

## Why the Treaty matters

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*World order will be secured only when the whole world has laid down these weapons which seem to offer us present security but threaten the future survival of the human race.*

*—President John F. Kennedy, State of the Union address, 1962*

At 2017's fiftieth anniversary celebration of the signing of the Nuclear Non-Proliferation Treaty (NPT) in Washington, DC, some participants enthused that the treaty should last for the next five decades and beyond. On the contrary, however, a recent provocative and timely article in the *Bulletin of the Atomic Scientists* by Tom Sauer and Joeliën Pretorius ('Is it time to ditch the NPT?') expressed serious doubts about the NPT's longevity and actual usefulness, in view of the disappointing implementation of some of its key provisions.

In response, Adam Scheinman, a recognized expert in arms control and nuclear non-proliferation matters, wrote 'No, it is not time to ditch the NPT', which disagreed sharply the former's premise, and extolled the enduring value of the NPT—pointing out its contribution to world security and stability.

In my view, the perceived shortcomings of the NPT are not sufficient grounds to justify mass withdrawal. However, it is important that calls to abandon the treaty be taken seriously, as evidence of a deeper deficit of confidence in its worth and ability to respond to current security perceptions. I believe that this is the time to take a hard look into the NPT and join forces in achieving its full promise of effective nuclear disarmament, including via new,

complementary agreements. Failure to do so may indeed weaken support by some parties, reinforce latent inclinations to actually ditch the NPT, and precipitate its demise.

Withdrawal en masse might seem an attractive option to some, as a powerful statement of dissatisfaction by non-nuclear weapon states with the lack of progress in concrete disarmament measures and the re-emergence of the nuclear arms race. Denunciation of any international treaty is universally recognized as a legitimate recourse when a state concludes that the disadvantages of membership outweigh perceived benefits. It is useful to recall, in this connection, the following passage from Mohammad Shaker on the genesis of the NPT: 'It is quite significant that ... violations of (or non-compliance with) the treaty as a ground for withdrawal figured prominently in explanations given by US officials'. To date, only one state that was party to the Nuclear Non-Proliferation Treaty—the Democratic People's Republic of Korea, more popularly known as North Korea—has invoked Article X.1 in order to terminate its membership in the NPT.

In my view, the treaty's parties do not seem ready to embark on such a course, which might create more problems than solutions. But one must acknowledge a growing need for a more effective and universal regulation of questions relating to nuclear disarmament and non-proliferation, in order to face the complexities of the current security realities. Recent events on the world stage, as well as an evolving debate inside and outside the United Nations, suggest that there is a pervasive lack of confidence in the existing legal architecture—including the NPT and its ability to ultimately survive in the present form. The longer this perception persists, the stronger will be the questioning of the treaty.

Having been present as a young member of Brazil's delegation to the Eighteen-Nation Disarmament Committee (ENDC) in 1966 to 1968, I vividly recall the inconclusive debate in that body on the draft NPT jointly introduced by the delegates of the United States and the Soviet Union. Lack of consensus prompted its two co-chairs to send it to the General Assembly 'on behalf of the committee'. About one-fourth of the membership of the United Nations at the time chose either to vote against the treaty's endorsement by the assembly or to abstain, which attests to the misgivings and hesitations of a considerable number of states. Over the following decades, however, acceptance of the NPT gradually grew and today only India, Israel, North Korea, and Pakistan—all of which came to acquire nuclear weapons—are not party to it.

Nevertheless, the perceived poor performance of the treaty on a number of issues, as well as discord over interpretations that are seen as deviating

from its original purposes, continue to fuel dissatisfaction among its non-nuclear parties. It might be useful to review some of the areas where conflicting views hinder its smooth functioning—and may provide grounds for stronger calls for defections in the not so distant future.

In 1965, General Assembly Resolution 2028 set forth the principles on which a future non-proliferation treaty should be based. According to that resolution, the treaty should be ‘void of any loopholes which might permit nuclear or non-nuclear powers to proliferate, directly or indirectly, nuclear weapons’ and should embody ‘an acceptable balance of rights and obligations between nuclear and non-nuclear weapon states.’

In all fairness, it can be said that the NPT was quite successful in helping to prevent additional states to obtain nuclear weapons. Nothing in it, however, deals with other forms of proliferation, such as the accumulation of nuclear arms, their spread all over the globe in airplanes and submarines, or technological improvements in their range, speed, accuracy and lethal power.

The definition of a nuclear-weapon state in Article IX.3 and the indefinite extension of the NPT in 1995 set in stone the division of the world into two categories of states. In an arrangement between such unequal parties, rights and obligations obviously would have to be asymmetric. Nuclear-weapon states, however, seem to interpret the provisions of the NPT as legitimizing their arsenals by claiming an exclusive right to rely on nuclear weapons for their security for as long as they see fit while denying this to all others forever.

