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Issue Brief

NPT@50: The Genesis of a Flawed Bargain

A. Vinod Kumar

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S*ummary*

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT), the cornerstone of the global nuclear non-proliferation regime, has attained near universal adherence. However, even after five decades of its entry-into-force, the NPT is largely seen as a Cold War era instrument that has failed to fulfil the objective of creating a pathway towards a credible disarmament process. The NPT State Parties further have not been able to effectively address the post-Cold War nuclear challenges, including the numerous instances of non-compliance, violations, defiance and the emergence of non-state actors with declared intent to access weapons of mass destruction.

March 5, 2020 marked the 50th anniversary of the entry-into-force of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), a legal instrument treated as the cornerstone of the global nuclear non-proliferation regime. The NPT has had a roller-coaster ride, with many accomplishments and has weathered many crises. The treaty institutionalised the non-proliferation norm by de-legitimising ‘proliferation’ (production and transfer) of nuclear weapons, fissile materials and related technology by the non-nuclear weapon states (NNWS) while the recognised five nuclear weapon states (NWS) or the P5 — namely the US, Russia, the UK, France and China — have continued to expand their respective arsenals without any constraints.

Notwithstanding this and many other structural flaws, the treaty has attained a near-universal status with just four hold-outs — India, Pakistan, Israel and North Korea (which exited from treaty in 2006) — among the 193 nation states.¹ Apart from the four nuclear-armed outliers, the treaty’s jurisdictional expanse over the vast majority of nation states is in itself a significant accomplishment. This is especially so since over a quarter of the member states were not supportive of the treaty text when it was introduced as Resolution 2373 (XXII) on June 12, 1968 at the UN General Assembly (UNGA). While 21 countries abstained and four voted against the resolution, even a majority of the 95 countries² who voted for the treaty, who were mostly allies of the two superpowers, were known to have viewed it as an imbalanced instrument. They however felt that having a treaty to halt the spread of nuclear weapons was better than having none at all.³ Interestingly, all the countries that voted against the treaty and most of those who abstained have in subsequent years ended up joining the treaty, but for a few exceptions like India.

Despite these accomplishments, the NPT is largely seen as a Cold War era instrument that has failed to fulfil the objective of creating a pathway towards a credible disarmament process. The NPT’s indefinite extension in 1995, while invoking its irreplaceability, also underlined the inability of states to formulate a stand-alone instrument towards that end-objective, as enshrined in Article VI of the NPT. The treaty’s existential challenges began in the post-Cold War setting when the attempts by a few State Parties to break-out or gain nuclear latency led to numerous instances of non-compliance, violations and defiance. The emergence of non-state actors with declared intent to access weapons of mass destruction and the detection of a global

¹ Besides the 193 member-states of the United Nations (UN), the Holy See and State of Palestine are non-member observer states of the UN. The states outside this system are Taiwan, The Cook Islands, and Niue.

² The four countries that voted against are Albania, Cuba, Tanzania and Zambia, whereas the NAM grouping, including India, Brazil, Burma, Ethiopia, Mexico, Nigeria, Sweden and UAR (members of ENDC that negotiated the NPT draft) abstained en masse .

³ William Epstein, who was privy to the treaty negotiations, makes this point in his book *The Last Chance: Nuclear Proliferation and Arms Control* (The Free Press: New York, 1976). Epstein also cites an American official calling the Treaty the “biggest con game of modern times” while the Soviet delegation showed nervousness on the eve of voting feeling that there were ‘many grounds for countries not to go along’.

nuclear black-market, mentored by Pakistani nuclear scientist, A.Q. Khan, raised concerns on the limitations of the treaty to address the challenges thrown up by the new strategic milieu.

The NPT State Parties however did not find the initiative or will to address these challenges either through a restructuring of the treaty or through amendments to “tailor the NPT for the 21st century.”⁴ Most of the quadrennial Review Conferences (RevCon), the forum that reviews the health and functioning of the treaty, have remained inconclusive since 1995, with only two of them, in 2000 and 2010, managing to bring out Final Documents. The 2015 RevCon, despite the momentum provided by the Humanitarian Consequences initiative, could not work on any of the progressive proposals, and instead, dispersed without any document on differences over a Middle East Nuclear Weapons Free Zone (NWFZ) proposal.⁵ On the eve of the upcoming 10th RevCon, there is no notable initiative or campaign to evaluate the *raison d'être* of the treaty.

As the treaty lugs past a historic milestone, how should its five-decade record be evaluated: as an instrument that institutionalised and universalised the non-proliferation norm, or one that failed to facilitate nuclear disarmament, or rather as one sustaining an imperfect status quo? How has a transitional arrangement meant to facilitate conditions for disarmament and eventual elimination while permeating the widest peaceful applications of the Atom, ended up formalising a discriminatory system of nuclear ‘haves’ and ‘have-nots’?

