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Reference:

Pretorius Joelen, Sauer Tom.- Ditch the NPT
Survival / International Institute for Strategic Studies - ISSN 0039-6338 - 63:4(2021), p. 103-124
Full text (Publisher's DOI): <https://doi.org/10.1080/00396338.2021.1956197>
To cite this reference: <https://hdl.handle.net/10067/1799210151162165141>

Ditch the NPT (Tom Sauer¹ and Joelen Pretorius²)

Abstract:

In this article we argue that the NPT's purpose, which it only partially achieved, has expired. The original intent of the NPT was to limit the number of states with nuclear weapons to those who had tested by 1967 while the conditions were created for nuclear disarmament negotiations as per Article 6. We explore the conditions that were deemed non-conducive for nuclear disarmament at the time of the NPT's negotiation and argue that by 1995 these conditions no longer prevailed. The NPT has since become a status quo treaty, where five states' nuclear weapons are legalized indefinitely. This was not the intention of this instrument when it was agreed in 1968. The NPT forum has become a space for NWS to justify the status quo, including by proposing mythical requirements for nuclear disarmament labeled CEND. It is time to shift the purpose of the NPT from non-proliferation to disarmament. This means that the NPT has to be superseded by another instrument as foreseen in Article 6.

1. Introduction

The Treaty on the Nonproliferation of Nuclear Weapons (NPT) has become an impediment to a world free of nuclear weapons. It is time to move beyond the treaty. In September 2019 we first put forward a cautionary argument in an opinion piece in *The Bulletin of Atomic Scientists*, asking whether it is time to ditch the NPT?³ We wrote the article to feed into the 50th anniversary of the treaty and discursive build-up to the critical 2020 NPT Review Conference. Our analysis that the non-proliferation and disarmament regime is in serious trouble is not unique, and yet, the opinion piece caused somewhat of a furore in the arms control and peace community. Some observers even argued that we were being 'woefully irresponsible', because we dared to imagine the NPT's collapse and replacement.⁴ In this article we aim to develop our argument further that it is time to ditch the NPT and address the criticisms of this viewpoint. Then we outline what we see as "moving beyond the NPT", including thinking through withdrawal from the NPT. We appeal to colleagues in the arms control and peace community to hear us out. For many of you a call to abandon a treaty that came as a great relief at the height of the Cold War is blasphemous. But, at a 100 seconds to midnight⁵, there can be no sacred cows. The problem must be looked at from all angles.

2. Why it is time to ditch the NPT?

For decades the NPT has been called "the cornerstone" of the nuclear non-proliferation and disarmament regime. This designation has become arms control common sense, applied automatically and uncritically in the Gramscian sense. Arguably, the NPT – that was concluded in 1968 and entered into force in 1970 - has helped to contain but not freeze the number of proliferators. Since 1967, four new nuclear-armed states arose: Israel, India, Pakistan, and North Korea.⁶ A state that is willing to spend a lot of money, personnel and time to acquire nuclear weapons may succeed⁷, and can always withdraw from the NPT if needed. North Korea is an example in case and may be followed by other states. In addition, the treaty is not universal. Three states never signed on to the NPT: Israel, India and Pakistan. As a result, one third of all nuclear armed states do not belong to the NPT. Three out of four nuclear armed states in Asia fall into that category. One of them – Pakistan – is known to have helped the spread of nuclear weapons technology to countries like North Korea, Iran, and Libya. And Israel offered apartheid South Africa Jericho missiles likely fitted

with nuclear warheads. It also sent South Africa enough tritium to help build its nuclear bombs⁸ and may have tested a nuclear weapon together with South Africa.⁹

Irrespective of the NPT's effect on (non)proliferation, there is a consensus amongst experts and decision-makers that the NPT is in trouble, basically because of a lack of nuclear disarmament.¹⁰ What is a matter of debate is the extent of the trouble and the potential negative consequences for the treaty and the regime. Most observers seem to believe that for one reason or another the NPT will be around forever, or at least for a very long time.¹¹ In contrast, we have previously argued that the NPT may come to an end just like many other arms control agreements (e.g. the Antiballistic Missile Treaty; the Intermediate-Range Nuclear Forces Treaty; the Open Skies Treaty), maybe sooner than later.¹²

The basic flaw of the NPT is that its implementation is one-sided. Contrary to most arms control agreements, the NPT is a discriminatory agreement, making a distinction between five states that could sign up as nuclear weapon states¹³ (because they had exploded a nuclear device before 1967) and all other states that had to sign up as non-nuclear weapon states. The latter had to promise never to acquire nuclear weapons. The continuation of this distinction between a small club of "haves" and a very large group of "have nots", however, is not sustainable. The negotiators of the treaty knew this and article 6 of the NPT demands the signatory parties to start multilateral negotiations leading to a world without nuclear weapons. If article 6 were not there, many states would not have signed up in the first place.

