant to blame nuclear proliferation, even the use of force, because it may affect their fundamental or economic interests.

During the Cold War, communication between NATO and the Warsaw Pact was minimal, led by the United States and the Soviet Union [5]. The reasons for this included geopolitics and the economic warfare widely used at the time, including export controls and economic aid. In the case of export controls, the U.S. and Soviet Union imposed sanctions on one another from 1947 until 1990. On December 17, 1947, the U.S. National Security Council issued a decision requiring the United States and its allies to cease all exports to the Soviet Union indefinitely and its allies of materials that were in short supply in the United States and that could contribute to the enhancement of the Soviet military potential [6]. Three years later, the U.S. led the Paris Coordinating Committee, which forced Western European allies with traditional trade relations with the Soviet Union to join the trade controls through threats and inducements, establishing and enforcing strict export control lists. Thus, during the Cold War, the two camps, NATO and Warsaw Pact, did not rely on each other economically but added some additional imports and exports to the economic cycle within the organization. As a result, it was easier for the opposing countries to speak out and condemn nuclear weapons and even the use of force because they did not have too much at stake. In contrast, nowadays, countries depend on other countries for some aspects, such as U.S. arms, Chinese infrastructure, and Russian oil, and are hesitant to accuse them of specific issues.

## 3. Moral Capital

In addition to the close economic ties between nations, the credibility or morality of countries is an essential factor in determining the usefulness of their statements, especially about the use of force, such as nuclear proliferation. Here, international credibility and morality can be more graphically referred to as the "political use of moral capital." The term "moral capital" is mentioned in "On Moral Capital" by Wang Xiaoxi, Vice President of the Chinese Society of Ethics, as a term in economics: from the macroscopic point of view, morality can create a favourable environment and necessary social conditions for the development of production, and reduce the "social cost" of product development; from the microscopic point of view, morality At the micro level, morality participates in the creation of use-value as the spiritual motivation and value support of individual workers [7]. From a historical perspective, moral capital can be interpreted as the deep desire for

moral values brought about by the gradual progress of human society, such as the abolition of slavery, which brought about the desire for proper moral behaviour [8]. In international politics, we can understand it as the moral contribution to the orderly functioning of the international order [9]. In more detail, in the case of international events that would harm the common good of humanity, such as nuclear testing, not doing anything would mean "moral capital" because in the case of nuclear testing and proliferation, not participating would already mean reducing the problems of the international order.

In contrast, the nuclear powers, such as the United States, Russia, China, the United Kingdom, and France - the five countries that have been called nuclear powers by the NPT from the beginning - are not very convincing when discussing the prohibition of nuclear weapons in other countries. Of course, it would be inappropriate to draw such a conclusion because the five nuclear powers mentioned have their own economic and military strengths. These advantages give them the strength to act beyond international law. Nonetheless, the moral capital of the discourse of these five powers is greatly diminished when it comes to the possession of nuclear weapons by other countries.

An analogy can be drawn between a country that has tested nuclear weapons and is (potentially) building them and a gangster with a shotgun. In contrast, a non-nuclear country is compared to an innocent baby. When an innocent baby wants to have its nuclear weapons, i.e., a "shotgun," the gangster with the shotgun comes out to stop it and talks about how having a "shotgun" would affect the current international order and go against the common good of humanity. At this point, the effectiveness of the gangster's words is significantly reduced: it is illogical for a country with a "hunting rifle" to advise other countries that "hunting rifles" will affect international security. This time a question arises: Why is it okay for a gangster to have a "hunting rifle" but not for other countries? Another reason for this dilemma is that since the Yalta Conference, the idea of equal dialogue has gradually emerged in international organizations, which is reflected in UN Chapter I: Purposes and Principles (Articles 1–2) [10]. Regardless of the member states' size, military, and economic power, all have the right to dialogue and vote equally, at least in most cases. This rule also provides a platform for non-nuclear states to claim their rights. So, in the game of nuclear proliferation, the notion of moral capital makes the nuclear powers' voice even more ineffective in preventing other countries from possessing nuclear weapons at the level of international law, at least for the nuclear powers. So, in summary, the role of nuclear forces in preventing proliferation is diminishing.

#### 4. Subjective Interpretation

Along with the issue of objectivity, subjective interpretations also contribute to the confusion over nuclear weapons. One of the most controversial is the reason for possessing nuclear weapons: a state may develop nuclear weapons to defend itself against the nuclear deterrence of its adversaries. A state may become a proxy state for nuclear weapons. Moreover, nuclear weapons may be the inevitable product of a state with sufficient economic power and research capabilities. States with nuclear weapons have a variety of reasons to justify their nuclear weapons. There is a great deal of subjective interpretation involved. Of the nine known nuclear-armed nations in the world, the United States, as the inventor of nuclear weapons, deserves to have nuclear technology. The Soviet Union successfully tested nuclear weapons four years after the United States developed them to counter the nuclear deterrence generated by the United States. And then, Britain, France, and China each tested nuclear weapons for defence (with the possible help of the United States and the Soviet Union). In such cases, false information or subjective interpretations are almost impossible to detect, especially when the reasons of these countries are brought to bear on the actual situation, which almost fits the circumstances.

