

***Interpreting the Nuclear Non-Proliferation Treaty.* By Daniel H. Joyner . Oxford/New York: Oxford University Press, 2011. Pp. xiv, 184 (including Appendices and Index). \$100.**

To set Daniel H. Joyner's new book on the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT)<sup>1</sup> in context, it is worth recalling the basic nature of that treaty. The NPT is commonly said to represent the 'cornerstone' of international nuclear law.<sup>2</sup> It sets out a system of differentiated obligations between two groups of states: nuclear weapons states (NWS) and non-nuclear weapons states (NNWS).<sup>3</sup> The NPT embodies and formalises a 'grand bargain' between these two groups.<sup>4</sup>

Under the NPT, the NNWS – comprising the vast majority of the states of the world – undertook not to seek to acquire nuclear weapons<sup>5</sup> and agreed to conclude safeguard agreements concerning their peaceful use of nuclear energy with the International Atomic Energy Agency.<sup>6</sup> In return for this, the NWS reaffirmed in the NPT the 'inalienable right' of all states to use nuclear energy peacefully<sup>7</sup> and gave a commitment to facilitate such peaceful use by other states.<sup>8</sup> Furthermore, the NWS undertook 'to pursue negotiations in good faith' towards complete nuclear disarmament themselves.<sup>9</sup> The NPT is therefore said to be

---

<sup>1</sup> Treaty on the Non-Proliferation of Nuclear Weapons, July 01, 1968, 729 UNTS 161 [hereinafter NPT].

<sup>2</sup> See, e.g., Masahiko Asada, *The Treaty on the Non-Proliferation of Nuclear Weapons and the Universalisation of the Additional Protocol*, 16 J. CONFLICT & SEC. L. 3-34, at 3 (2011); and *Fact Sheet: Nuclear Non-Proliferation Treaty* 2 U.S. DEPT. OF STATE DISPATCH 12 (1991).

<sup>3</sup> For the purposes of the NPT, a NWS 'is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967.' NPT, art. IX(3), *supra* note 1. This group is comprised of the permanent members of the United Nations Security Council: the United States, the United Kingdom, Russia (formerly the Soviet Union), France and China. The NNWS are therefore all other states.

<sup>4</sup> Leonard Weiss, *Nuclear-Weapon States and the Grand Bargain*, 33 ARMS CONTROL TODAY 21-25 (2003).

<sup>5</sup> NPT, art. II, *supra* note 1.

<sup>6</sup> *Id.*, art III.

<sup>7</sup> *Id.*, art IV.

<sup>8</sup> *Id.*, art V.

<sup>9</sup> *Id.*, art VI.

comprised of three substantive ‘pillars’: non-proliferation, disarmament, and the peaceful use of nuclear energy.<sup>10</sup>

Joyner is a Professor of Law at the University of Alabama. He has written extensively on international law’s approach to non-proliferation and nuclear issues, as well as on the related area of the law on the use of force (*jus ad bellum*).<sup>11</sup> *Interpreting the Nuclear Non-Proliferation Treaty* is his second sole-authored book, following 2009’s excellent *International Law and the Proliferation of Weapons of Mass Destruction*.<sup>12</sup>

Although *Interpreting the Nuclear Non-Proliferation Treaty* obviously covers some of the same substantive material as Joyner’s previous sole-authored volume, in that it focuses on the NPT, it is actually a rather different type of book. Where *International Law and the Proliferation of Weapons of Mass Destruction* provided broad analysis and exposition of international law’s various approaches to the proliferation of weapons of mass destruction,<sup>13</sup> *Interpreting the Nuclear Non-Proliferation Treaty* is very much a monograph: it is a book with a focused, singular thesis. As such, it is not a general or comprehensive review of the NPT *per se*.

At only 126 pages of substantive content – excluding the helpful appendices – this is a rather short book. In the case of some academic volumes, this might be something that is said as a criticism. However, given its aim of presenting a very specific thesis, the relatively short length of Joyner’s book is actually a great strength. *Interpreting the Nuclear Non-*

---

<sup>10</sup> NPT pillars

<sup>11</sup> For a full list of Joyner’s publications, see [http://www.law.ua.edu/directory/People/view/Daniel\\_Joyner](http://www.law.ua.edu/directory/People/view/Daniel_Joyner).

