

Chapter 22

The Future of the Non-proliferation Treaty



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The Nuclear Non-proliferation Treaty (NPT) is generally regarded as the key pillar of the world nuclear order Walker [1]. With its 188 parties, it is the most universal arms control treaty in world history. Its basic philosophy is that nuclear war is a global calamity that must be avoided and that nuclear war becomes all the more likely the more states possess nuclear weapons and the more dyads of nuclear armed states watch each other with distrust and fear weary that the opponent may try to attack with surprise to disarm the victim's deterrent. In such a world, every single political crisis would open the specter of a nuclear holocaust. The NPT was meant to prevent this world from emerging by stopping the number of nuclear weapon states at five, the number existing officially when the negotiations for this Treaty started earnestly in 1968.¹

The NPT constitutes a historical anomaly. In the political history of mankind, political units from nomadic hordes to territorial states always strove for the most powerful weapon of their time within the boundaries of their own resources. Through membership in the NPT, in contrast, most states renounce most powerful weapon of their time, while a small minority is permitted to possess them temporarily, and a few more states have acquired them as non-members of the NPT. In other words, the Treaty constitutes an unequal world—at least for the time being.

Such inequality creates the inevitable impulse to get back to a level playing field. This impulse is not uniform and simultaneous for all countries at all times, but occurs with considerable regularity: one or the other government considers, embarks on, and sometimes brings to end, a program of activities geared towards the acquisition of nuclear bombs. In the nuclear age, no less than 37 cases of such

¹In fact, at the time the real number was already six, as Israel obtained its first operational nuclear weapons most likely not later than 1967.

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consideration, embarking, or completion have become known. The value of the NPT can be deduced from the fact that the overwhelming number of these cases started before the Treaty entered into force, and the overwhelming number of renunciations occurred when he was in force. Obviously, the NPT provides a framework in which renouncing these weapons is supported by the dominant normative and legal framework Müller and Schmidt [2].

Catching up with the nuclear Joneses by the many, however, is not the only way to create equality. Disarmament by the few is the obvious alternative, and this path is prescribed in Article VI of the NPT which obliges all parties to the NPT to terminate the nuclear arms race and to embark in good faith negotiations towards nuclear disarmament. The International Court of Justice (IGJ) has clarified in an Advisory Opinion in 1996 that good faith requires that negotiations are pursued in a way that they are brought to a successful end. It is for this reason that I have mentioned above that the NPT's inequality is "temporary" "for the time being".

The said inequality has three dimensions. First, there is the unequal distribution of rights and duties of the parties to the NPT; this dimension distinguishes the NWS from the NNWS. NWS, as mentioned, are permitted for the time being to possess nuclear weapons, NNWS are prohibited from acquiring and possessing them. Thus, the NPT distributes military power unequally among its membership.

The second dimension concerns the precision by which duties are defined. The prohibition for the NNWS is relatively clear (even though what "development" and what "nuclear weapon" means is not defined). In addition, this prohibition is to be verified by the International Atomic Agency (IAEA), and what verification entails is detailed in two lengthy documents, the Comprehensive Safeguards Agreement which is obligatory for all NPT NNWS, and the Additional Protocol with even farther reaching and more intrusive rights for the inspectors which is yet voluntary. In contrast, the disarmament obligation in Art. VI is vague. Neither the time frame is prescribed, nor are the steps that are obligatory clearly stated.

The third dimension concerns the procedures for addressing non-compliance disputes and enforcement decisions. These procedures empower the NPT NWS through their UNSC permanent seats, since the UNSC, reading the NPT, the Comprehensive Safeguards Agreement, and the IAEA statute in their mutual relationship, is put in the role of the ultimate arbiter in non-compliance cases under international law. This situation has been described sarcastically as the alcoholics empowered to ensure abstinence.

