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# THE GLOBAL NUCLEAR ORDER: FROM NON-PROLIFERATION TO NUCLEAR BAN

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## *Abstract*

Despite early efforts to effectuate a nuclear-weapon free world after WWII, policy makers and experts in the 1950s and early 1960s shifted their attention from the arsenals of the nuclear powers to the risk of future proliferators and the risk of a nuclear arms escalating into nuclear conflict. This paper analyzes how the emergence of the twin goals of non-proliferation and arms control have limited policy innovation and have helped nuclear weapons possessors to shy away from their responsibility to effectuate a world free from nuclear weapons. In this light, this paper argues that the adoption of the Treaty on the Prohibition of Nuclear Weapons on July 7, 2017, represent a revolutionary challenge to the global nuclear order by once again putting the norm of non-possession front and center.

## *Introduction*

The conclusion of the Treaty on the Prohibition of Nuclear Weapons (TPNW) on July 7, 2017 represents a surprising conclusion to nearly three decades of pessimistic assessments about the vitality of the non-proliferation regime and ideal of a nuclear-weapon-free world. Numerous diplomats, scholars, and other ‘nuclear experts’ have commented on the peril caused by, among others, “unfulfilled disarmament pledges; incessant proliferation efforts; selective favoritism towards countries unwilling to ratify the NPT; the diffusion of sensitive nuclear technologies; the use of illegitimate force as a counter-proliferation instrument; or the right to withdraw from the treaty.”<sup>1</sup> Indeed, volumes with ominous titles such as *The Nuclear Tipping Point* and *The Coming Crisis* warned of looming nuclear (and biological and chemical) weapons threats.<sup>2</sup> To be sure, all has not been rosy: India and Pakistan made their nuclear status public by performing twin tests in 1998, Iraq was falsely accused of developing and possessing weapons of mass destruction (WMD) and invaded in 2003, North Korea withdrew from the Non-proliferation Treaty in 2003 and performed its first nuclear weapons test in 2006, and, of course, a decade-long game of nuclear-chicken led to an important but tenuous nuclear agreement with Iran in 2015. Yet, as Nina Tannenwald notes, from the perspective of most states, the biggest challenge to the non-proliferation regime concerns the issue of justice and fairness of the regime’s norms, rules, and procedures.<sup>3</sup> Against this background, the TPNW represents a revolutionary attempt at fulfilling the original promise of the NPT.

## *Constructing a Global Nuclear Order*

The cornerstone of the nonproliferation regime, the NPT, is a bargain between ‘haves’ and ‘have-nots’: the treaty recognizes five states as nuclear weapons possessors, while obligating all others to not acquire nuclear weapons. In return, the ‘haves’ pledged to negotiate in good faith to cease the nuclear arms race and disarm, and to make available to the ‘have-nots’ nuclear technology for peaceful purposes. At its inception, the asymmetry of the NPT was accepted by so many nations due to the exceptional nature of the Cold War and the escalating arms race. Early efforts to bring nuclear

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<sup>1</sup> Liviu Horowitz, “Beyond Pessimism: Why the Treaty on the Non-Proliferation of Nuclear Weapons Will Not Collapse,” *Journal of Strategic Studies* 38, no. 1–2 (2015): 126–58.

<sup>2</sup> Kurt M. Campbell, Robert J. Einhorn, and Mitchell Reiss, eds., *The Nuclear Tipping Point: Why States Reconsider Their Nuclear Choices* (Brookings Institution Press, 2004); Victor A. Utgoff, ed., *The Coming Crisis: Nuclear Proliferation, U.S. Interests, and World Order* (Cambridge, MA: MIT Press, 2000).

<sup>3</sup> Nina Tannenwald, “Justice and Fairness in the Nuclear Nonproliferation Regime,” *Ethics & International Affairs* 27, no. 3 (2013): 1.

power under international control had proven unattainable and by the early 1960s it was out of the question that either of the two opposing ideological blocs would disarm without absolute certainty that the other side would reciprocate. It is against this backdrop that a new approach was needed to sidestep the issue of great power disarmament. This approach came to consist of two principles at the core of the international nuclear order: halting the arms race through arms control and preventing the further spread of nuclear weapons. The NPT reflects this shift in international nuclear discourse by formally elevating the latter norm of *non-proliferation* alongside the norm of *complete nuclear disarmament*.