#### 4.1. Overseas Military Bases

Nuclear weapons can be deployed in many ways, and there are three main types: air-based launch platforms, sea-based launch platforms, and road-based platforms. The first two types are virtually impossible to interpret subjectively because the bombers and submarines that launch them have their own country and number, and there is no way to "subjectively interpret" them. Road-based nuclear weapons, however, have characteristics that are more easily subjectively interpreted. This is because some countries, such as the US and the Soviet Union, have overseas military bases in other countries [11]. Even though most military bases are leased or have been stationed, which means the land is not part of the US or the Soviet Union, the military still has the authority to deploy nuclear weapons at overseas military bases. At this point, although the control of nuclear weapons launches remains with the country deploying the military base, it also creates a nuclear deterrent for neighbouring countries. This model has much in common with proxy wars: the country that deters does not participate, but the country that deploys the nuclear weapons or initiates the war thus becomes the most apparent cause of deterrence and war [12].

On the other hand, international law has no consensus on the issue of military bases abroad. Some international treaties contribute to the establishment of military bases. The most obvious of these is the collective defence section of the North Atlantic Treaty, drafted by the United States [13]. It is because of the historical roots of "proxy" and the reluctance of the major powers to change it. International law does not address the issue of military bases abroad. Thus, international law has indirectly contributed to the existence and ferment of the issue of proxy nuclear nations.

#### 4.2. Defensive Responses

For defence against adversary nuclear deterrence, the best examples are China and the Soviet Union in the Cold War. On 22 Dec. 2015, the U.S. Cold War nuclear weapons inventory was declassified for the first time. In the document "Study of Atomic Bomb Requirements 1959," the American nuclear weapons targets were listed as China, the Soviet Union, and some satellites in Eastern Europe. The United States intended to drop 3,500 atomic bombs on more than 1,200 targets, including the Soviet Union, China, and Eastern European countries, as soon as war broke out. Of these 3,500 bombs, 870 were aimed at 117 Chinese cities [14]. Part of this nuclear program was the strategic defeat of the U.S.-led United Nations forces in the Korean War. Because North Korea, China, and the uncertain Soviet Union were in the same Soviet camp, the Eisenhower administration developed the much-criticized "massive retaliation" strategy. Even in a 1954 speech by Secretary of State Dulles, he stated that "in the face of a Communist invasion, the free world will immediately retaliate in the manner and place of our choosing [15]. This signal was a threat to the Soviet Union, which already possessed nuclear weapons, but it was a signal of national survival for China, which did not. At the time, this could be seen as the suppression of non-nuclear power by nuclear power. Since then, China has had a legitimate reason to develop nuclear weapons: to defend itself against a nuclear deterrent that already existed and was harmful to its national interests. Ten years after Secretary of State Dulles' speech in 1954, in October 1964, China successfully tested a nuclear weapon with partial help from the Soviet Union. This case seems normal and logical, but the "1959 Atomic Bomb Requirements Study," which was only made public in the 21st Century, was a state secret during the Cold War. Although there may have been intelligence help, China and the Soviet Union needed to decipher the signals sent by the United States and the internal planning of the United States themselves. How should China and the Soviet Union have interpreted the phrase "The free world will retaliate immediately in the manner and place of our choosing"? Would the "free world" have taken economic sanctions? Would it have been a military provocation? Or will they use nuclear weapons? Hardly anyone but the countries involved can know this. In light of

this fact, one could even go to the extreme and conclude that there is a possibility that a state could create an "adversary" for itself and use subjective interpretations of the wording of its adversary to gain a legitimate right to research nuclear weapons. As the number of countries with nuclear weapons grows, not only among the major powers but also among other countries such as North Korea and India equipped with nuclear weapons, it could create more tension and excuses for neighbouring countries to develop nuclear weapons [16]. Of course, such a theory would not work in most cases because nuclear testing and maintenance of nuclear weapons require a lot of money. A country without sufficient economic and technological power would not take such a risk of acquiring nuclear weapons. Nonetheless, we cannot completely deny the possibility of this idea. Such an inference warns that more nations with nuclear weapons would cause higher tension in different regions, and subjective interpretations may increase the likelihood of nuclear proliferation.

## 5. Conclusion

Based on current interstate interests, moral capital, and the reasons for the development of nuclear weapons, it is easy to conclude that the growing number of states possessing nuclear weapons will make it more difficult for international law to control nuclear proliferation. Moreover, it is essential to understand that relying solely on international law to manage nuclear proliferation is deeply mistaken. The fact that international law has played a significant role in governing most of the world's national order does not mean that it has no limits. As mentioned, international law without actual authority fundamentally differs from domestic law. International law should be used as a tool and a means to promote nuclear nonproliferation, for example, rather than a fundamental solution to the problem.

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