There is a fourth type of inequality which must be noted, an inequality of a regional kind: The inequality in the conflict-ridden region of the Middle East, where Israel is the single nuclear weapons possessor, even though the Israeli government has never officially claimed to be in this position. This regional inequality triggered the same impulse for catching up, and led no less than four regional states to make attempts to do so: Libya, Syria, Iraq and Iran. Like at the global level, there is a regional approach to create equality by disarmament and regional diplomacy. This is the motivation for the regional project of a Nuclear Weapon (or Weapons of Mass Destruction) free zone in the Middle East Müller and Müller [3].

These inequalities and the feelings of injustice they are inducing are at the roots of three crises Becker et al. [4] which characterize the present relationships within the Treaty regime: a crisis of compliance, a crisis of confidence, and a crisis of leadership.

Currently, the NPT is facing two serious compliance problems concerning the core of the NNWS undertakings. The first concerns the Democratic People's Republic of Korea (DPRK), the second one the Islamic Republic of Iran.

North Korea left the NPT in 2004 after having cheated on its undertakings by running a nuclear weapons program while the country was still a party to the Treaty. In response, the international community, led by the United Nations Security Council (UNSC) pursued a double strategy of sanctions and diplomacy. The strategy was compromised by the opposite geopolitical interests of China and the US in East Asia. The fact that the DPRK is an ally of China in the struggle for regional and global leadership dissuaded Beijing from imposing pressure that could lead to regime collapse. Apart from the fear of regional destabilization, the prospect of Korean re-unification under South Korean leadership implied the nightmare of US armed forces in immediate neighborhood of Chinese Borders. China agreed to sanctions, but insisted on limitations. The stubborn pursuit of nuclear weapons by the DPRK and nowadays the brandishing of these arms and utterance of wild threats not only against the United States, but also against South Korea and Japan, two NPT NNWS, constitute the most blatant case of defiant proliferation against the spirit and letter of the NPT so far.

Iran—the second serious non-compliance case, failed to comply with its obligations under its safeguards agreement with the IAEA for more than a decade, after it had re-started its nuclear program in the mid-eighties after the experience that Iraq's use of chemical weapons did not provoke any international response while, to the contrary, East and West continued to prop up Iraq's military power, including supplies which were used in Saddam Hussein's weapons of mass destruction programs.

2002, it became known through the revelations by an Iranian resistance group that the country had started a clandestine program for uranium enrichment. In the following dispute Teheran was first ready to cooperate, but after the election of President Ahmadinejad defied a series of UNSC resolutions and refused to fully cooperate with the IAEA in order to resolve open questions concerning its nuclear activities, particularly its potential weapons aspects.

Significant and increasing pressure and the need to overcome growing sanction costs that threatened to cripple the Iranian economy moved Teheran to seek cooperation. Under the new President Rouhani and a more accommodating US Administration under President Obama, a diplomatic solution became possible. The eventual agreement (JCPoA) presented a triumph of diplomacy and reason by accepting basic requests of either side. It treated Iran with respect and accepted implicitly its right to develop civilian nuclear energy, including enrichment. Iran, on its side, accepted an extra burden to restore lost confidence through extraordinary concessions concerning constraints on its civilian program and unprecedentedly intrusive verification measures. The agreement thus stopped Iran's creep towards

the bomb for an extended period of time. The JCPoA includes the most intrusive and comprehensive verification system ever installed Perkovich et al. [5]. Yet, the agreement is threatened by Pres. Trump's hostility and the stubborn opposition of right-wing Republicans. It is unlikely that Pres. Trump has read a single line of the JCPoA, and if so, has understood a single word. Yet he refused to certify that this agreement is in the US interest and opened the opportunity for Congress to kill it.