The legitimacy of a treaty depends on its implementation. If all states carry out what they have promised, a treaty can exist for a very long time. That is for instance the case for the nuclear weapon free zone treaties. If, however, one group of states does not fulfill the obligations under the treaty, while another group of states does, the legitimacy of the treaty and in the end its survival is in question. That is the case with the NPT. The intention with the NPT was to build a house where nuclear weapons would eventually become illegitimate and illegal. But, the house that was built (and continues to be built) on the NPT cornerstone is not the one that the architects promised. As a result, the NPT has become the cornerstone of a severely hypocritical nuclear order where a few states regard wielding their nuclear weapons as legitimate while proscribing this "sovereign" right to other states – something which India dubbed "nuclear apartheid".¹⁴

The unwillingness by the nuclear weapon states to eliminate their nuclear arsenals – there are still 14,000 nuclear weapons on earth - yields an enormous amount of frustration for many of the non-nuclear weapon states. This frustration was first canalized by the Non-Aligned Movement (NAM). In 1995, after the NPT was extended indefinitely, 25 years after the treaty's entry into force, the New Agenda Coalition (NAC) captured and transmitted that frustration. In hindsight, one could question whether the indefinite extension was the right thing for the non-nuclear weapon states, as they gave up a very important instrument of leverage.¹⁵ As the NPT does not contain a deadline for nuclear disarmament and as the treaty was indefinitely extended, the nuclear weapon states were freed of any immediate pressure to disarm.¹⁶ From that point onwards, the NPT became at best a status quo treaty and at worst it emboldened nuclear weapon states to treat article 6 with impunity after the indefinite extension was secured. The three major demands that were part of the package deal in 1995 are still not implemented 25 years later: the conclusion and entry into force of a CTBT; the conclusion and entry into force of a fissile materials cut off treaty; and a weapons of mass destruction free zone in the Middle East.¹⁷ In our estimation, the indefinite

extension of the NPT is an important explanatory factor for the slowdown of nuclear arms control and disarmament since the mid-1990s.

At the five-yearly Review Conferences, the non-nuclear weapon states complain about the lack of nuclear disarmament, leading to the failure of the adoption of a consensus document at many of those conferences. In fact, more Review Conferences have failed than have succeeded. Those Review Conferences that succeeded contained promises that, just like in 1995, were later on not implemented. More in particular, the thirteen arms control and disarmament steps agreed at the 2000 Review Conference, as well as the 64 steps agreed upon in 2010 have not been implemented in any meaningful way.

One year after the failed 2005 Review Conference one of us started his article as follows: 'The nuclear non-proliferation regime is under more pressure than ever and from different corners. It has to be adapted if it wants to stay alive'.¹⁸ That adaptation has never happened. For one reason or another, the nuclear weapon states – and many observers with them¹⁹ – never seemed to grasp the size of the frustration of the non-nuclear weapon states. At some moments in time, the nuclear weapon states – in particular the US and France – even questioned the steps that had been promised. At other moments, the nuclear weapon states defended themselves by saying that more time is needed for their implementation. They refer to their preferred step-by-step approach that sees nuclear disarmament happening over time in the form of arms control (limitations on nuclear arsenals). Put on the spot, defenders of the nuclear order therefore argue that although the house built over the last 50 years is not the one that the NPT promised, the world should remain patient. The house, they claim, is simply not finished yet.²⁰ The slow pace of nuclear disarmament is attributed to the world being not safe for the elimination of nuclear weapons at the present time.²¹ The US initiative in the NPT forum, Creating an Environment for Nuclear Disarmament (CEND), follows this logic, but is called out by some states and scholars – and rightly so – as just the latest excuse to delay nuclear disarmament by postulating mythical prerequisites for its implementation.²² As the only country that can claim role model status for nuclear disarmament, South Africa's refusal to participate in the CEND initiative is an indictment of this approach.

For most of the non-nuclear weapon states it is crunch time. Fifty years ago, they signed up to a discriminatory treaty that was disadvantageous to their side with a promise that the situation will be rectified in good faith. It has not been rectified. On the contrary, the popular narrative being perpetuated is that the NPT gave the five nuclear weapon states the (sovereign) right to keep their nuclear weapons, as long as they pass on civilian nuclear technology to states without nuclear weapons.²³ The nuclear weapons states have squandered a number of opportunities to fulfill their end of the bargain embedded in the treaty, which line up as proof that nuclear weapon states have no intention to give up their nuclear weapons.²⁴ More evidence derives from the modernization activities going on in nuclear armed states. The US alone is planning to spend \$1.2 trillion (without taking into account inflation) on the modernization of nuclear weapons and their delivery vehicles in the coming 30 years. This year alone the US will spend \$50 bn on nuclear weapons. That means 20% of the US defense budget that is spent on nuclear weapons research and development and procurement (or 30% if one adds missile defense and the cleaning up of nuclear sites).²⁵ These modernization activities reflect the intent to keep nuclear arsenals for decades (up to 50-80 years). The latter makes a mockery of article 6 of the NPT.