The NPT was constructed as a universalistic project that served the immediate security needs of the international community by blocking the further spread of nuclear weapons and by uplifting the states in the Global South by means of an “inalienable” right to civilian nuclear technology.<sup>4</sup> At the same time, the retention of nuclear weapons by the nuclear weapon states (NWSs) was merely a temporary trust.<sup>5</sup> That the NPT represented an uneasy compromise was clear from the outset as states such as India, China, Brazil, Argentina, and France expressed their unease over the unequal treatment and declined to join the treaty. Yet, this project shaped the institutional non-proliferation regime in a profound way through an emerging consensus among a “non-proliferation complex” consisting of primarily Western government agencies together with think tanks, interest groups, non-governmental organizations, and academic institutes that relied on this line of thought for policy relevance, and financial and political support.<sup>6</sup> This consensus revolved around two intertwined ideas: non-proliferation and arms control.

The focus on the ‘proliferation problem’ originated in the late 1950s and early 1960s, when the US intelligence community and American experts attempted to identify future nuclear states. By 1963, President Kennedy forecast: “I see the possibility in the 1970s of the president of the United States having to face a world in which 15 or 20 or 25 nations may have these weapons.”<sup>7</sup> Despite such alarmism and the frantic efforts to predict future proliferators, the nuclear dominoes have hardly fallen. Currently, only nine states have nuclear weapons. In fact, ‘proliferation’—the rapid spread of something—is hardly an apt descriptor. Still, proliferation has been considered the core

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<sup>4</sup> William Walker, “Nuclear Enlightenment and Counter-Enlightenment,” *International Affairs* 83, no. 3 (2007): 431–53.

<sup>5</sup> A point that was reiterated by the heads of the US and UK delegations to the 1995 Review and Extension Conference of the NPT, see, Cecilia Albin, *Justice and Fairness in International Negotiation* (Cambridge: Cambridge University Press, 2001), 202.

<sup>6</sup> Campbell Craig and Jan Ruzicka, “The Nonproliferation Complex,” *Ethics & International Affairs* 27, no. 3 (2013): 329–48.

<sup>7</sup> As quoted in “Test Ban: Choice Between Risks,” *Bulletin of the Atomic Scientists* 19, no. 5 (May 1963): 37.

international policy problem for decades now. This orthodoxy cannot be divorced from its epistemological underpinnings. While proliferation is a core concept of security discourse, it is not a neutral analytical category.<sup>8</sup> The influential US nuclear strategist Albert Wohlstetter (then at the RAND Corporation) lifted the term ‘proliferation’ from the field of biology, where it describes the process of rapid cellular reproduction, and first applied to nuclear weapons in 1961.<sup>9</sup> As Benoît Pelopidas has argued, proliferation became a metaphor through which the history and future of nuclear weapons is constructed. This metaphor brings together three key notions: that the spread of nuclear weapons is self-begetting, that the proliferation process is akin to a game of dominoes driven by national security considerations, and that it is a pathological process that requires treating uncertainty with pessimism and suspicion and prompting action to prevent or counter the spread of weapons.<sup>10</sup>

The second aspect of the consensus concerned the stabilization of the East-West conflict through arms control. Arms control is a distinct concept from disarmament. While the latter pertains to reducing or eliminating a class of weapons, the goal of arms control is to incrementally reduce the likelihood of conflict, ensure crisis stability, and prevent surprise attack. As Krause & Latham aptly note, arms control was a “*management* tool for the Cold War: it was not a strategy of the peace movement, it was not designed to achieve disarmament.”<sup>11</sup> One of the legacies of this incremental approach is the creation of a thriving international “arms control community,” among which, many of the participants of the Pugwash meetings, which developed the key arms control concepts and agreements such as the 1963 Partial Test TPNW (PTBT), the 1972 Anti-Ballistic

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<sup>8</sup> On this idea see, among others, David Mutimer, “Reimagining Security: The Metaphors of Proliferation,” in *Critical Security Studies: Concepts and Cases*, ed. Keith Krause and Michael C. Williams (London: Routledge, 1997), 187–222; Benoît Pelopidas, “The Oracles of Proliferation: How Experts Maintain a Biased Historical Reading That Limits Policy Innovation,” *The Nonproliferation Review* 18, no. 1 (March 1, 2011): 297–314; Itty Abraham, “Notes toward a Global Nuclear History,” *Economic and Political Weekly* 39, no. 46/47 (November 20, 2004): 4997–5005; Itty Abraham, “The Ambivalence of Nuclear Histories,” *Osiris*, 2nd Series, 21 (January 1, 2006): 49–65; Matthew Woods, “Inventing Proliferation: The Creation and Preservation of the Inevitable Spread of Nuclear Weapons,” *The Review of International Affairs* 3, no. 3 (March 1, 2004): 416–42.

<sup>9</sup> Albert Wohlstetter, “Nuclear Sharing: NATO and the N+1 Country,” *Foreign Affairs* 39, no. 3 (1961): 355–87.