<sup>12</sup> DANIEL H. JOYNER, *INTERNATIONAL LAW AND THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION* (2009).

<sup>13</sup> As Joyner notes himself in the book under review (p. 1).

*Proliferation Treaty* is precisely as long as it needed to be and no longer.<sup>14</sup> Therefore, while it is certainly accessible for all readers – a good job is done in Chapter 1 of setting out the basics of the international legal regime regarding nuclear energy and the NPT’s place within this – it is probably not the place to start for those unfamiliar with the area wishing to gain an initial understanding of the NPT.

Instead, the book offers a focused critique of the interpretive approach to the NPT that was taken by the *de jure* NWS, and in particular the United States, during the target of Joyner’s study (1998-2008). The core claim is that a correct interpretation of the NPT, based on established principles of treaty interpretation as enshrined in Articles 31 and 32 of the 1969 Vienna Convention on the Law of Treaties (VCLT),<sup>15</sup> requires that the three pillars of the treaty must be viewed ‘holistically’. That is, the substantive pillars have to be interpreted as being, and must thus be applied on the basis that, they are intrinsically interrelated and are of equal normative weight. It is then argued that during the target decade, there was a disproportionate prioritization by NWS of non-proliferation principles, and a corresponding ‘under-prioritization of peaceful use and disarmament principles’ (p. 2).

To break this down a little, as is well known, Article 31 of the VCLT sets out the ‘general rule’ of treaty interpretation. To paraphrase: the rule requires the good faith interpretation of

---

<sup>14</sup> *E.g.*, there is no consideration at all in *Interpreting the Nuclear Non-Proliferation Treaty* of the Agreement for Cooperation Between the Government of the United States of America and the Government of India Concerning Peaceful Uses of Nuclear Energy, Oct. 10 2008, [http://responsiblenucleartrade.com/keydocuments/india\\_123\\_agreement\\_text.pdf](http://responsiblenucleartrade.com/keydocuments/india_123_agreement_text.pdf) [hereinafter Indo-US 123 Agreement]. Given the groundbreaking nature of this treaty for civil nuclear cooperation between the United States and a *de facto* nuclear weapons state operating outside of the NPT regime (in this instance, India) – devised and signed during Joyner’s target decade – and, in particular, the problems posed by the Indo-US 123 Agreement for the stability of the NPT and its associated regime, its omission from a book considering the NPT in general terms would be extremely concerning. In the case of the book under review, however, the Indo-US 123 Agreement simply does not impact upon Joyner’s core interpretive analysis of the NPT, and so was wisely excluded from the discussion. The present reviewer is a project member and co-investigator of the ‘123 Agreement Project’. See <http://www.reading.ac.uk/123agreement>.

<sup>15</sup> Vienna Convention on the Law of Treaties, May 23, 1969, 1155 UNTS 331 [hereinafter VCLT].

the ordinary meaning of the treaty's terms in light of its object and purpose (taking into account not merely the treaty itself, but also other agreements related to the treaty, subsequent relevant practice, and other obligations under international law).<sup>16</sup> VCLT Article 32 then provides that a treaty's *travaux préparatoires* can act as a supplementary means of interpretation where the application of Article 31 leads to an unclear or absurd conclusion.<sup>17</sup>

Applying these core rules of treaty interpretation, Joyner demonstrates in Chapter 2 that the NPT has a 'balanced, multi-principled underpinning' (p. 33), with the consequence that its three pillars are both interrelated and normatively equal. This is done through consideration of the ordinary meaning of the terms of the NPT, a detailed construction of the object and purpose of the treaty – taking account of its preamble and its overriding nature as a treaty involving differentiated obligations – and by supplementary means through reference to the process of its drafting.