A recurrent criticism of the NPT is that the language of another article, known as Article VI, makes it all but impossible to pinpoint and enforce the obligation of all its parties to pursue good-faith negotiations on ‘effective measures relating to the cessation of the nuclear arms race at an early date and to nuclear disarmament and on a treaty on general and complete disarmament under strict and effective international control’. For their part, references to nuclear disarmament in the preamble of the NPT do not go beyond declaring the ‘intention’ of the parties to undertake effective measures ‘in the direction of’ nuclear disarmament and expressing their desire ‘to further the easing of the international tension and the strengthening of trust between states in order to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a treaty on general and complete disarmament under strict and effective international control’. This kind of language further dilutes the uncontested obligation

to work toward disarmament and hinders its enforceability.

Non-nuclear states also complain that promises of nuclear disarmament made by nuclear-weapon states on other documents related to the NPT similarly amount to no more than vague expressions of a general aspiration relegated to an uncertain time in the future, when unspecified ‘conditions’ or a ‘favourable environment’ would make concrete measures in that direction possible. Various commitments to take specific steps made by nuclear-weapon states in such documents have been reneged upon, or never found concrete expression in the policies of their subscribers.

Furthermore, the NPT does not contain a definition of a nuclear weapon—which consequently makes it difficult to ascertain when a non-nuclear party can be said in a legally binding document to be in violation of the provision contained in Article II not to ‘acquire’ such a weapon. For instance, if a country merely enriches uranium to a grade sufficient to cause an explosion, but has not actually tested an explosive device, can it be said to have violated its commitment under Article II? To get around problems like these, the treaty’s Article III is worded: ‘with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other explosive devices’.

And let it be noted that the above solution only applies to non-nuclear weapon states; no such statutory system exists to ascertain whether or not the nuclear-weapon states are complying with their own obligations. In fact, it is hard to even imagine a case where a specific concern about a nuclear weapon party violating the NPT could get a fair hearing at the United Nations Security Council, given that each of its five permanent members enjoy the power of the veto.

Another point of contention regards the security assurances from nuclear weapon states not to use or threaten to use nuclear arms against non-possessors. This subject has been widely discussed in the United Nations and in the Eighteen-Nation Disarmament Committee (ENDC), but did not find a place in the final text of the NPT or in any multilateral, legally binding agreement. As individually formulated by each nuclear-weapon state and endorsed by the Security Council, existing assurances do not go beyond unilateral promises that can be revoked at any time for the reasons that each nuclear-weapon state deems applicable. States party to nuclear weapon free zones have consistently requested the review and withdrawal of reservations and interpretations that impose conditionalities—all but nullifying the assurances contained in the protocols annexed to the treaties that established such zones.

By making such assurances dependent on the non-nuclear party’s

complying with the NPT while reserving to themselves the right to determine such compliance, nuclear-weapon states can play the part of accuser, judge, and executioner.

The international community is legitimately concerned with the possibility that some of the non-nuclear parties of the NPT might be tempted to procure nuclear weapons as a security hedge. Indeed, in recent years concern about possible new aspirants to the nuclear club has grown, particularly in areas of chronic instability. Security is not to be enjoyed solely by the handful of states that assured for themselves a privileged status under the NPT, or by those that followed their example by developing their own nuclear capability outside the scope of the treaty.

The persistent standstill in multilateral bodies devoted to disarmament, the recent erosion of the arms control architecture, and the revival of the nuclear arms race gave rise to a successful multilateral effort to negotiate and adopt the Treaty on the Prohibition of Nuclear Weapons in 2017. Progress in the process of entry into force of this new instrument should reassure, rather than alarm, the possessors of such weapons. None of its provisions contradicts the NPT. Rather, it expressly reinforces the commitments already accepted by the non-nuclear parties, and provides a path for fulfilling the commitments to nuclear disarmament.

Nuclear-weapon states should seriously ponder their current policies and strategic postures that rely on the possession of nuclear weapons; such undertakings risk catastrophic consequences by design, accident, or sheer incompetence. Regardless of its cause, a nuclear detonation would bring unacceptable and long-term damage to the environment, climate, human health, and wellbeing, besides threatening the very survival of humankind. This danger is inherent to the existence of nuclear weapons. As recognized by numerous responsible scientists and statesmen, such consequences would affect all nations, regardless of boundaries, including the populations of nuclear weapon states themselves. No nation, group of nations, or international organization would be able to deal with the humanitarian emergency resulting from a nuclear attack. Recent technological advancements in artificial intelligence make overwhelming retaliation and second strike a certainty, assuring the devastation of the planet as defined by the apt acronym MAD—meaning ‘Mutual Assured Destruction’.

It is incumbent upon every responsible member of the international community—first and foremost the nuclear-weapon states—to work in good faith toward the complete removal of that danger. The contribution of the Nuclear Non-Proliferation Treaty to help curb widespread

proliferation, and the role it can play in the direction of nuclear disarmament must be duly recognized. It has been a valuable tool in the effort to contain the number of states able to unleash untold suffering and destruction upon the world, possibly wiping out human civilization as we know it.

Its worth, however, should not be a justification for perpetuity. Now is not the time to ditch the Nuclear Non-Proliferation Treaty, but to make good on its unfulfilled promise—and once and for all ditch the nuclear bomb.

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