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THE FUTURE OF THE NPT: REVCON AND BEYOND

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NPT Overview

The Treaty on the Nonproliferation of Nuclear Weapons (NPT), with its quinquennial review conferences (RevCons), has become the foundation of the international nonproliferation regime over the course of its 50-year history. With more states parties than any other arms control agreement (currently 191), the Treaty provides a legally binding framework for all states parties, constraining proliferation of nuclear weapons and committing the five recognized states who possess nuclear weapons to work toward disarmament.

The NPT's origins go back to the late 1950s when the accessibility of nuclear technology began to increase. In 1958, Ireland proposed a resolution in the United Nations General Assembly noting that "the danger now exists that an increase in the number of states possessing nuclear weapons may occur, aggravating international tension and the difficulty of maintaining world peace..."² The resolution was adopted three years later and work toward the conclusion of an international legal instrument curbing nuclear proliferation began in the early 1960s. Following years of negotiations, the United States and the Soviet Union reached substantial agreement on a treaty text in 1967. A final draft followed, and in June 1968 the NPT was officially opened for signature. It entered into force on March 5, 1970 after garnering forty-three state ratifications. It was initially set to remain in force for twenty-five years, but was extended indefinitely in 1995.

The substance of the NPT is organized around three core pillars. The first focuses on the nonproliferation of nuclear weapons with obligations for both the non-nuclear weapon states (NNWS) and the nuclear weapon states (NWS). Article II of the Treaty requires that the NNWS refrain from acquiring nuclear weapons, while Article I prohibits the NWS from transferring nuclear weapons to the NNWS or in any way assisting them in the acquisition of nuclear weapons or explosives. Article III commits the NNWS to the acceptance of International Atomic Energy Agency (IAEA) safeguards for ensuring that any nuclear activities relate exclusively to the advancement of peaceful, civilian ends.

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¹ *The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States government or Lawrence Livermore National Security, LLC, and shall not be used for advertising or product endorsement purposes*

² Evgeny M. Chossudovsky, "The Origins of the Treaty on the Nonproliferation of Nuclear Weapons: Ireland's Initiative in the United Nations (1958-61)," *Irish Studies in International Affairs*, Vol. 3, No. 2 (1990): 111-35,

https://www.jstor.org/stable/30001773?seq=1#metadata_info_tab_contents.

The focus of the second pillar is disarmament, and is directed at the NWS. This pillar has commonly been viewed as the core of a bargain between the NNWS and NWS inherent in the NPT, wherein the former pledge never to acquire nuclear weapons and the latter pledge to eventually eliminate theirs. Article VI provides that the NWS “pursue negotiations in good faith on effective measures relating to 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.” The Preamble also highlights a desire for “easing of international tension... 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.”

The third pillar relates to the peaceful uses of nuclear technologies. Article IV guarantees the right for all states parties to develop and cultivate nuclear technology for peaceful purposes, such as civilian energy and medical isotope production. Under this pillar, nuclear technology and materials intended for peaceful uses may be transferred between states parties subject to IAEA safeguards.

Current State of Affairs

The NPT has enjoyed wide success in constraining the spread of nuclear weapons. Only one state party has left the agreement and gone on to acquire these weapons, and the overall track record of compliance with IAEA safeguards has been robust. However, for all its effectiveness in the area of nonproliferation, its achievements on the disarmament front have been relatively unimpressive. While the NWS – most notably the United States and the Soviet Union/Russia – have decreased the overall size of their nuclear arsenals significantly since 1970, these arsenals have remained an important feature of NWS security policies. The limited progress towards disarmament has created friction between the NNWS and NWS and has been the source of mounting tension within the NPT regime.