The two cases of the crisis of compliance are a heavy burden for the existence of the NPT, yet they have not, so far, destroyed the Treaty. It is likely that the North Korean case might be contained as a regional problem and that the combined efforts of China and the USA might eventually halt the further progress of Kim Jon-un's arsenal. It might also happen that President Trump wants to use the remaining, brief window of opportunity before the DPRK can field indeed an operational inter-continental capability to destroy cities at the US West Coast by a devastating (hopefully conventional) strike against North Korea's nuclear (and probably chemical and some conventional) assets, creating havoc on the Peninsula. Or things will just fall apart with North Korea enlarging arsenal and capabilities and the US and China deeply divided and hostile against each other.

The Middle East situation may have even more repercussions. Iran has indicated that a withdrawal of Washington from the JCPoA might not be the end of things if the other parties—China, Russia, France, Germany, the UK and the EU stick to the agreement and help to compensate for losses incurred by Iran for US defection. What this would mean for the Western Alliance, however, remains to be seen. For the NPT and future compliance crises, the experience that US legal commitments to agreements destined to terminate a crisis may have long-term negative consequences.

47 years after the NPT entered into force, there are much less nuclear weapons in the world, between 14 000 and 15 000 instead of over 60 000. Yet, the remaining nuclear weapons are still integral part of national security strategies of NWS and their allies. This situation created seep dissatisfaction among non-allied NNWS which undermines the unity of the Treaty community and threatens to de-legitimize the NPT.

The NWS refusal to disarm is justified by three arguments which look right at the surface but become unconvincing if scrutinized carefully: First, Nuclear abolition needs specific political requirements. On the surface, this argument seems to have something to it: Since nuclear weapons are presumably held to respond to certain perceived security problems, the solution of these problems would help to eliminate the missions for nuclear weapons. But this argument is largely invalid in reality since the political facts which prevent the NWS from disarming are largely the consequences of their own policies: The doctrine of superiority of the US armed forces and Washington's (and NATO's) claim to employ force for "higher objectives" even when there is neither a case for self-defense nor legalization of such military action by a UNSC Resolution under Chap. 7 of the UN Charter.

The second argument maintains that nuclear weapons as deterrent in the hands of rational, "civilized" governments are riskless and, moreover, useful for international

security. But this argument is unconvincing in the light of leaders who brandish nuclear weapons like Putin or Trump.

The third argument states that nuclear disarmament can progress only in steps, not in jumps. In principle, an incremental strategy promises the most realistic path of disarmament, because each single step lays the groundwork for the next and enhances mutual confidence which is the condition for more daring progress. But this argument is empty in the light of history because of the present undeniable stagnation in nuclear disarmament. Even worse, the NWS refuse to take steps they have already agreed to. Analyses like the annual Hiroshima report document that compliance with agreed disarmament steps are below 50% Hiroshima Prefecture [6].

We have to look at the facts: There has been no new nuclear disarmament treaty since 2010, the ABM Treaty which prohibited complete national missile defense system, granting the integrity of deterrence arsenals even at very low number has been scrapped by the George W. Bush administration, the plutonium disposition agreement of 2010 has been suspended by Moscow, the CTBT is not in force 21 years after its negotiations were concluded, because states like the US, China, India, Pakistan, India, Israel and North Korea have not become parties. The US and Russia accuse each other of violating the INF Treaty; this pillar of nuclear disarmament might fall by the wayside in the next few years.

Rather than a process nuclear disarmament, we are watching a five-polar nuclear arms competition which involves the US, Russia, China, India, and Pakistan. Not everybody is arming against everybody else, but we have a chain of mutually distrusting nuclear armed dyads so that armament steps of any of these actors engender ripple effects everywhere else. All the while, the NWS improve the quality of their arsenals. China, India and Pakistan increase the number of their nuclear warheads. Russia has announced that it envisages a strategy of nuclear de-escalation; this means the employment of nuclear weapons in wars that go badly for Russia with a view to dissuade the enemy from continuing fighting because of the risk of further escalation. In NATO, nuclear deterrence gains new traction, because the Eastern members are highly nervous about Russian exercises, illegal overflights by Russian military aircraft and nuclear saber-rattling, notably after what happened in Ukraine. As a consequence of these developments many NNWS have lost confidence in the sincerity of NWS commitment to nuclear disarmament.