Article 6 is not the only treaty article of the NPT that yields frustration for the non-nuclear weapon states. The other major article that is under fire is article 4, which states that all signatories – including the non-nuclear weapon states – have the right to develop civilian nuclear programs, as long as every program is declared to the International Atomic Energy Agency (IAEA) and as long as the IAEA can control these facilities (as specified in article 3). Notice that the nuclear weapon states are exempted from these controls, another layer of discrimination, although some of them have unilaterally agreed with IAEA controls on their civilian facilities. More fundamentally, the benefits of article 4 for the non-nuclear weapon states are decreasing and the restrictions increasing. While the NPT does not specify the kind of civilian facilities that states can build, there is a tendency (especially in the US) to claim that enrichment and reprocessing facilities do not fall under the heading of article 4.²⁶ At the same time, an Additional Protocol to the IAEA was negotiated that gives the IAEA more power to verify declared and undeclared facilities in the non-nuclear weapon states. Non-nuclear weapon states like Brazil perceive this as an additional burden and therefore did not sign up to the Additional Protocol.²⁷ Furthermore, the US seems to have a two standard policy. On the one hand, the US turns on the screws with respect to safeguards. On the other hand, the US had no qualms in signing a proliferation deal with one of the three states that never signed the NPT, namely India. As a result of the US-India nuclear deal, India obtained more nuclear know-how and materials that benefited both its civilian and military program.²⁸

There are not only serious flaws in the respective implementation of each of the “three pillars” of the NPT: nonproliferation, disarmament, and peaceful uses. These flaws also reinforce each other, which means that there is something structurally unstable with the house that is built upon three pillars. Much of the stalemate in and deterioration of the nuclear normative order is possible because of the discursive ordering of the nuclear weapons issue-area around the NPT’s “three pillars”. This trinity or what we call the rock-paper-scissors approach keeps officials and their advisers going on a rhetorical merry-go-round. It goes as follows: nuclear disarmament cannot occur while there is a risk of proliferation, and proliferation is an inherent risk of peaceful uses, and peaceful uses is an inalienable right. As a result, the peaceful use and consequent proliferation make nuclear disarmament an impossibility, which in turn unravels the grand bargain of the NPT that links non-proliferation and disarmament. Thus non-nuclear weapon states may think of their peaceful programs as nuclear hedging, which allows nuclear weapon states to play up nuclear proliferation risks to justify their own nuclear weapons, and so the arguments go round and round. This rhetorical game of rock-paper-scissor has not only become standard in the NPT Review Conferences, but is becoming a self-fulfilling prophecy. It is time to get off the discursive merry-go-round and pursue discourses and practices that move beyond the NPT trinity.

3. Moving beyond the NPT

3.1 The Humanitarian Initiative and the Ban Treaty

Non-nuclear weapon states and civil society organizations that are serious about a world without nuclear weapons found a way to canalize their growing frustrations after the failed 2005 Review Conference with the start of the so-called Humanitarian Initiative. Ronald McCoy, the founder of the Malaysian chapter of the International Physicians for the Prevention of Nuclear War (IPPNW), initiated this new humanitarian movement that led to

the creation of the International Coalition to Abolish Nuclear Weapons (ICAN). Taking the initiative further, states like Austria, Switzerland and Norway were able to include the following paragraph in the 2010 NPT Review Conference: “deep concern at the continued risk for humanity represented by the possibility that these weapons could be used and the catastrophic humanitarian consequences that would result from the use of nuclear weapons”. In the period of 2013-2014, Norway, Mexico and Austria each organized a Conference on the Humanitarian Impact of Nuclear Weapons, with a growing number of states (120-150) attending. The last conference in Vienna led to the Austrian pledge, later re-branded the Humanitarian Pledge. The latter called for a new legal instrument that would make nuclear weapons illegal.

Nuclear armed states were absent at (most of) these Humanitarian Conferences, which is ironic because the main question that was dealt with at these conferences was whether societies are ready in case nuclear weapons were used (again) by one or more of the nuclear armed states. As the consequences of their use will not be restricted to the target state, like the corona pandemic, all states in the world would be directly concerned. The answers that the main question generated at these conferences were highly unsatisfactory: societies were not ready and – worse - could not be ready to deal with the aftermath of nuclear weapons use. Taking the comparison with the corona pandemic further, one could ask how many intensive care beds will be left after a nuclear weapons attack, let alone after a nuclear war.²⁹ It strengthened the view that the only way to protect the international community from nuclear weapons use was their elimination.

One useful way to start eliminating a weapons category is, just as with landmines and cluster munitions, to ban them and declare them illegal. That is exactly what happened. In October 2016 a United Nations General Assembly resolution was agreed by 123 states demanding the start of multilateral negotiations of a legally binding instrument to prohibit nuclear weapons in 2017 in the framework of the UN. These negotiations were started up in the beginning of that year and were concluded on 7 July 2017: 121 states voted in favor of the Treaty on the Prohibition of Nuclear Weapons (TPNW), better known as the Ban Treaty. The Ban Treaty outlaws the development, acquisition, possession, transfer, use and threat of use of nuclear weapons for all states, without any discrimination. If all states in the world sign, ratify and implement the treaty, a world without nuclear weapons would be in the making.