<sup>10</sup> Pelopidas, “The Oracles of Proliferation: How Experts Maintain a Biased Historical Reading That Limits Policy Innovation.”

<sup>11</sup> Keith Krause and Andrew Latham, “Constructing Non-Proliferation and Arms Control: The Norms of Western Practice,” *Contemporary Security Policy* 19, no. 1 (1998): 27.

Missile (ABM) Treaty, the Strategic Arms Limitation (SALT) agreements, and the Strategic Arms Reduction (START) treaties.<sup>12</sup>

### *Limits to Policy Innovation*

While lofty in their goals, the focus on non-proliferation and arms control severely limits the universe of policy options and crowds out viable alternatives. A closer look at the scenarios that (have) play(ed) out by accepting the premise that the ‘proliferation problem’ is significant, pervasive, and resides outside ourselves speaks volumes.<sup>13</sup> First, the deterministic belief that weapons technology will find a way to spread itself manifests itself in policies to restrict the availability of nuclear technology at the supply-side, while discounting human agency. Second, the view of a nuclear chain reaction driven by (regional) security considerations gave rise to extended deterrence and is retroactively credited for discouraging past nuclear aspirants (like Japan and Germany), which in turn legitimizes the continued possession of nuclear weapons and nuclear postures. Third, the pathological association—conceiving proliferation as a disease that is to be monitored and cured—emphasizes worst-case scenarios (that a country will proliferate) and urges preventive military action to forestall such outcomes, overlooks positive or transformative outcomes (that the intentions of a country were misunderstood or that preferences have changed), and ignores or erases past errors in judgment.

The pessimistic view about the spread of nuclear weapons has little basis in reality. While President Kennedy estimated that ten to twenty new nuclear-weapon states could appear between 1963 and 1980, only three (China, Israel, and South Africa) three did, despite 22 states having enrichment or reprocessing facilities during that same time period.<sup>14</sup> Technologically advanced states such as West-Germany, Switzerland, Norway, Australia, Sweden, Japan, and Italy have in the past explored the nuclear weapons option but ultimately opted not to proceed down the path towards possession. More importantly, the majority of states have no desire for *any* nuclear technology,

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<sup>12</sup> Krause and Latham, “Constructing Non-Proliferation and Arms Control”; Emanuel Adler, “The Emergence of Cooperation: National Epistemic Communities and the International Evolution of the Idea of Nuclear Arms Control,” *International Organization* 46, no. 1 (1992): 101–45.

<sup>13</sup> Pelopidas, “The Oracles of Proliferation: How Experts Maintain a Biased Historical Reading That Limits Policy Innovation”; Mutimer, “Reimagining Security: The Metaphors of Proliferation.”

<sup>14</sup> Matthew Fuhrmann and Benjamin Tkach, “Almost Nuclear: Introducing the Nuclear Latency Dataset,” *Conflict Management and Peace Science* 32, no. 4 (January 8, 2015): 1–19.

whether for civilian or military purposes.<sup>15</sup> Similarly, if the proliferation process is akin to a game of falling dominoes, then many more states that have faced threats from proliferating neighbors should have reciprocated. Yet, few have given in. For instance, Egypt gave up nuclear weapons exploration in the early 1970s, even though its rival Israel had acquired a nuclear deterrent only a few years earlier. Brazil and Argentina gave up their nuclear ambitions to prevent a regional arms race. Japan and South Korea have refrained from proliferating while neighboring China and North Korea have nuclear weapons. The notion that states that have the ability and motive to proliferate will actually do so clearly has no basis in the historical record. Yet, it is meaningful that this view is promoted by countries that have proliferated themselves and are projecting their own fears, prejudices and decision-making rationales onto others.<sup>16</sup>

Similarly, the concepts that were developed by the arms control community in the late 1950s and the 1960s laid the basis for future arms control agreements and treaties. The principal contributions were the twin concepts of ‘nuclear deterrence’ and ‘mutual assured destruction.’ Nuclear weapons escape traditional military-strategic notions, since they cannot be used defensively (in the sense of fending off an attack by an adversary), nor are they useful on the offense (i.e., to conquer). Nuclear weapons are paradoxical in nature because their utility lies in scaring off an adversary through the threat of massive retaliation. When American experts internalized these notions in the early 1960s and convinced their skeptical Soviet counterparts (and in turn the Soviet leadership), arms control found its purpose.<sup>17</sup> Going forward, the logic of arms control focused on a step-by-step process aimed at preventing super power conflict and surprise attacks, and the prevention of excesses in the arms race that would destabilize deterrence. Of course, the relative success of arms control policies and the absence of direct (hot) conflict between great powers reinforces the belief in the stability and desirability of deterrence and forecloses the consideration of alternative worlds where nuclear deterrence is not needed or not as stable as assumed.<sup>18</sup> As

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<sup>15</sup> Itty Abraham, “‘Who’s Next?’ Nuclear Ambivalence and the Contradictions of Non-Proliferation Policy,” *Economic and Political Weekly* XLV, no. 43 (2010): 50.