Since the NPT’s entry into force, the RevCons have been held every five years to review the status of the Treaty’s implementation. The states parties agreed at the 1995 RevCon to indefinitely extend the NPT in exchange for commitments to work toward disarmament and the establishment of a nuclear weapons free zone in the Middle East. Five years later, at the 2000 RevCon, concurred on a 13-step action plan for progressively implementing Article VI, including accelerated efforts toward entry into force and implementation of the Comprehensive Test Ban Treaty (CTBT) and Fissile Material Cutoff Treaty (FMCT). Again, at the 2010 RevCon, the states parties were able to reach consensus on a final document. This time, they included a 64-point action plan, reaffirmed commitment to the 2000 action plan items and added steps for advancing disarmament.

In 2014, United States-Russia relations deteriorated substantially, yielding a largely unproductive 2015 RevCon, which failed to achieve consensus on a final document. Since 2015, major power competition has intensified, leading these states to attach an increased strategic significance to nuclear weapons once again. Nuclear arms control has suffered a series of blows, as major power appetites for restraints on their military capabilities have diminished. All the while, NNWS frustration with years of perceived NWS procrastination on disarmament initiatives and other grievances has mounted, culminating in the Treaty on the Prohibition of Nuclear Weapons (TPNW). The 2020 RevCon, the 50th anniversary of the NPT and 25th anniversary of its indefinite extension, faces a range of contentious challenges, old and new, which call into question the Treaty's future viability.

Challenges Facing the 2021 RevCon

- *Old Issues*

Humble NWS efforts under Article VI have been a deep-seated source of tension within the NPT regime. While the NNWS felt that they submitted themselves to the nonproliferation provisions pertinent to them, a perception arose that the NWS were not living up to their end of the bargain under the disarmament provisions. Frustration grew with the United States' and China's failure to ratify the CTBT and general NWS reluctance to take other finite steps toward disarmament. Furthermore, the Arab states had been proposing a nuclear weapons free zone in the Middle East since the 1970s and advocating for a resolution calling for Israel's accession to the NPT. This had served as a second prominent point of consternation in the Treaty's first 25 years.

The NNWS ultimately agreed to indefinite extension of the NPT at the 1995 RevCon, but achieving this consensus was fraught with challenges and necessitated carefully crafted concessions. These included agreeing to "principles and objectives," involving a "program of action" for committing the NWS to "systematic and progressive efforts" to reduce nuclear arsenals and to working toward the CTBT and FMCT.³ Additionally, a resolution on the Middle East served as an additional concession. It endorsed the establishment of a "zone free of nuclear weapons as well as other weapons of mass destruction" and their delivery systems. In the years that followed, focus remained concentrated on nonproliferation, with alleged proliferation risks in Iran and Iraq, and with North Korea's withdrawal from the Treaty. In 1999, the United States Senate rejected CTBT ratification and negotiations on an FMCT remained stalled. The NWS affirmed the 13- step and 64-point plans in 2000 and 2010, respectively, but concrete implementation of these steps remains outstanding.

The election of Barack Obama in 2008 appeared to offer a possible turning point. Shortly after entering office, President Obama articulated his "Prague vision" for a world without nuclear

³ Randy Rydell, *Looking Back: The 1995 Nuclear Nonproliferation Treaty Review and Extension Conference*, Arms Control Today, <https://www.armscontrol.org/act/2005-04/looking-back-1995-nuclear-nonproliferation-treaty-review-extension-conference>.

weapons to be achieved through combating nuclear terrorism, strengthening the nonproliferation regime, supporting the peaceful use of nuclear energy, and reducing the role of nuclear weapons in United States national security strategy. To the latter end, the Obama Administration concluded the New Strategic Arms Reduction Treaty with Russia in 2010, reduced the United States nuclear stockpile and supported United Nations Security Council Resolution 2310 calling for the CTBT's entry into force and reaffirmation of the global moratorium on nuclear testing. Under the Administration, the Department of Energy also invested heavily in the Stockpile Stewardship Program, ensuring that the stockpile would remain secure and reliable without the need for actual testing.⁴

However, the establishment of a weapons of mass destruction free zone in the Middle East remained a challenge throughout. The Obama Administration had agreed to a conference on such a zone at the 2010 RevCon, but reneged in 2012, citing concerns about Israel's security. In 2014, relations with Russia deteriorated markedly, as a period of renewed major power competition took hold. After the Trump Administration took office, competitiveness with Russia and China became more overt. This competitive orientation manifested itself in a retreat from arms control agreements, leading to the demise of the Intermediate-Range Nuclear Forces Treaty and unilateral United States withdrawals from the JCPOA and the Open Skies Treaty. All the while, the nuclear powers actively undertook continued modernization of their nuclear arsenals.