The Ban Treaty is both a prohibition and disarmament treaty. For the first time ever, an international legally binding treaty stipulates that nuclear weapons are prohibited and that they will be regarded as illegal (at least by the signatories), once the treaty enters into force, which is in January, 2021. A ban will expand the existing nuclear taboo³⁰ from use to possession. It aims to strengthen the existing norm against nuclear weapons. The hope of the advocates of the Ban Treaty (including the authors) is that the stigmatizing effect of the Ban treaty will trigger a renewed societal and political debate inside the nuclear armed states and their allies about the legitimate role of weapons of mass destruction in their defense doctrines.³¹

In order to grasp the remainder of this article, it is crucial to note that the Ban Treaty should be regarded as another signal by most of the non-nuclear weapon states that they fundamentally dislike the current state of affairs with respect to nuclear disarmament. It reflects frustration with the NPT to the point that they will find other forums to enact the NPT's objectives. The Humanitarian Initiative can indeed be regarded as the successor of the

New Agenda Coalition in the 1990s, which in turn can be regarded as the successor of the pressure by the NAM earlier on. This time, for the first time ever, the non-nuclear weapon states successfully used the power of their number to their advantage. That is how Hannah Arendt defines power.³² The Ban Treaty shows that, instead of the nine nuclear armed states and their 30 allies, the 120 to 130 non-nuclear weapon states that want to get rid of nuclear weapons are at the steering wheel of the global non-proliferation and disarmament regime.

There is what Alexander Kmentt calls a conceptual gap among the nuclear armed states and the non-nuclear weapons states.³³ The nuclear weapon states in solidarity boycotted the first two Humanitarian Conferences, arguing that the Initiative is a distraction from and undermines the NPT. They assumed that their absence would make the initiative a futile exercise that would fizzle out, but their boycott backfired. Amb. Kmentt writes that their absence ‘proved almost to a greater degree that the humanitarian approach was valid and provided a possibility to have the kind of nuclear disarmament debate that is usually stifled in other fora. Rather than weakening the humanitarian approach, the nuclear weapon states’ dismissive attitude actually provided further impetus to this non-nuclear weapon state-driven initiative.’³⁴ In a turn-about, the US, UK, India and Pakistan officially participated in the Vienna Conference, which was now considered part of the mainstream nuclear debate.³⁵

However, the boycott policy and critique that the process undermines the NPT returned during the negotiations of the Ban Treaty and is still sustained by the nuclear weapon states in an effort to hamper the Ban Treaty’s success.³⁶ For the non-nuclear weapon states most invested in the Humanitarian Initiative, the Ban is not only complimentary to the NPT, but also firmly rooted within the NPT, especially article 6, and ‘fully consistent with their own objective of trying to promote a strong and credible NPT’.³⁷ The Ban Treaty even mentions the NPT. As such, these states find the NWS’ claim that the Ban Treaty is incompatible with the NPT especially confrontational.

Some commentators saw our 2019 article as playing into the hands of the detractors of the Ban Treaty, because it suggested that the Ban Treaty should replace the NPT.³⁸ Our article was apparently cited “with glee” by some of these detractors to show that the Ban Treaty undermines the NPT.³⁹ To be clear, the NPT inevitably must be replaced with another international agreement—be it the Ban Treaty or a newly negotiated instrument—that abolishes nuclear weapons, oversees their elimination, and institutes a universal system to ensure nuclear abstinence for all. This progression from the NPT to other instruments of nuclear disarmament is built in to article 6. The ideal is that the NPT becomes a dynamic and time-bound forum for the orderly transition to a new nuclear order where nuclear weapons are illegal for all. However, the nuclear armed states intransigent responses to the TPNW process suggests that this will not happen in time to avert the NPT’s collapse.

The nuclear armed states and their allies certainly had not expected the arrival of the Ban Treaty so soon. They could have welcomed the Ban Treaty as a constructive step in eliminating nuclear weapons, and at the same time could have started creative thinking in how to proceed further in the short, medium and long term to implement their end of the NPT bargain. Unfortunately, the nuclear armed states and their allies boycotted the negotiations and categorically rejected the Ban Treaty, and some of them radically stated that they would “never” sign it.⁴⁰ From their point of view, nuclear weapons are legitimate

defense tools that will not be given up soon. In our view, the idea of eliminating them has never been taken seriously in the nuclear armed states.⁴¹

3.2 Has the NPT become a sacred cow?

To move nuclear disarmament forward, we have to understand the pertinacious thinking around the NPT as the cornerstone of the nuclear order. Our article⁴² asking whether it is time to ditch the NPT has been criticized both from the right and the left. The criticism of the right – the nuclear armed states and their allies and those who agree with their views – was understandable. For reasons we explained above it is in their interest to keep calling the NPT “a cornerstone”, because they cannot imagine a world without the privileged position that it affords nuclear armed states.