<sup>16</sup> Abraham, 50.

<sup>17</sup> Adler, “The Emergence of Cooperation,” 143f.

<sup>18</sup> On a counterfactual analysis of a nuclear-free post-WWII world see: John Mueller, “The Essential Irrelevance of Nuclear Weapons: Stability in the Postwar World,” *International Security* 13, no. 2 (October 1, 1988): 55–79; On the shortcomings of deterrence see, among others: Scott D. Sagan, “The Perils of Proliferation: Organization Theory, Deterrence Theory, and the Spread of Nuclear Weapons,” *International Security* 18, no. 4 (1994): 66–107; Richard Ned Lebow and Janice Gross Stein, “Rational Deterrence Theory: I Think, Therefore I Deter,” *World Politics* 41, no. 2 (January 1, 1989): 208–24.

Emmanuel Adler notes, “the science of nuclear strategy has an input in creating the reality it is supposed to explain and predict.”<sup>19</sup>

Out of this arms control logic soon emerged another influential set of norms, that of strategic parity, balance, and reciprocity.<sup>20</sup> The western arms control community prioritized balanced arsenals, mostly in a quantitative sense, to ensure strategic stability.<sup>21</sup> When parity was not a defining feature of an agreement—as was the case with SALT I, which contained no numerical limits—the US Senate heavily objected and demanded its inclusion in future treaties.<sup>22</sup> The notions of parity and reciprocity have become so internalized that, aside from the unilateral 1991-1992 US and Russian Presidential Initiatives to drastically reduce tactical nuclear weapons, it has become nigh impossible for either the United States or Russia to take unilateral disarmament or even reduction initiatives. Even measures that would have little to no effect on the strategic balance—for instance, the removal of the remaining 200 US tactical nuclear weapons stored on the soil of five NATO-member states (Belgium, the Netherlands, Germany, Italy, and Turkey)—are tied explicitly to reciprocal measures from the other side.<sup>23</sup>

### ***End of the Cold War: New Threats, More Disappointment***

International institutions have long been constructed and over time adapted to suit the interests of the dominant power, as is reflected in the writings of a group as eclectic as to include the likes of the British founder of the classical realist school of International Relations E.H. Carr as well as the Canadian critical theorist Robert Cox.<sup>24</sup> The merging of the universalist principle of preventing nuclear armageddon with the particular interests of nuclear possessors and their allies that benefit from a nuclear umbrella. What was supposed to be a transformative regime, aimed at effectuating a world free of nuclear weapons, has become a status-quo regime to uphold the privileged position of

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<sup>19</sup> Adler, “The Emergence of Cooperation,” 108.

<sup>20</sup> Mutimer, “Reimagining Security: The Metaphors of Proliferation”; Krause and Latham, “Constructing Non-Proliferation and Arms Control.”

<sup>21</sup> Krause and Latham, “Constructing Non-Proliferation and Arms Control,” 30.

<sup>22</sup> And they were included, among others, in the INF Treaty and START treaties, but also the Treaty on Conventional Armed Forces in Europe (CFE).

<sup>23</sup> Biejan Poor Toulabi, “Nuclear Myths and Atlantic Realities,” *Atlantisch Perspectief* 38, no. 1 (2014): 83; Tom Sauer and Bob van der Zwaan, “US Tactical Nuclear Weapons in Europe after NATO’s Lisbon Summit: Why Their Withdrawal Is Desirable and Feasible,” *International Relations* 26, no. 1 (March 1, 2012): 78–100.

<sup>24</sup> Edward Hallett Carr, *The Twenty Years’ Crisis, 1919-1939*, 2nd ed. (London: Macmillan, 1946), 81–83; Robert W. Cox, “Gramsci, Hegemony and International Relations: An Essay in Method,” *Millennium - Journal of International Studies* 12, no. 2 (June 1, 1983): 172.



the powerful.<sup>25</sup> Far from shaping a nuclear-free world, these states' strategists and experts have continued to develop concepts and doctrines for the manufacture, deployment, threat, and use of nuclear weapons.<sup>26</sup>

The fundamental inequality of the NPT's grand bargain was initially accepted because of the exceptional circumstances of the cold war (although not by all states). When the NPT was set to expire in 1995, the NWSs pledged as part of a deal to indefinitely extend the treaty not only to pursue good faith negotiations towards disarmament, as required by Article VI of the NPT, but also acknowledged for the first time that general and complete disarmament is the ultimate goal of the treaty.<sup>27</sup> This was given further weight the next year when the International Court of Justice opined that, "there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament."<sup>28</sup> Yet, in the nearly thirty years since the end of the cold war, the nuclear powers have made little meaningful progress towards full disarmament.