- *New Issues*

NNWS frustration with the lack of progress toward disarmament steps continually grew. In 2014, the Marshall Islands attempted to bring a lawsuit in the International Court of Justice against all NWS for failing to comply with the NPT's disarmament provisions. While the case was ultimately dismissed on jurisdictional grounds, it garnered international attention with Marshallese Foreign Minister, Tony De Brum, receiving the Right Livelihood Award in 2015 for his "vision and courage" in holding the NWS accountable for their disarmament commitments. Around the time of the Marshallese lawsuit, a series of three international conferences were convened in Oslo, Nayarit and Vienna on the humanitarian consequences of nuclear weapons. The conferences reinforced international resolve around action toward disarmament. In 2014, the New Agenda Coalition, comprised of Brazil, Egypt, Ireland, Mexico, New Zealand, and South Africa, proposed the idea of a treaty banning nuclear weapons as a means of implementing NPT Article VI. The First Committee of the United Nations General Assembly adopted a resolution in 2016 establishing a mandate for negotiation of a ban treaty. These negotiations took place in the summer of 2017 and ultimately led to the TPNW. That same year, the International Campaign to Abolish Nuclear Weapons was awarded the Nobel Peace Prize "for its work to draw attention to the catastrophic humanitarian consequences of any use of nuclear weapons and for its ground-breaking efforts to achieve a treaty-based prohibition of such weapons."

⁴ Fact Sheet: *The Prague Nuclear Agenda*, The White House Office of the Press Secretary, January 11, 2017, <https://obamawhitehouse.archives.gov/the-press-office/2017/01/11/fact-sheet-prague-nuclear-agenda>.

On October 25, 2020, Honduras became the 50th state to ratify the TPNW, triggering its entry into force in January 2021. In keeping with this drive for independent action, the United Nations General Assembly also decided in 2018 to proceed with a conference on the establishment of a Middle East WMD free zone without participation of the United States and over its firm objections.

Possible Pathways Forward

Multiple possible ways forward for pursuing the continued presence of an international nonproliferation regime have emerged. None, however, provide a quick and easy fix to the deep problems enumerated above. Each potential path must inevitably traverse the political and practical fault lines fracturing global consensus on nuclear weapons.

- *Enhanced Status Quo*

Given the issues facing a new course of action, the easiest manner of proceeding would be to continue with the status quo as long as possible. This would mean persisting with the step-by-step approach outlined in the 2000 and 2010 RevCon final documents. However, the status quo does not appear sustainable in light of widespread frustration and impatience with what is perceived as NWS failure to make progress towards implementation of these steps. This NNWS dissatisfaction has manifested itself in independent conclusion of the TPNW without NWS involvement. Now that the TPNW will enter force in January 2021, the door is open for increasing numbers of states to ratify it, putting more pressure on the NWS to take some action.

Just what this action might include will be central to 2021 RevCon deliberations. Might the NWS renew their commitment solely to the NPT, or to the Treaty and its final documents and actions plans from previous RevCons? Might the NWS arrive at a nuclear risk reduction agenda that is both mutually acceptable to them and sufficiently impactful to garner NNWS support? Might the states parties reach agreement on language relating to the TPNW? To date, the United States has refused to acknowledge TPNW in NPT-related documents. Russia has recently indicated that it might be more flexible. Can the NWS agree among themselves on how to approach the TPNW? These are all open questions.