The criticism of the left – ICAN and other peace organizations – was maybe more surprising, but at the same time understandable. For some critics of our position, the NPT is regarded as one of the few treaties (albeit imperfect) still standing that regulates nuclear weapons and as such ditching it will mean that non-nuclear weapon states give up the only legal leverage over nuclear weapon states that they have.⁴³ However, in our estimation, that leverage was already given up with the indefinite extension in 1995, and the nuclear armed states certainly do not act as if the NPT regulates their nuclear weapons. The only leverage that remains within the NPT framework is withdrawal (like North Korea) or acting outside the NPT, as the negotiation process of the Ban Treaty illustrated.

Related, the criticism from the left can also be understood in terms of the nuclear weapon states’ insistence that the Ban Treaty would undermine the NPT. For some non-nuclear weapon states and peace activists, the “do no harm” principle applies, i.e. they would not like any action to be seen to contribute to the proliferation of nuclear weapons and ditching the NPT could result in proliferation.

For other actors from the left, our article came at the wrong time. They argue that the Ban Treaty first needs to enter into force. For that to happen, the criticism that the Ban Treaty will undermine the non-proliferation regime needs to be neutralized to attract more signatories and ratifications. The references to the NPT in the Ban Treaty and assurances that the Ban does not contradict the NPT are sweeteners. But, irrespective of these sweeteners, ratification has become more complicated than previously thought because of the pressure by the nuclear weapon states,⁴⁴ just as happened when the NPT had to be extended indefinitely.⁴⁵ The US has apparently even pressured states to un-sign the TPNW right before the 50th ratification of the treaty.⁴⁶ That said, the TPNW has been ratified by the necessary 50 states. The Ban Treaty puts in effect the grand bargain that the NPT negotiators struck, but is also a radical departure from the hypocritical and status quo treaty that the NPT has become.

Once the Ban Treaty enters into force, the stigmatizing effects of the Ban Treaty can be fully realized. This will be a crucial period for the NPT and the future of nuclear weapons. If the nuclear armed states and their allies at that time, or at least some of them, start to listen better to the grievances and frustrations of the non-nuclear weapon states with a clear agenda to eliminate nuclear weapons, the NPT can become a framework for an orderly transition to a world without nuclear weapons under a legal instrument that eventually supersedes the original NPT. If, in contrast, the nuclear armed states and their allies remain stubborn, we do not only predict, but also prescribe the end of the existing NPT.

3.3 Thinking through NPT withdrawal

What if the nuclear armed states don't listen? If the call for nuclear disarmament is not picked up after so many diplomatic signals, it is time for something else. That "something else" means getting the attention of more and more experts and people in the nuclear armed states. There are different ways to capture the attention of more domestic actors inside the nuclear armed states. One approach is to "ditch", or more politely put, withdraw from the NPT. Previously, as was the case with North Korea, the international community regarded withdrawal from the NPT as a rogue act that immediately cast suspicion on a state's nuclear intentions. But, if a large group of states in good standing with their IAEA safeguard agreements, who are members of the TPNW and/or Nuclear Weapons Free Zone treaties, walk away on the grounds that article 6 of the NPT is being undermined, the stigmatizing effect will be reversed and come to bear on the nuclear armed states.

What about the risk of proliferation in a world without the NPT? When it comes to withdrawal from the NPT, a distinction between three kinds of states can be made. For many non-nuclear weapon states that have signed on to the Ban Treaty and are part of other arrangements, such as nuclear weapon free zones (NWFZs), we do not see that withdrawal from the NPT will impact on their nuclear status. These states can transfer their safeguards agreements under the NPT to other legal instruments (e.g. NWFZ treaties) and in the end the IAEA will still function as the watchdog organization, in addition to regional organizations such as Brazilian-Argentine Agency for Accounting and Control of Nuclear Materials (ABACC) and the African Commission on Nuclear Energy (AFCONE). For us, this solves the problem of duplicity in the nuclear order: states that forgo the nuclear option will no longer be beholden to nuclear weapon states in the unfair and therefore unstable set-up of the NPT, but to like-minded states and the international community at large on the basis that nuclear weapons are illegal for all. That is the first and in all likelihood largest group of states.

A second group of states may withdraw from the NPT because they feel insecure and would like to build nuclear weapons. As Mohammed El Baradei once stated: 'Imagine this: a country or group of countries serves notice that they plan to withdraw from the nuclear Non-Proliferation Treaty (NPT) in order to acquire nuclear weapons, citing a dangerous deterioration in the international security situation. "Don't worry," they tell a shocked world. "The fundamental purpose of our nuclear forces is political: to preserve peace and prevent coercion and any kind of war. Nuclear weapons provide the supreme guarantee of our security. They will play an essential role by ensuring uncertainty in the mind of any aggressor about the nature of our response to military aggression. The rationale I've just cited to justify nuclear weapons is taken from NATO's current Strategic Concept'.⁴⁷ Iran is the most likely case. If Iran goes nuclear, the odds are that Saudi Arabia will follow soon. Although their motivation has less to do with the higher-mentioned grievances and frustrations vis-à-vis the nuclear weapon states and their allies, they may make use of the current crisis of the NPT to leave the treaty. The North Korean precedent will certainly not deter them, on the contrary. North Korea is currently a nuclear armed state and is not being physically attacked. A different treatment of Iranian proliferation is not defensible.⁴⁸