Chapter 3 goes on to show that, during the target period, the NWS promulgated (and, to an extent, *imposed on NNWS*) an alternative interpretation of the NPT. This incorrect interpretation focused on the non-proliferation obligations of the NNWS to the comparative exclusion of the reciprocal obligations on NWS to assist NNWS in their right to utilize nuclear energy peacefully and to themselves take steps towards full disarmament. Joyner evidences this through the cumulative weight of official statements made by NWS representatives during this period, in relation to each substantive pillar.

The book then analyzes, in Chapter 4, this conception of the NPT, as presented by the NWS, in light of the holistic interpretation of the treaty previously set out (based on the application

---

<sup>16</sup> *Id.*, art. 31.

<sup>17</sup> *Id.*, art. 32.

of provisions of the VCLT). This chapter is therefore the core of the monograph's thesis. Finally, in Chapter 5, Joyner notes a comparative change, since 2008, in NWS interpretation of the NPT. There has undeniably been a policy-shift on the part of the NWS – led by Obama-era America – towards an understanding of the NPT that is more in line with the way Joyner argues it *should* be interpreted (albeit that this new interpretation is still considered imperfect by Joyner, especially with regard to the peaceful use pillar).

Overall, Joyner's thesis is highly convincing. Significant evidence is provided supporting the view that a prioritization the non-proliferation pillar goes against the ordinary meaning of the NPT, as well as its object and purpose as a 'grand bargain' between the nuclear 'haves' and the nuclear 'have-nots'. It is also undeniable that, during the relevant period, the NWS interpreted the NPT in this way and erroneously indicated that their own obligations to assist in peaceful use and to move towards disarmament were *conditional* on the fulfillment of NNWS non-proliferation obligations (in many cases obligations of a much more onerous sort than the NPT itself requires). Chapter 4 of the book in particular does an excellent job of highlighting the inconsistencies between a correct reading of the NPT and the approach of the five NWS from 1998-2008.

The power of the central argument of *Interpreting the Nuclear Non-Proliferation Treaty* is admittedly lessened somewhat by the notable policy change on nuclear issues by the NWS in general, and the United States in particular, since 2008. This change was, of course, most graphically emphasized by President Obama's famous Prague speech of April 2009.<sup>18</sup> The incorrect and unlawful NWS interpretation of the NPT Joyner demonstrates has been altered

---

<sup>18</sup> Remarks by President Barack Obama, Hradcany Square, Prague, Czech Republic, Apr. 5 2009, [http://www.whitehouse.gov/the\\_press\\_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered](http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered).

significantly, and – while the nature of this book makes it clear that Joyner welcomes this policy-shift – it has to a degree lessened the instrumental value of his critique.

Somewhat bravely, Joyner meets this fact head on in Chapter 5 by assessing this policy change and updating his analysis accordingly, rather than – as must have been tempting – simply ignoring recent practice and focusing solely on his target decade of 1998-2008. Ultimately, though, this was a wise choice, because Chapter 5 shows that while there may have been a notable altering of policy, there remains an under-prioritization of the peaceful uses pillar in particular, and much room for improvement on the part of the NWS in terms of balancing competing nuclear concerns (as they remain obliged to do under the NPT).

The present reviewer does have some concerns over Joyner’s relatively uncritical classification of the NPT as a ‘contract treaty’. He views the NPT is a ‘contract treaty’ because it has a *quid pro quo* arrangement at its core, and contrasts this with a pure ‘law-making treaties’, which create common standards of legal obligation for all parties (pp. 26-29).<sup>19</sup> Joyner is entirely correct that the NPT represents a system of differentiated obligations between the NWS and the NNWS (as he calls it, a ‘*quid pro quo* relationship of differential and reciprocal obligations’, p. 27). This in many respects indicates that the NPT is a ‘contract treaty’, but this is debatable.