- *Governmental & Organizational Initiatives*

The Stockholm Initiative is a noteworthy proposal by the Swedish government introduced in a working paper in 2019 in preparation for the 2020 RevCon. It proposes a “stepping stones” approach to rescue the NPT by downgrading the “traditional progressive step-by-step approach [of the 13-steps and 64-point action plan]” to “‘actionable’ implementation measures that signal intent to engage in mutual managed disarmament in support of the global disarmament regime; build trust for subsequent steps; and take into account the existing security

environment that they themselves may contribute to improving.”⁵ These smaller, more feasible measures are organized into groupings to advance four overarching goals, namely, reducing the salience of nuclear weapons; rebuilding habits of cooperation in the international community; reducing nuclear risks; and enhancing transparency surrounding arsenal size, control of fissile materials and nuclear technologies. Some of the identified measures include, *inter alia*, enhancing negative security assurances, unequivocal expressions against the notion of nuclear weapons use, improving crisis communication channels, distinguishing between nuclear and conventional delivery systems, increasing transparency relating to nuclear modernization programs and fissile material stocks, and more.

The Nuclear Threat Initiative has launched the Global Enterprise to Strengthen Nonproliferation and Disarmament. It seeks to stimulate “high-level, international dialogue to drive fresh, creative thinking, generate new ideas, and address political divisions that are stalling progress toward building a safer world.”⁶ Through this dialogue, it endeavors to achieve “short-term, concrete progress” geared toward producing some consensus at the next RevCon. German Foreign Minister, Heiko Maas, has also initiated the so-called German Initiative, which focuses on addressing military competition more broadly by constraining the proliferation of autonomous weapons systems, advanced missile technology, biotechnology, and offensive cyber capabilities.⁷

These initiatives appear reasonable, but face the same political challenges. It is far from clear that consensus on smaller, intermediary steps is currently more attainable than consensus on the bigger steps of the 2000 and 2010 RevCon final documents. The TPNW may be seen by some NNWS as a potential bargaining chip to extract greater concessions.

- *United States’ Initiative*

In 2018, the United States launched the Creating the Conditions for Nuclear Disarmament. The name was changed to Creating the Environment for Nuclear Disarmament (CEND) the following year, replacing more objective term “conditions” with the more subjective “environment.” The United States delegation to the RevCon preparatory committee in 2018 explained that

If we continue to focus on numerical reductions and the immediate abolition of nuclear weapons, without addressing the real underlying security concerns that led to their production in the first place, and to their retention, we will advance

⁵ *Unlocking Disarmament Diplomacy Through a ‘Stepping Stone’ Approach*, Submitted by Sweden to the Third Session of the Preparatory Committee for 2020 Review Conference of the Parties to the Treaty on the Nonproliferation of Nuclear Weapons, April 29 – May 10, 2019, p. 2-3, <https://undocs.org/NPT/CONF.2020/PC.III/WP.33>.

⁶ *Global Enterprise to Strengthen Nonproliferation and Disarmament*, Nuclear Threat Initiative, <https://www.nti.org/about/projects/global-enterprise-strengthen-non-proliferation-and-disarmament/>.

⁷ Heiko Maas, Speech from *Capturing Technology: Rethinking Arms Control* Conference, March 15, 2019, <https://www.auswaertiges-amt.de/en/newsroom/news/maas-conference-2019-capturing-technology-rethinking-arms-control/2199902>.

neither the cause of disarmament nor the cause of enhanced collective international security.⁸

The CEND initiative suggests that nuclear disarmament cannot happen in a vacuum and that its eventual plausibility is dependent upon the status of the international security environment. It essentially calls for the replacement of the prevailing step-by-step approach with a less formal process of identifying key international security challenges and working toward their mitigation in a manner that is “more realistic than these traditional modes of thought and more consonant with the security challenges facing the real-world leaders whose engagement is essential for disarmament.”⁹ To date, CEND has convened two meetings of potential stakeholders to discuss, *inter alia*, “developing a common understanding of threat perceptions, clarifying the importance of sustaining existing arms control and disarmament commitments, and developing common understanding of humanitarian concerns...”¹⁰

While CEND has garnered interest from broad and diverse parties, including non-NPT member nuclear possessors, it has also drawn serious criticism as shifting focus away from concrete disarmament action. Critics note that conditioning disarmament action on the fundamental transformation of great power relations is a formula for perpetual disarmament inaction.¹¹ They contend that isolating challenges and talking about them, all the while NWS continue their nuclear arsenal renovations, is no longer sufficient, and that finite actions are required now. CEND will likely prove difficult to sell to disgruntled NNWS excited by the prospect of the TPNW.