The third and last group of states does not immediately feel insecure, but feels unfairly treated by the NPT, and might think of changing their status to nuclear. Only weeks after our previous article was published, Turkish President Erdogan said publicly the following in the UN General Assembly, followed by a lot of applause: 'Some countries have missiles with

nuclear warheads, not one or two. But (they tell us) we can't have them. This, I cannot accept'.⁴⁹ In the past, similar statements were heard in Brazil. Vice-President Jose Alencar said in 2009: 'The nuclear weapon, used as an instrument of deterrence, is of great importance for a country that has 15,000 kilometers of borders to the west and a territorial sea'.⁵⁰ Egypt is also known as being critical vis-à-vis the NPT and has already walked out of one of the NPT Prepcoms.

In short, more states may follow the North Korean example by leaving the NPT. If more states leave the NPT, it signifies the end of the NPT. Ditching the NPT is only a responsible approach if there is an alternative. Not by chance, that alternative exists, namely the Ban Treaty. As soon as the Ban Treaty enters into force and there is still no sign that the nuclear armed states and their allies are substantially moving in the direction of fundamentally delegitimizing nuclear weapons, there is no need for the NPT anymore.

What would states that withdraw from the NPT lose? Nothing. A discriminatory regime would have been replaced with a regime in which all states are equal with respect to the possession of nuclear weapons. It would be a world without a treaty that ends up legitimizing nuclear weapons for a small group of states while condemning their acquisition by most other states. It would be a world in which nuclear weapons and their possessors would be regarded as pariah states, possessing defense instruments that are not only inhumane, immoral and illegitimate, but also illegal from now onwards.⁵¹

In case the NPT – a house of cards - falls apart, the nuclear armed states and their allies will need to re-think their strategy: keep hanging on to their nuclear weapons and find additional reasons to legitimize their arsenals because of the end of the NPT, or come to the conclusion that a scenario where they are the pariahs and rogues is not in their interest either. In all likelihood, it will create a schism between and inside the nuclear armed states and their allies. If that analysis is correct, the pressure of the states that call for a radical change will grow, as the group of non-nuclear weapon states will be joined by more (domestic actors in other) states.

Admittedly, ditching the NPT becomes more complicated if states opt for the nuclear option after withdrawal, or in a first stage threaten to build nuclear weapons. Legally, they would do nothing wrong as they will have withdrawn from the NPT. More nuclear armed states means that the inherent risks of nuclear weapons possession, i.e. nuclear use, nuclear accidents, nuclear terrorism and catastrophic failure of any perceived deterrence, are exported to more states.

The international community may choose to accept the nuclear status of states that withdraw and obtain nuclear weapons in the same way it has largely accepted the status of the four nuclear armed states outside the NPT system. In the worst-case scenario, particular nuclear armed states may use proliferation as an excuse to start wars on some of these states, which will have dire consequences if the dragging humanitarian cost and geopolitical instability of the Iraq War (2003) are anything to go by. However, these wars cannot be justified by pointing to the NPT if states have used their sovereign right to withdraw from the treaty and are no longer bound by it. This worst-case scenario in any event does not look much different from the manifestation of the NPT order since 1995.

4. Conclusion

The value of the NPT, as is the case with all treaties, is linked to all state parties playing by the rules. Our analysis provides evidence of an opposite trend towards achieving the goals of the three NPT pillars individually (non-proliferation, disarmament and peaceful nuclear technology) and collectively (a world without nuclear weapons). This trend is largely to blame on the nuclear armed states. The nuclear armed states are reversing arms control measures and a new arms race is underway. Their do-as-we-say-and-not-as-we-do approach is provoking proliferation, while they increasingly question the inalienability of nuclear weapon states' right to peaceful nuclear technology. The nuclear armed states also misconstrue the pillars of the NPT to justify prolonging nuclear weapons possession, which is possible because of how the NPT sets up these pillars. For better or worse, article 3, 4 and 6 of the NPT hang and fall together. There comes a point where the lack of and skewed implementation of a treaty does not warrant its continuation. The NPT is at that point. After 50 years of its existence and 25 years since its indefinite extension it can no longer be contended that the NPT order will result in a world without nuclear weapons. It is time to move beyond the NPT. Since 1995 the non-nuclear weapon states have no leverage left in this forum, but to withdraw. The arrival of the Ban Treaty embodies the frustration of this group of states, and exposes the nuclear armed states' intransigence with respect to achieving the spirit of the NPT. It is in this context that we explored withdrawal as a legitimate option for states that are serious about nuclear disarmament. This is by far the largest group of non-nuclear weapon states. If enough of these states withdraw, the NPT will collapse. Our analysis offers a way to think about a post-NPT world. The majority of non-nuclear weapon states will not change their nuclear status, but likely are already or will become members of the Ban Treaty. We do not rule out that there may be states that acquire nuclear weapons, but this kind of proliferation must be seen in the context of the failure of nuclear armed states to abide by their NPT obligations, rather than in isolation. Although the norm against nuclear weapons is concrete in the NPT, the way nuclear armed states have interpreted the NPT does damage to this norm. Withdrawal is not an invalidation of the NPT, but in fact, an indictment of this interpretation and an attempt to reclaim the NPT's original intent – a world without nuclear weapons. As such, the optimal step towards nuclear disarmament is for states to withdraw from the NPT and to join the Ban Treaty.