The obligation to pursue nuclear disarmament was reaffirmed during the 2000 and 2010 NPT Review Conferences. The final document of the 2000 Review Conference, with agreement of the NWSs, specified 13 practical steps towards nuclear disarmament. At the next Review Conference in 2005, the nuclear states, led by the United States, completely sidelined the agreed upon steps ending the conference in disarray and without a final document. At the 2010 follow-up, a new action plan was negotiated that specified 22 action points to advance disarmament. Yet, at the time of the 2015 Review Conference "forward movement" on only five of these 22 actions had been made, while the conference itself yet again ended without a final outcome document due to disagreement between Arab states and the Western nuclear powers over lack of support for a weapon of mass destruction free zone in the Middle East (WMDZFZME).<sup>29</sup>

Despite the easing of international tensions as the cold war drew down, the makeup of the global nuclear order was remarkably resilient and was fortified with the indefinite extension of the NPT. The critical difference between the old and the new era was the need for a new strategic threat discourse, which was found by reorienting away from the Soviet threat to that of 'rogue states'

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<sup>25</sup> Tannenwald, "Justice and Fairness in the Nuclear Nonproliferation Regime," 300.

<sup>26</sup> Anthony Burke, "Nuclear Reason: At the Limits of Strategy," *International Relations* 23, no. 4 (2009): 509.

<sup>27</sup> "Decision 2: Principles and Objectives for Nuclear Non-Proliferation and Disarmament" (New York, NY: Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 1995), [https://fas.org/nuke/control/npt/text/prin\\_obj.htm](https://fas.org/nuke/control/npt/text/prin_obj.htm).

<sup>28</sup> ICJ, "The Legality of the Threat or Use of Nuclear Weapons," *ICJ Reports 1996*, 1996, 267.

<sup>29</sup> George Perkovich, "The Nuclear Ban Treaty: What Would Follow?" (Washington, DC: Carnegie Endowment for International Peace, May 2017), 6, <http://carnegieendowment.org/2017/05/31/nuclear-ban-treaty-what-would-follow-pub-70136>.

pursuing weapons of mass destruction. In doing so, western officials and experts drew on the familiar cognitive ordering strategy of the ‘unproblematic,’ ‘trustworthy,’ ‘responsible,’ ‘civilized’ West versus the ‘threatening,’ ‘irrational,’ ‘untrustworthy,’ ‘immoral’ and ‘uncivilized’ Other (i.e., non-West).<sup>30</sup> The aforementioned proliferation lens was perfectly compatible with this new threat outlook as it helped to highlight potential/future foreign threats, while ignoring the threats posed by existing nuclear arsenals. This position effectively erases the vertical proliferation of the nuclear haves and problematizes the, oft-imagined, horizontal proliferation by other states. The Western discourse, thus, frames highly destructive weapons in such a way that ‘theirs’ are problematic, while ‘ours’ are not.<sup>31</sup> This position clearly emerged on the public stage in the 1980s. Consider how former US Secretary of State George Shultz framed the issue of nuclear spread in 1984 (the height of President Reagan’s escalation of the arms race):

[T]here will be *insecure or irresponsible leaders* [emphasis added] who seek to shift the balance of power dramatically by acquiring a ‘secret weapon.’ *We and other responsible members of the international community* [emphasis added] are ceaselessly at work to deter those who might be tempted to transfer the promise of nuclear energy into the peril of nuclear weapons.<sup>32</sup>

This new wave of proliferation concerns was distinct from concerns in the 1960s that industrial nations such as West Germany and Japan would give into nuclear temptation, or the fear in the 1970s that the spread of nuclear power would enable developing countries to attain nuclear weapons.<sup>33</sup> Whereas the first two waves were dealt with by such policies as extending nuclear guarantees (Japan and West-Germany), diplomacy and economic incentives (Egypt), or outright acceptance (Israel), the new concerns gave rise to a forceful response. The international reaction to the discovery of significant chemical, biological, and nuclear weapons programs in Iraq after the 1991 Gulf War signified this shift from the norm of non-proliferation to counter-proliferation. After

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<sup>30</sup> Ritu Mathur, “‘The West and the Rest’: A Civilizational Mantra in Arms Control and Disarmament?,” *Contemporary Security Policy* 35, no. 3 (September 2, 2014): 332–55.