- TPNW

The conclusion of the TPNW and its entry into force has undoubtedly been a major development since the last RevCon. Emphasizing the unacceptable humanitarian risks of nuclear weapons, the TPNW was negotiated to complement the chemical and biological weapons conventions in outlawing the one outstanding weapon of mass destruction, namely, nuclear weapons. Article I prohibits states from “develop[ing], test[ing], produc[ing], manufactur[ing], otherwise acquir[ing], possess[ing] or stockpile[ing] nuclear weapons or other nuclear explosive devices”¹² and from receiving the “transfer of or control over nuclear weapons.”¹³ It mandates that states possessing nuclear weapons “immediately remove them from operational status, and destroy them as soon as possible.”¹⁴ It calls on states that have

⁸ Paul Meyer, *Creating an Environment for Disarmament: Striding Forward or Stepping Back?*, Arms Control Today, April 2019, <https://www.armscontrol.org/act/2019-04/features/creating-environment-nuclear-disarmament-striding-forward-stepping-back>.

⁹ *Ibid.*

¹⁰ Heather Williams, *CEND and a Changing Global Nuclear Order*, European Leadership Network, February 18, 2020, <https://www.europeanleadershipnetwork.org/commentary/cend-and-a-changing-global-nuclear-order/>.

¹¹ Lyndon Burford, Oliver Meier and Nick Ritchie, *Sidetrack or Kickstart? How to Respond to the US Proposal on Nuclear Disarmament*, Bulletin of Atomic Scientists, April 19, 2019, <https://thebulletin.org/2019/04/sidetrack-or-kickstart-how-to-respond-to-the-us-proposal-on-nuclear-disarmament/>.

¹² TPNW Art. 1(a)

¹³ TPNW Art. 1(c)

¹⁴ TPNW Art. 4(2)

not yet done so to “conclude with the [IAEA] and bring into force a comprehensive safeguards agreement,”¹⁵ and on those states that have done so to maintain these obligations.

The TPNW gained the support of 122 states at the time of its conclusion in the summer of 2017, and, as of October 24, 2020, has 84 signatories and the required 50 ratifications for entry into force. Despite the enthusiasm it has engendered and its recent momentum with the 50th ratification by Honduras, the TPNW faces the obvious obstacle of NWS denunciation. The United States has provided that, together with the other five NPT-recognized nuclear powers, as well as its NATO allies, it “stands united in [its] opposition to the potential repercussions” of the TPNW, though Russia has recently indicated that it might be willing to afford the TPNW some degree of recognition.¹⁶ The United States, however, continues to maintain that the “TPNW is and will remain divisive in the international community and risk further entrenching divisions in existing nonproliferation and disarmament fora that offer the only realistic prospect for consensus-based progress...” Accordingly, it has urged states not to join the TPNW and to withdraw if they have already done so.

- *Combination*

Those in opposition to the TPNW have tended to portray it as an alternative to the NPT which may drive an erosion of the international nonproliferation regime.¹⁷ Critics have raised concerns about the possibility of “‘forum shopping’ in which a state might hope to dilute international condemnation over its noncompliance with the strict verification requirements of the existing [NPT].”¹⁸ However, such characterizations of the TPNW as challenging the NPT are misguided. Indeed, statements from TPNW drafting states specifically emphasize the mutually-reinforcing relationship with the NPT,¹⁹ and the TPNW’s Preamble expressly provides that “the full and effective implementation of the [NPT], which serves as the cornerstone of the nuclear disarmament and nonproliferation regime, has a vital role to play in promoting international peace and security.”