Frustrated by perceived neglect of the NWS' central NPT duty, repelled by the condescending attitude of the NWS, most NNWS, supported by NGOs, chose a new path: negotiating a Nuclear Ban Treaty (NBT). A movement, initially driven by a few leading governments (e.g. Austria, Switzerland, Ireland, Mexico, South Africa, Costa Rica) started with a focus on humanitarian consequences of NW—as highlighted in the NPT's preamble. Three consecutive conferences in Norway, Mexico and Austria reached the conclusion that nuclear arms are inhumane, incompatible with international humanitarian law and must be prohibited like biological or chemical weapons. From there emerged the demand for a legal ban against nuclear weapons (NBT) Kmentt [7].

The NBT movement proceeded against the opposition of the NWS and allies and without their participation. In 2016, the majority of the UN General Assembly established a negotiation forum for ending the lack of an effective legal instrument against nuclear weapons. During the negotiations in 2017, only the Netherlands joined among US allies the negotiating crowd of 124 states, because the Dutch parliament, driven by a public referendum, ordered the executive to take part in the talks. The NWS and their other allies abstained. Eventually, the NL voted against the ban Potter [8], Mukhatzhanova [9].

The NBT that was adopted by the vast majority constitutes an impressive signal by the majority and a new element into NPT debates whose impact remains to be seen. Given the history since indefinite extension of the NPT, notably the disappointment by broken promises, it was inevitable and justifiable that the majority would seek self-empowerment to break deadlock.

Unfortunately, the NBT is not a very good treaty: it fails to fill NPT gaps concerning prohibition scope by not mentioning nuclear weapons research, transfer of arms parts, materials and technology in addition to nuclear weapons of which to dispose the NBT members are not permitted anyway, it lacks any clause on export controls beyond the transfer of full weapons, is silent on non-compliance/enforcement but contains only a toothless dispute settlement imperative, lacks institutional clarity, because the IAEA and a mysterious “Authority” with competences in verifying nuclear disarmament share authority without clearly distinct mandates. Nevertheless, the NBT is there and will most likely enter into force in the coming years. Opponents will have to learn to live with it. Fundamental opposition will thus prove futile and counterproductive. NWS and their allies appear painfully unprepared to face the facts.

In the current situation, there is no leadership visible on any side in the disputes which would open a new path, cut the Gordian knot, or build bridges between the opposite camps. The US suffers worst domestic political cleavage inside since the Civil War and is led by an incapable, psychically if not mentally defect president without any knowledge of the world who is not, and will never be, up to his job. Many Republicans in Congress are fanatics and ideologues of Bolshevik dimensions and known as little about the world as their president.

Russia is led by a nationalist, corrupt and resentful elites, led by a president socialized as a mediocre intelligence officer of the Soviet Union with the behavior of a strong boy in puberty with minority complexes. Ensuring geopolitical gains, showing military muscles, and taking revenge against the US for perceived past slights take priority over rational, compromising external policy.

China is busy with preserving internal rule by the Communist party, pursuing territorial claims against no less than 8 neighbours, and standing up and getting equal with the US. An ego-orientated president tries to enhance his personal power and extend his personal rule by enlarging the international power of China. In this project, territorial claims against altogether eight neighbors on land and on sea are an apparently non-negotiable part.

The EU is internally divided between NWS/allies and disarmers (Austria, Ireland, and Sweden). Germany as the leading economic power in the EU is

compromised in the eyes of many NPT members by its nuclear NATO role. France is, besides Russia, the most uncompromising NWS. It is obvious that in the field of nuclear disarmament, the EU is incapable to function as an unified actor.

