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THE UNIVERSITY OF
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**INTERPRETING THE NUCLEAR NON-
PROLIFERATION THEORY**

Daniel H. Joyner

Oxford University Press (2011)

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Interpreting the Nuclear Non-Proliferation Treaty

DANIEL H. JOYNER

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Foreword

This study is a remarkable one and is greatly welcomed at an important juncture and after a successful NPT Review Conference in 2010. Daniel H. Joyner has relied on solid grounds in interpreting the Treaty not relying entirely on statements made by certain officials and personalities involved in negotiating the Treaty. Since my book was published more than 30 years ago, it is a great source of comfort to find such a new and remarkable study that greatly enhances our understanding of the NPT and which can be considered as an inescapable companion to my study of the NPT negotiations.

This new study should be required reading for anyone who would wish to deal with nonproliferation. I am grateful to the author for having resorted to my book frequently in which I do not pretend to have an answer to all questions raised or still to be raised in the future. Congratulations for a well-thought-out study which is original and faithful to the tradition of meticulous interpretation.

Congratulations!

Mohamed I. Shaker
Chairman of the Egyptian
Council for Foreign Affairs
and author of *The Nuclear
Nonproliferation Treaty: Origin
and Implementation
1959-1979* (1980)

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Introduction

This book was not originally meant to take the form that it has. When I first considered writing a book on the 1968 Nuclear Non-proliferation Treaty (NPT), I intended it to take the form of a legal commentary on the NPT. I began my planning for this project while I was still writing my first book, *International Law and the Proliferation of Weapons of Mass Destruction*, which is a broad treatment of international law relating to the proliferation of weapons of mass destruction, including both non-proliferation law and counterproliferation policy. In that book, I wrote a chapter on the NPT and the various hard and soft law normative regimes associated with it. That chapter eventually grew to become by far the longest chapter in the book, covering every legal question that I could come across that was associated with the NPT. In a sense, that chapter became the NPT legal commentary that I had separately planned to write.

At the same time, however, while writing that chapter on the NPT, I began to see that there were problems of legal interpretation of the NPT in the international community which struck at an even more fundamental level than I had been able to address systematically in my first book, which again was of broad scope and which had its own overarching thesis. These were problems which went to the very essence of the treaty's content, meaning, and structure, and which were a challenge to the basic rules of treaty interpretation in international law. They were problems which had produced distorted and unsustainable policy positions, particularly among Western, nuclear-weapon-possessing states. I decided not to try to revise the NPT chapter in my first book, as it covered the questions necessary to that volume's scope of inquiry, but resolved instead to follow up that book with a stand-alone volume on the NPT containing the more fundamental analysis that I could see was needed to address the remaining problems of interpretation.

The current volume, therefore, is not a legal commentary on the NPT. To the extent that such a thing can be written about a treaty as controversial as the NPT, that more comprehensive analysis of legal questions relating to the NPT is contained in my first book, *International Law and the Proliferation of Weapons of Mass Destruction*. The current volume is, rather, a thesis-driven monograph which will apply the rules of treaty interpretation in international law to produce what I will term a 'holistic interpretation' of the NPT. More on exactly what this means shortly. Through the application of these interpretive methods, I will hope to demonstrate that a number of the legal interpretive positions on the NPT, maintained particularly by nuclear-weapon-possessing governments, are legally incorrect.

When I read a thesis-driven book, I appreciate it when the author provides a summary of the thesis in the introduction. I think this straightforward approach firstly helps the reader to know if they want to continue reading the book or not, i.e. whether the book is addressing the questions the reader wants to read about. Secondly, I think it helps to lay the author's cards on the table from the beginning, so that the reader can more clearly understand the structure and intent of the work. So, for these reasons I will proceed to give a summary of this volume's thesis.

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. I will argue that this distortion of principled balance by nuclear-weapon states has resulted in a number of erroneous legal interpretations of the NPT's provisions.

These misinterpretations, in turn, have been used to form the legal basis for nuclear-weapon states' policies relevant to the NPT regime, a number of which have unlawfully prejudiced the legitimate legal interests of non-nuclear weapon states (NNWS), pursuant to the NPT's grand bargain. Specifically, these policies include:

1. Requiring NNWS to exclusively source nuclear material from a multilateral fuel bank or multinational enrichment center as a condition of supply;
2. Requiring NNWS accession to the IAEA Additional Protocol as a condition of supply; and
3. Conditioning supply and recognition of rights to nuclear technologies on compliance with an IAEA Comprehensive Safeguards Agreement.

After examining the treaty interpretations and related policies of the nuclear-weapon states during what I will identify as the target decade of this study (1998–2008), I will finally proceed to examine developments in nuclear-weapon state policy and international law since the Obama administration came to power in the United States in early 2009, to see whether these recent developments manifest a serious change of course toward a restoration of the original balance of principle and prioritization underlying the NPT's grand bargain. Though these developments are recent and ongoing, I think that in several important ways they do constitute promising evidence of remediation of interpretive and policy excesses of the past. However, some imbalances, often derived from incorrect treaty interpretation, still linger in diplomatic rhetoric and should be rectified.