<sup>31</sup> Hugh Gusterson, “Nuclear Weapons and the Other in the Western Imagination,” *Cultural Anthropology* 14, no. 1 (1999): 114.

<sup>32</sup> George Pratt Shultz, “Preventing the Proliferation of Nuclear Weapons,” Current Policy (Washington, DC: U.S. Department of State, Bureau of Public Affairs, November 1984), 1, <https://babel.hathitrust.org/cgi/pt?id=umn.31951d00822791s>.

<sup>33</sup> Richard K Betts, “Universal Deterrence or Conceptual Collapse? Liberal Pessimism and Utopian Realism,” in *The Coming Crisis: Nuclear Proliferation, U.S. Interests, and World Order*, ed. Victor A. Utgoff (Cambridge, MA: MIT Press, 2000), 55.

the war, Iraq was subjected to a stringent international inspections regime and a decade of crippling economic sanctions that decimated the economy and contributed to hundreds of thousands of deaths.<sup>34</sup> This policy was institutionalized at the international level, when the President of the United Nations Security Council, speaking on behalf of its members at a meeting held at the level of heads of state in 1992, declared that “the proliferation of all weapons of mass destruction constitutes a threat to international peace and security,” paving the way for future military action under the UN Charter.<sup>35</sup> The zenith was reached in 2003 when the United States, supported by a “coalition of the willing,” invaded Iraq in the name of preventing proliferation. Of course, soon after it turned out that there were no WMDs in Iraq, and the evidence presented as *casus belli* was either faulty or falsified.

Any optimism that may have existed in the minds of the NNWSs about a renewed commitment to disarmament in the immediate post-cold war years has decidedly faded. The non-nuclear states are increasingly feeling that the majority of the burden of the NPT falls on their shoulder. These issues of justice and equity do great harm to the viability of the NPT. First, the continued focus on non-proliferation and counter-proliferation disproportionately focuses on potential future threats and distracts from the continued possession of nuclear weapons by the nuclear haves. While monitoring and enforcement mechanisms (e.g. the IAEA and the UN Security Council) exist and are regularly used for nonproliferation purposes, they are lacking for disarmament. Unsurprisingly, proposals for the establishment of such mechanisms are firmly rejected by the nuclear possessing states.<sup>36</sup>

Second, NNWSs increasingly feel that some NNWSs reap the rewards of a nuclear deterrent while continuing to moralize others about the importance of respecting the anti-nuclear norms. Yet, when it comes to discussing alternative courses of action to move beyond a decades-old stalemate, these very states drag their feet, in turn perpetuating the status quo.

Third, the right to civilian nuclear technology, an integral part of the NPT’s grand bargain, is eroding. Following India’s 1974 “peaceful nuclear explosion,” the Nuclear Suppliers Group (NSG) was formed by countries supplying nuclear technology to control the export of nuclear technology, materials, and equipment, a move that has been criticized by countries in the Global South as

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<sup>34</sup> John Mueller and Karl Mueller, “Sanctions of Mass Destruction,” *Foreign Affairs*, 1999, 49.

<sup>35</sup> UN Security Council, “Note by the President of the Security Council (UN Doc. S/23500),” January 31, 1992, <http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/PKO%20S%2023500.pdf>.

<sup>36</sup> Tannenwald, “Justice and Fairness in the Nuclear Nonproliferation Regime,” 306.

constituting a cartel of technology holders. In recent years, the meaning of the “inalienable right” to peaceful nuclear technology (Article IV of the NPT) has also begun to see reinterpretation. The point of contention is whether states have the right to develop a full indigenous nuclear fuel cycle—as plants that can produce commercial-grade fissile materials can also be redirected towards the production of materials for military purposes—or should procure necessary materials on the commercial market or through international fuel banks. Countries like Iran, Argentina, and even South Korea, a close ally of the United States, have decried this attempt at raising a new non-enrichment norm.<sup>37</sup> The unequal application of norms became even more evident when the United States decided to break with a decade-long prohibition on nuclear trade with non-signatories of the NPT by announcing the 2008 US-India civil nuclear agreement. India, which is not a party to the NPT or the CTBT, was granted a waiver by the US government and by the NSG, the very nuclear export control regime set up in response to India’s first nuclear test. Not only did the agreement indicate that nuclear acquisition is worthwhile as long as actors are willing to play the long game and that commercial interests trump the integrity of the non-proliferation regime, but it also signaled that the spread of nuclear weapons is not universally bad, it just depends on who is doing it.