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³ Joelen Pretorius and Tom Sauer, 'Is it Time to Ditch the NPT?', in: *The Bulletin of the Atomic Scientists*, 6th of September 2019.

⁴ Heather Williams, 2019, <https://twitter.com/heatherwilly/status/1170990676227579905>.

⁵ 'Closer than ever: It is a 100 seconds to midnight', 2020 Doomsday Clock Statement, *The Bulletin of Atomic Scientists*, 23 January 2020, <https://thebulletin.org/doomsday-clock/current-time/>

⁶ South Africa built nuclear weapons during the 1980s, but dismantled them and joined the NPT in 1991.

⁷ South Africa proved that even amidst sanctions this is possible.

⁸ Sasha Polakow Suransky, *The Unspoken Alliance: Israel's secret relationship with apartheid South Africa* (New York: Pantheon Books, 2010). p. 83, 125.

⁹ Avner Cohen and William Burr, 'Revisiting the 1979 VELA mystery: a report on a critical oral history conference, in: Sources and Methods. A blog of the History and Public Policy Program of the Woodrow Wilson Center, 31 August 2020, <https://www.wilsoncenter.org/blog-post/revisiting-1979-vela-mystery-report-critical-oral-history-conference>.

¹⁰ Paul Meyer, 'The nuclear nonproliferation treaty: fin de régime?', in: *Arms Control Today*, April 2017; Jerry Brown and William Potter, 'Open Forum: Time for a reality check on nuclear diplomacy', in: *San Francisco Chronicle*, 24 April 2019, <https://www.sfchronicle.com/opinion/openforum/article/Open-Forum-Time-for-a-reality-check-on-nuclear-13793344.php>; Tariq Rauf, 'The NPT at Fifty: Perish or Survive?', in: *Arms Control Today*, March 2020.

¹¹ Liviu Horowitz, 'Beyond pessimism: why the treaty on the non-proliferation of nuclear weapons will not collapse', in: *Journal of Strategic Studies*, 38 (1-2), 2015, pp.126-158; Adam Scheinman, 'No, it is not time to ditch the NPT', in: *The Bulletin of the Atomic Scientists*, 7th of October 2019.

¹² Pretorius and Sauer, *ibid*.

¹³ "Nuclear-armed states" are composed of the five "nuclear weapon states" temporarily recognized by the NPT and the four additional ones mentioned in our text.

¹⁴ Pretorius and Sauer, *ibid*.

¹⁵ See e.g. Rebecca Johnson's analysis that led her to conclude the NPT's 'indefinite extension has exposed more problems than it cured.' In 'Troubled Treaties: Is the NPT Tottering?', *The Bulletin of Atomic Scientists*, Vol. 55, March/April 1999, No. 2, pp. 16-18.

¹⁶ That was already predicted in an article by one of the authors: Tom Sauer, 'Het Nucleair Non-Proliferatie Verdrag' [translated: The Nuclear Non-Proliferation Treaty], in: *Streven*, April 1995, vol.62 (4), pp.306-315.

¹⁷ Johnson (*ibid*) also details how some in the nuclear weapon states saw the strengthened review process agreed to as part of the indefinite extension package as merely a gambit to achieve the NPT's permanence.

¹⁸ Tom Sauer, 'The Nuclear Nonproliferation Regime in Crisis', in: *Peace Review*, vol.18, 3, Fall 2006, pp.333-340.

¹⁹ Bruno Tertrais, 'The Illogic of Zero', in: *The Washington Quarterly*, vol.33 (2), pp.125-138.; Brad Roberts, 'Ban the Bomb or Bomb the Ban?', in: *ELN Policy Brief*, 22 March 2018.

²⁰ The nuclear weapons states and their allies were put on the spot when they had to defend their choice not to support the negotiation of the TPNW in UN forums. See e.g. the UN High Level Meeting on the total elimination of nuclear weapons on 27 September 2017, <https://www.un.org/press/en/2017/ga11954.doc.htm> (accessed 2020-12-18)

²¹ Pretorius and Sauer, *ibid*.