It is worth remembering that the distinction between ‘law-making treaties’ and ‘contract treaties’ is an artificial academic device to aid our understanding of how treaties function – it has no legal meaning in itself – and the line between the two ‘types’ of treaty is not well

---

<sup>19</sup> Joyner has made the same claim – that the NPT is rightly to be considered a ‘contract treaty’ – previously, *see* JOYNER, *supra* note 2, at 9-11. On the distinction between ‘law-making treaties’ and ‘contract treaties’ generally, *see* PETER MALANCZUK, *AKEHURST’S MODERN INTRODUCTION TO INTERNATIONAL LAW* 37-38 (7th ed. 1997); and MALCOLM SHAW, *INTERNATIONAL LAW* 94 (6th ed. 2008).

defined.<sup>20</sup> In spite of its *quid pro quo* nature, from another perspective the near-universal, multilateral nature of the NPT does not resemble the common conception of a bilateral ‘contract treaty’ at all. Indeed, the NPT – which is both a multilateral treaty with near-universal membership and at the same time one with an unequal core – is a prime example demonstrating that artificiality of, and confusion that can be caused by, a distinction between these purported treaty-types. Admittedly, this issue of classification does not impact seriously on Joyner’s argument: the NPT is the NPT however one classifies it. Joyner’s interpretation of the NPT remains convincing,<sup>21</sup> despite the treaty being rather unhelpfully pigeon-holed as a ‘contract treaty’.<sup>22</sup>

An obvious criticism that could be leveled at *Interpreting the Nuclear Non-Proliferation Treaty* stems from a realist analysis: there is a key issue of political reality here, which Joyner does not acknowledge quite as fully as he may have. The *realpolitik* of international relations is often distasteful for international lawyers (focused as we are on notions of equality and the binding nature of law). Nonetheless, particularly with regard to areas such as the use of military force or the possession of nuclear weapons, power is an undeniable feature of the international legal order. Joyner demonstrates in a principled manner that the interpretative approach of the NWS to the NPT was both ‘unfair’ and unlawful, but is this not to some extent to be expected, however undesirable one considers that it may be?

With regard to the failure of the NWS to meet their NPT Article VI obligation to take progressive steps towards nuclear disarmament, for example, any nuclear weapons state (whether it has attained such status *de jure* or merely *de facto*) is extremely unlikely to buckle

---

<sup>20</sup> MALANCZUK, *supra* note 2, at 38.

<sup>21</sup> After all, as Joyner notes, Articles 31 and 32 of the VCLT apply equally to all treaties (p. 28).

<sup>22</sup> This reviewer has written elsewhere about his concern at labelling the NPT a ‘contract treaty’, see James A. Green, *India’s Status as a Nuclear Weapons Power under Customary International Law*, forthcoming 2012.

under pressure – political or legal – to relinquish its nuclear arsenal.<sup>23</sup> Given the perception of nuclear weapons as an effective security deterrent, so intrinsically tied up with notions of self-determination, power and defense, NWS are understandably keen to hold on to them, however discriminatory and unlawful (in the light of NPT Article VI) this may be. Moreover, of course, the political perception of both nuclear weapons as a defensive deterrent and of nuclear proliferation as a palpable security threat was particularly evident in the United States (and the Western world more generally) in the immediate post-9/11 period with which Joyner is engaging.

It is additionally always worth remembering that the *de jure* NWS are also the five permanent members of the United Nations Security Council, and so are used to getting their own way at the international level. It is only with recognition of the fact that the NPT itself is a discriminatory treaty built upon a continuing power imbalance that we can begin to move towards achieving its underlying (balanced) goals. Having said all this, it is perhaps unfair to criticize the book for not straying into these dark extra-legal waters of political realism; to an extent such matters go beyond its stated purpose. It is also not as if Joyner is necessarily claiming that it would have been realistic to expect an alternative approach on the part of the NWS, given the context of global security paranoia (both justified and imagined) of the period in question. Instead, he simply demonstrates that the approach taken was unlawful and had undesirable effects; this in itself should perhaps be considered enough.

The contribution to the literature of *Interpreting the Nuclear Non-Proliferation Treaty* is twofold. First, and most importantly, it acts as an original critique of the interpretation and application of the obligations of the NPT during the target decade, as has been discussed.