Fourth, even the progress on arms control has been stalled, or worse, reversed. The 1996 Comprehensive Nuclear-Test-Ban Treaty (CTBT) has still not entered into force, as eight states have not ratified it. In May 2002, the United States announced its withdrawal from the ABM Treaty, with Russia countering by abandoning START II and may currently be violating the INF Treaty.<sup>38</sup> Since the two countries agreed on the New START Treaty in 2010, no new agreements have been reached to halt modernizations, further reduce arsenals, or to end production of weapons-grade fissile materials.<sup>39</sup> Instead, the United States and Russia have announced massive investments in the modernization and upgrading of their nuclear arsenal—with the United States slated to spend one trillion US Dollars by 2045 and Russia spending 150 billion US Dollars between 2015 and 2020—

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<sup>37</sup> Tannenwald, “Justice and Fairness in the Nuclear Nonproliferation Regime,” 306f.

<sup>38</sup> Michael R. Gordon, “Russia Deploys Missile, Violating Treaty and Challenging Trump,” *The New York Times*, February 14, 2017, sec. Europe, <https://www.nytimes.com/2017/02/14/world/europe/russia-cruise-missile-arms-control-treaty.html>.

<sup>39</sup> Perkovich, “The Nuclear Ban Treaty,” 6; In a call with President Putin in February 2017, President Trump was reported to have decried New START after Putin raised the possibility of extending the treaty beyond its 2021 expiration date: Jonathan Landay and David Rohde, “Exclusive: In Call with Putin, Trump Denounced Obama-Era Nuclear Arms Treaty - Sources,” *Reuters*, February 9, 2017, <https://www.reuters.com/article/us-usa-trump-putin-idUSKBN15O2A5>.

while other nuclear states like China, the United Kingdom, and Pakistan have also announced modernization schemes.<sup>40</sup>

### *The Treaty on the Prohibition of Nuclear Weapons*

The frustration with the lack of meaningful progress on disarmament has led a coalition of non-nuclear states and civil society groups to search for new counterarguments to the nuclear status quo. The key objective of this effort has been to delegitimize the possession of nuclear weapons and challenge the “civilized” identity of nuclear-weapon possessors, by drawing attention to the catastrophic humanitarian consequences of the use of a nuclear device, whether accidental or intentional. The humanitarian initiative was launched at the 2010 NPT Review Conference and led to three international conferences (in Oslo, Nayarit, and Vienna) attended by diplomats from nearly 160 states, officials from UN agencies, experts and scholars, and representatives of civil society. The conferences highlighted that the humanitarian and environmental risks of nuclear weapons use are far more severe than commonly assumed: even the use of a small number of nuclear weapons would cause radioactive fallout, dramatic shifts in the climate, and the widespread destruction of crops that would also kill millions of people outside the territories of the states on which the weapons were used and put many more at serious risk. Another important conclusion was that no state or international body would be able to provide immediate humanitarian assistance in an adequate manner or build the capacity to do so in the event of a nuclear explosion.<sup>41</sup>

The humanitarian initiative succeeded in gaining the support of a majority of states in the UN General Assembly in 2016 to negotiate a legally binding prohibition on nuclear weapons. During the historic vote, 113 states supported the initiation of negotiations. France, Russia, the United States, and the United Kingdom voted against together with another 34 states, including almost all NATO members. The Netherlands, the lone NATO member to deviate from the Alliance’s strict line on the matter, opted to abstain following a parliamentary resolution that exhorted the government to support the negotiation of a treaty. Other abstainers included US allies such as Japan and South Korea, as well as nuclear possessors such as India, Pakistan, and China.

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<sup>40</sup> Jon B. Wolfsthal, Jeffrey Lewis, and Marc Quint, “The Trillion Dollar Nuclear Triad” (Monterey, CA: James Martin Center for Nonproliferation Studies, January 2014), [http://cns.miiis.edu/opapers/pdfs/140107\\_trillion\\_dollar\\_nuclear\\_triad.pdf](http://cns.miiis.edu/opapers/pdfs/140107_trillion_dollar_nuclear_triad.pdf).

<sup>41</sup> Norwegian Ministry of Foreign Affairs, “Chair’s Summary Humanitarian Impact of Nuclear Weapons,” March 5, 2013, [https://www.regjeringen.no/no/aktuelt/chair\\_oppsummering/id716343/](https://www.regjeringen.no/no/aktuelt/chair_oppsummering/id716343/).