²² Tariq Rauf, 'CEND is Creating the Conditions to 'Never Disarm': 74 Years since Hiroshima and Nagasaki', 5 August 2019, <https://www.indepthnews.net/index.php/opinion/2876-cend-is-creating-the-conditions-to-never-disarm-74-years-since-hiroshima-nagasaki> (accessed 13/07/2020)

²³ Stephen McGlinchey, 'Diplomacy' in: Stephen McGlinchey (ed), *International Relations*, 2017, e-IR Publications; Julian Borger and Ian Sample, 'All you wanted to know about nuclear war, but were too afraid to ask', in: *The Guardian*, 16 July 2018, <https://www.theguardian.com/world/2018/jul/16/nuclear-war-north-korea-russia-what-will-happen-how-likely-explained> (accessed 24/02/2020)

²⁴ Pretorius and Sauer, *ibid*.

²⁵ Lawrence Korb, 'Trump's 2021 Budget', in: *The Bulletin of the Atomic Scientists*, 12th of February 2020.

²⁶ Joellen Pretorius, 'Nuclear Politics of Denial', in: *International Negotiation*, vol.18 (3), 2013, pp.379-399, https://brill.com/view/journals/iner/18/3/article-p379_4.xml

²⁷ *Ibid*.

²⁸ The US-India deal was not the first time that the US and its allies helped a proliferator outside the NPT. See Renfrew Christie's 1993 analysis on the substantial help that the South African nuclear weapons program received from the West, particularly the US. Renfrew Christie, 'South Africa's Nuclear History', Nuclear History Program Fourth International Conference, Nice (France), 23-27 July 1993.

²⁹ Tom Sauer and Ramesh Thakur, 'How many intensive care beds will a nuclear weapon explosion require?', in: *The Bulletin of the Atomic Scientists*, 28 April 2020, <https://thebulletin.org/2020/04/how-many-intensive-care-beds-will-a-nuclear-weapon-explosion-require/>

³⁰ Nina Tannenwald, *The Nuclear Taboo* (Cambridge: Cambridge University Press, 2007).

³¹ Tom Sauer and Mathias Reversaert, 'The potential stigmatizing effect of the Treaty on the Prohibition of Nuclear Weapons', in: *The Nonproliferation Review*, vol.25 (5-6), 2018, pp.437-455.

³² Hannah Arendt, *Crisis of the Republic: Lying in Politics, Civil Disobedience, On Violence. Thoughts on Politics and Revolution* (New York: Harcourt Brace, 1972).

³³ Alexander Kmentt, 'The Development of the International Initiative on the Humanitarian Impact of Nuclear Weapons and its Effect on the Nuclear Weapons Debate', in: *International Review of the Red Cross*, vol 97 (899), 2015, pp.681-709, https://international-review.icrc.org/sites/default/files/irc97_11.pdf

³⁴ Ibid

³⁵ China sent a representative to the Vienna Conference, who registered as an academic, and therefore China's participation cannot be regarded as official.

³⁶ 'P5 joint statement on the Treaty on the Non-Proliferation of Nuclear Weapons', 24 October 2018. <https://www.gov.uk/government/news/p5-joint-statement-on-the-treaty-on-the-non-proliferation-of-nuclear-weapons>

³⁷ Kmentt, *ibid*

³⁸ See e.g. Rob Goldston's comment to our article on *The Bulletin of Atomic Scientists* website, <https://thebulletin.org/2019/09/is-it-time-to-ditch-the-npt/>

³⁹ Heather Williams, 'What the Nuclear Ban Treaty means for America's allies', in: *War on the Rocks*, 5 November 2020, <https://warontherocks.com/2020/11/what-the-nuclear-ban-treaty-means-for-americas-allies/>

⁴⁰ 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, 7 July 2017.

⁴¹ See also Benoit Pelopidas, "The birth of nuclear eternity", Oxford University Press (forthcoming)

⁴² Pretorius and Sauer, *ibid*.

⁴³ Scheinman, *ibid*.

⁴⁴ For pressure from the nuclear weapon states before November 2016, see: Xanthe Hall, 'Under pressure', see: <https://peaceandhealthblog.com/2016/11/03/under-pressure/>

⁴⁵ Rebecca Davis Gibbons, "American Hegemony and the Politics of the Nuclear Non-proliferation Regime," PhD diss, Georgetown University, 2016, chapter 6.

⁴⁶ US urges nations to withdraw support for nuclear weapons prohibition treaty, in: *CBS News*, 22 October 2020, <https://www.cbsnews.com/news/us-urges-nations-to-withdraw-support-for-un-nuclear-weapons-prohibition-treaty-ap/>

⁴⁷ Mohamed El Baradei, 'Five Steps towards Abolishing Nuclear Weapons', in: *Süddeutsche*, 4 February 2009.

⁴⁸ The US Senate's recent passing of the so-called Iran War Powers resolution certainly suggests that there is limited appetite outside the White House for war.

⁴⁹ 'Erdogan says it's unacceptable that Turkey can't have nuclear weapons', in: *Reuters*, 4th of September 2019.

⁵⁰ J.Boyle, 'Brazilian Nuclear Ambitions ?', in: *Rio Times*, 25 September 2009.

⁵¹ Pretorius and Sauer, *ibid*.