---

<sup>23</sup> Adam Steinfeld, *Nuclear Objections: The Persistent Objector and the Legality of the Use of Nuclear Weapons*, 62 BROOK. L. R. 1635-1686, at 1676, 1680 and 1685 (1996). [Check](#)



While there are numerous works considering the NPT generally,<sup>24</sup> or various aspects of that treaty more specifically,<sup>25</sup> there are none – so far as this reviewer is aware – that apply the rules of treaty interpretation to the NPT in the systematic and principled manner in which this is done here. This is extremely valuable in terms of underpinning the more progressive and balanced approach to international nuclear law that has seemingly begun to emerge under the Obama administration and its counterpart governments in other NWS since 2008.

Secondly, the book will be useful to those interested in treaty interpretation more generally. Given the nature of its thesis, *Interpreting the Nuclear Non-Proliferation Treaty* is not merely a study of the NPT, but is also a consideration of the appropriate manner in which to interpret treaties and treaty-based norms. The approach taken to treaty interpretation is not especially novel, in that the rules contained in VCLT Articles 31 and 32 are well settled and have been fully discussed in the literature.<sup>26</sup> As such, the book's contribution in this respect is less noteworthy than with regard to the NPT more specifically. However, while the book's understanding of treaty interpretation may not, in itself, be entirely novel, the considered and detailed application of core interpretive principles to a particular treaty (in this case the NPT), will certainly be a valuable point of reference for other scholars who may wish to consider different treaties in a similar manner, or simply to understand the nature of treaty interpretation *per se*.

As with all Joyner's previous work read by the present reviewer, *Interpreting the Nuclear Non-Proliferation Treaty* is extremely well written. Its thesis is presented engagingly and yet simply. The clarity of the writing style is such that the complex arguments relating to treaty interpretation (and the application of these rules to the NPT) is at all times easy to follow and

---

<sup>24</sup> General works on NPT

<sup>25</sup> Works on specific aspects of NPT

<sup>26</sup> See ANTHONY AUST, MODERN TREATY LAW AND PRACTICE 230-255 (2007) for an excellent summary.

accessible. The conversational tone<sup>27</sup> and flashes of humor employed<sup>28</sup> in the book may admittedly not be to everyone's taste, but, for this reviewer, these stylistic touches – along, of course, with the quality of its substantive thesis – made *Interpreting the Nuclear Non-Proliferation Treaty* a joy to read. It is far less 'dry' than most academic contributions to the field.

Having said this, there are an excessive number of block quotes used in the text. At times it is undoubtedly necessary to quote in full a treaty provision or an official state proclamation, particularly in a book such as this that requires close textual interpretive analysis. Joyner does, however, on occasion resort to large sections of primary quoted material where not strictly necessary, particularly as a number of the materials quoted are reproduced again in full in the book's appendices. This is, though, a minor concern, and, while being a little distracting, is not something that notably detracts from the high quality of the writing.

Ultimately, *Interpreting the Nuclear Non-Proliferation Treaty* is an excellent book, which sets out a clear thesis and then evidences its claims with significant detail. It originally contributes to our understanding of the NPT, as well as to the inequalities at its core (both in theory and, particularly in the context of the book's thesis, in practice) and the application of the key rules of treaty interpretation generally. As Mohamed I. Shaker's foreword to the volume correctly indicates, this is a 'well-thought-out study which is original and faithful to the tradition of meticulous interpretation.' (p. vii).

---

<sup>27</sup> E.g., 'They [the NNWS] fear that the new tone of the Obama administration only put's sheep's clothing on the original wolfish idea' (p. 124).

<sup>28</sup> E.g., 'I originally wanted to entitle this volume *A Holistic Interpretation of the Nuclear Non-proliferation Treaty*. However my editor and other colleagues eventually convinced me that modern associations of the concept of 'holism' with New Age healing and philosophy would likely make this confusing to readers, who might expect a free scented candle with each purchase of the volume' (p. 21).

JAMES A. GREEN  
*University of Reading*