The clear text of the TPNW renders forum-shopping concerns dubious. TPNW Article 18, “Relationship with Other Agreements,” plainly provides that the “implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing international agreements, to which they are party, where those obligations are consistent with the Treaty.” Article 3 specifies that each state party “at a minimum, maintain its [IAEA] safeguards obligations in force at the time of entry into force of this Treaty” and that those states which

¹⁵ TPNW Art. 3(2)

¹⁶ Edith Lederer, *UN: Nuclear Weapons Ban Treaty to Enter Into Force*, Associated Press, October 24, 2020, <https://apnews.com/article/nuclear-weapons-disarmament-united-nations-gun-politics-united-states-a539eee6868462b17a81747f04fc6fbb>.

¹⁷ See Joseph R. Piland, “A World Without the Nuclear Nonproliferation Treaty Redux?” CGSR Lecture, October 24, 2019, <https://cgsr.llnl.gov/event-calendar/2019/2019-10-24>.

¹⁸ Adam Mount and Richard Nephew, *A Nuclear Weapons Ban Should First Do No Harm to the NPT*, Bulletin of Atomic Scientists, March 7, 2017, <https://thebulletin.org/2017/03/a-nuclear-weapons-ban-should-first-do-no-harm-to-the-npt/>.

¹⁹ Statement by Ireland at the 2018 Preparatory Conference of the Parties to the Treaty on the Nonproliferation of Nuclear Weapons, April 25, 2018, https://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom18/statements/26April_Ireland.pdf.

have “not yet done so shall conclude with the [IAEA] and bring into force a comprehensive safeguards agreement.” Furthermore, the TPNW’s disarmament provisions do not necessarily render it incompatible with the NPT, as it “can be seen as putting... Article VI into practice [as an] effective measure.”²⁰

Consequently, it is possible for both treaty regimes to legally operate in tandem without decay of nonproliferation norms and safeguards. The TPNW’s stigmatization of nuclear weapons possession may be unwelcome by the NWS, but is a result of their own failure to take concrete action, leading to gridlock in the NPT process. The TPNW could be the needed impetus to spur finite action toward reviving faltering arms control and resuscitating the suffocating NPT regime. Still, political obstacles impede this potential development. The NWS continue to view the actions toward disarmament sought by the NNWS as at odds with their national interest and security. Until this changes, the NPT and TPNW will remain in tension with forward progress stunted.

Conclusion

The perception of NWS failure to live up to disarmament commitments, while the NNWS submitted to relevant nonproliferation obligations, has been an old problem within the NPT regime. Since the Treaty’s indefinite extension, frustration has mounted with the lethargic nature of implementation of disarmament steps recognized in 1995 and identified in the 2000 and 2010 RevCon final documents. The onset of renewed major power competition and reinvigorated arms racing, together with the deterioration of established arms control, has further exacerbated tensions between the NWS and NNWS. In response, the latter have moved in a more independent direction, venturing outside the NPT framework to negotiate and conclude the TPNW. Though intentionally compatible legally, the NPT and TPNW are likely to be kept in tension with one another as long as the NWS perceive the latter as a threat to their interests.

However, in its present state, the NPT faces serious challenges to its continued viability, absent some action by the NWS. Extension of New START and renewed interest in arms control under a Biden Administration may extend the NPT a lifeline, but it appears inevitable that the NWS will eventually have to take more finite steps toward disarmament, such as those outlined in the 2000 and 2010 RevCon final documents, if the NPT-based nonproliferation regime is to persist in perpetuity.

²⁰ Tytti Erästö, *The NPT and the TPNW: Compatible or Conflicting Nuclear Weapons Treaties*, Stockholm International Peace Research Institute, March 6, 2019, <https://www.sipri.org/commentary/blog/2019/npt-and-tpnw-compatible-or-conflicting-nuclear-weapons-treaties>.



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