The TPNW represents an unequivocal effort by a majority of states to finally restore the original antinuclear norm—that of non-possession—to its rightful place and, in turn, fulfilling the original promise of the NPT. Not too long ago, experts and analysts warned of the peril that the non-proliferation regime is in. Despite the expectation in the 1990s and 2000s that many states would soon join the nuclear weapons club and that the NPT would collapse, few if any of these fears have come true. In a monumental shift, the disappointment of the NNWSs over the unequal treatment by the NWSs and the lack of progress on disarmament was galvanized to create a new norm-setting agreement.

The adoption of the treaty supports some important trends in the democratization of disarmament politics.<sup>42</sup> First, is the shift from a disarmament agenda that was driven by the great powers to one carried by small and middle powers. The TPNW follows in the footsteps of other disarmament treaties, like the 1997 Anti-Personnel Landmines Convention and the 2010 Cluster Munitions Convention, that were adopted through simple majority voting instead of the customary consensus voting procedures of the UN in order to circumvent foot-draggers. Second, civil society groups played a key role in advocating for a TPNW. In the case of the TPNW, the International Campaign to Abolish Nuclear Weapons (ICAN) brought together non-governmental organizations in over a hundred countries to create public awareness, lobby governments, and help to draft proposals for inclusion in the agreement. This coalition was inspired by similar movements that had played a role in bringing to life the cluster munitions and land mines agreements before.

### *Criticism and the Move Forward*

The humanitarian initiative and the TPNW have experienced fierce public opposition from the three Western nuclear powers, their NATO allies, and Russia. In a joint statement immediately following the historic vote on the TPNW, the United States, United Kingdom, and France, declared that they opposed the agreement, would never join it, and rejected the idea that any legal prohibitions would arise from it.<sup>43</sup> This and other statements made by US officials have also vilified the TPNW and its proponents for supposedly disregarding the realities of the international security environment, have

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<sup>42</sup> Nina Tannenwald, “Analysis | The U.N. Just Passed a Treaty Outlawing Nuclear Weapons. That Actually Matters,” *Washington Post*, July 17, 2017, <https://www.washingtonpost.com/news/monkey-cage/wp/2017/07/17/the-u-n-just-passed-a-treaty-outlawing-nuclear-weapons-that-actually-matters/>.

<sup>43</sup> U.S. Department of State, “Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption of a Treaty Banning Nuclear Weapons,” July 7, 2017, <https://usun.state.gov/remarks/7892>.

faulted the treaty for doing nothing to solve issues like the standoff with North Korea, and have even accused it of undermining the NPT. The US ambassador to the Conference on Disarmament, Robert Woods, for instance, tweeted on June 15, 2017, “How do the ban advocates propose to deal with North Korea's grave nuclear threat? A ban treaty? Have yet to hear any REAL WORLD answers”, later adding, “The nuclear weapons ban treaty being negotiated in NY will not reduce nuclear weapons stockpiles by one single weapon! Support the NPT!”<sup>44</sup> And, on June 27, 2017, he tweeted, “I just returned Ban Treaty from P-5 mtg where the five underscored the primacy of the NPT & rejected efforts, such as the ban treaty, to undermine it.”<sup>45</sup> However, such protestations are misleading. The TPNW and its proponents can hardly be faulted for the North Korean nuclear issue and tensions on the Korean peninsula. Moreover, the charge of undermining the NPT is gratuitous, as the TPNW reaffirms the importance of the NPT in its preamble and complements Article VI of said treaty.

The TPNW is not likely to lead to a state renouncing its nuclear weapons any time soon. That, however, was not the intention or the expectation of its supporters. The value of the treaty lies in its challenge to existing nuclear norms that allow the nuclear powers to hold on to their weapons indefinitely. The treaty is an instrument that promotes a change in prevailing attitudes, beliefs, and discourses about nuclear weapons and challenges leaders and societies to rethink how they value nuclear weapons.<sup>46</sup> It also provides a major boon for civil society and activists to pressure their governments to take action towards this end. The Dutch peace organization PAX, for instance, collected over 40,000 signatures, triggering a parliamentary debate that led to Dutch government’s participation in the TPNW negotiations as the sole NATO member. This will be most effective in democratic states where civil society is a strong and integral part of the political process. Likely candidates are a number of NATO states with populations that have historically been predominantly antinuclear, like the Netherlands, Germany, Norway, and Denmark.

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<sup>44</sup> Robert Woods, June 15, 2017, <https://twitter.com/USAmbCD/status/875386245198884865>; Robert Woods, June 15, 2017, <https://twitter.com/USAmbCD/status/875388279172063232>.

<sup>45</sup> Robert Woods, June 27, 2017, <https://twitter.com/USAmbCD/status/879684800621293569>.

<sup>46</sup> Tannenwald, “Analysis | The U.N. Just Passed a Treaty Outlawing Nuclear Weapons. That Actually Matters.”