In the NAM, South Africa suffers from a weak, corrupt president. Brazil focusses on preserving its Navy's plans for nuclear powered submarines. Iran is still busy to stand up to the US, enhance its regional power status, and pacify internal divisions by propping up national pride. Egypt has developed an almost manic concentration on the Middle East theme. That Egypt did not take to offer of Israel, extracted by intense US diplomacy, to address the nuclear subject in a conference on a Middle East Zone Free of Weapons of Mass Destruction under the condition that it will be embedded in the overall regional security situation still strikes me as incomprehensible. As long as this stubbornness persists, Egypt is not up to the task as a NAM leader. Some states, e.g. Mexico, Costa Rica, Indonesia show occasional, but not perpetual leadership qualities. Iran's failure as NAM chair, despite best efforts to rally NAM consensus around positions during the 2015 RevCon and during the 2016 UNGA debate concerning NBT negotiations documents the lack of NAM leadership, and possible the structural impossibility to establish one.

The next phase in the future of the NPT will be, of course, the review cycle which has already begun. Frontlines between the majority of the NWS and their allies, on the one hand, and the vast majority of the NNWS are as sharp and deep as never before.

The NWS resent the NBT and allege that it is hurting the NPT. They try to keep discipline among their allies, which is easier with some (the Easternmost NATO members) than with others ("old" NNWS Europe and the Southern part). They attempt to arms-twist smaller states not to sign and ratify the NBT, because they still maintain the hope that they might be able to prevent the NBT from entering into force because of the quorum: fifty ratifications are needed for the NBT to enter into force. The NWS continue to regard nuclear deterrence, decisions on the nuclear posture, arms control and disarmament as their exclusive turf with no role for NNWS. Because the NBT intrudes this *chasse garde*, they take it as offense, as a slight in their face xxx dealt them by countries of minor importance. As far as disarmament is concerned, NWS want moves, if at all, as single small steps, to become obligatory only with their agreement, and to be implemented after such agreement only at their will and with due regard to the national security requirements—as they see them—of the moment.

The majority of NNWS refuses, in retaliation for lacking disarmament, to accept any further improvement of the non-proliferation toolbox (verification, export control, procedures for withdrawal and non-compliance cases, obligatory multi-lateralisation of fuel guarantees and fuel cycle activities). The weaknesses in the NBT prove this attitude: even for saving the credibility of their commitment to lay the foundations of a nuclear weapons free world, they were not ready to take upon themselves the necessary undertakings beyond present ones. This attitude puts an air of lack of seriousness over the NBT. It is also possible that at least the NAM members are ready to shelter peer NAM states who temper with NPT compliance

by their solidarity, as long as the cleavage continues, even though this would remove the realization of a nuclear weapons free world even farther into the future.

If world politics were the realm of reason, both NWS and NNWS would do their best to strengthen the NPT as their common good, given what is at stake. The NWS would agree to take steps towards disarmament, notably those which would enhance safety against nuclear war, accident, or non-state actor attack. The NWS and their allies would accept the NBT as *fait accompli*. They would agree to take note of the NBT, recognize that it is designed to serve the objectives of the NPT's preamble and Art. VI, that it is compatible with the NPT, and that a large number of NPT parties support it. NNWS would accept that agreed disarmament steps, although not leading to nuclear weapons abolition in the short term, serve the common goal and are thus worth supporting. They would agree to improve new non-proliferation measures and to help bring non-compliant states back to good standing, NWS and NNWS would both effectively implement the agreed steps. On the Middle East, the formula which the US extracted from Israel in 2015—address nuclear issue, but in the context of regional security—would be embraced by all regional states.

But international politics is not the realm of reason Bleiker and Hutchinson [10]. NWS are jealously guarding their privileges and pursue their competitive geopolitics which stand in the way of disarmament. NNWS feel offended and humiliated by the NWS' disregard for their cherished positions and thus block measures that would be in their own best interest.

In the past, wise bridge-builders were repeatedly capable to work as katalysts for consensus. Xxx But with the lack of capable leadership in our age of populist emotions, can reason prevail? Hence, unfortunately, my answer to the question about the future of the NPT ends itself with a question mark.

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