The following sections will delineate the course of the treaty’s flawed construction through three major themes: the treaty’s superpower authorship; its flawed bargain; and its multiple missions.

A treaty authored by the superpowers

What started as an initial momentum to halt nuclear tests in the atmosphere soon transformed into a quest for a comprehensive disarmament instrument with the superpowers pressured to arrive at a framework agreement. The US-Soviet Joint Statement on Agreed Principles for Disarmament Negotiations (McCloy-Zorin Accord) of September 1961 provided an initial breakthrough.⁶ The efforts gained momentum with Ireland’s resolution in November of that year that introduced proposals of ‘non-dissemination’ and ‘non-spread’ by calling for measures to stop transfer of nuclear weapons or technology to states that did not possess them. This largely implied that

⁴ See Hillary Clinton, ‘[Remarks at the United States Institute of Peace](#)’, US Department of State, October 21, 2009,

⁵ For an analysis, see A. Vinod Kumar, [Reframing the Disarmament Discourse: Can the Humanitarian Paradigm make a difference?](#), *IDSIA Strategic Comment*, May 26, 2015.

⁶ ‘[McCloy-Zorin Accords: Joint Statement of Agreed Principles for Disarmament Negotiations](#)’, September 20, 1961.

the nuclear powers will not relinquish control (in allied territory) or help in their manufacture, and that others will undertake not to produce them. An immediate outcome was the Limited/Partial Test Ban Treaty (LTBT/PTBT) in 1962 banning all forms of nuclear testing, except underground tests. This resulted in the formation of an Eighteen Nation Disarmament Committee (ENDC), as expansion of a ten-nation version, with representation from both blocs and the non-aligned group, with the mandate to negotiate a disarmament instrument.

The turning point came after the Chinese nuclear test of October 1964, which veered the debate then centred on test ban, ending fissile materials productions and phased reductions proposals to what was termed as the threat of ‘proliferation’.⁷ The advent of ‘non-proliferation’ brought to the fore arguments about vertical and horizontal proliferation, which, the NNWS felt, can be addressed only through a comprehensive disarmament treaty. Resolutions at ENDC (149) and UN Disarmament Commission (DC/224 and 225) in June 1965 framed the contours of a ‘non-proliferation’ treaty to include non-dissemination, non-use, disarmament (including test ban, freeze on production and reduction of stockpiles), and non-acquisition or manufacture by NNWS.⁸

Consequently, the US and Soviet sides came up with individual drafts for a treaty to prevent the spread of nuclear weapons. Both drafts talked about the means to prohibit transfer of nuclear weapons and technology or assisting any state in their manufacture. While their common interest to ensure ‘no additional fingers on the trigger’ facilitated dialogue towards a reconciled draft, the non-aligned grouping, finding various proposals in these drafts as impinging negatively on their interests, sought the means to push for a balanced instrument. An eight-nation memorandum was passed as Resolution 2028 at UNGA instructing principles for the Treaty to include the avoidance of loopholes, maintenance of mutual obligations and responsibilities, inclusion of means to disarmament, among others.⁹ However, contrary to expectations, the reconciled draft of the superpowers presented at the ENDC on January 18, 1968 had no tangible disarmament roadmap, no reference to test ban or to the freezing of production of either fissile materials or nuclear weapons, and omitted provisions for reductions and elimination. It instead allowed sustenance

⁷ India’s representative at ENDC, V.C. Trivedi called for ‘preventing proliferation’ through ‘non-proliferation’ agreements that “prohibit manufacture, acquisition, receipt or transference of these weapons” (ENDC/P.V.174, March 12, 1964) thus bring the concept for the first time in the negotiations. At another ENDC meeting (ENDC/P.V. 223, August 12, 1965) Trivedi went on to define “proliferate” as “reproduce itself, grow by multiplication of elementary parts,” and argued that “a non-proliferation agreement is basically an agreement to be entered into by nuclear powers not to proliferate nuclear weapons.”

⁸ For a reference, see [Report of the Eighteen Nation Disarmament Committee](#), UNGA (A/5986), September 22, 1965.

⁹ The [joint memorandum on non-proliferation](#) (ENDC/158) was submitted to the 233rd meeting of UNGA by eight nations: Brazil, Burma, Ethiopia, India, Mexico, Nigeria, Sweden and United Arab Republic. They also presented a joint memorandum on a comprehensive test ban treaty, adopted by UNGA as Resolution 2032 (XX).

and expansion of arsenals by stipulating January 1, 1967 as the cut-off date to determine the P5. While uninhibited access to nuclear energy was promised to all subject to safeguards, disarmament was kept as a common goal (Article VI), and not an explicit obligation of the NWS. Besides driving a wedge among the non-aligned and NNWS groupings with the nuclear energy promise, the superpowers contended that tying up non-proliferation to other measures could cause an impasse and affect both non-proliferation and disarmament which convinced the majority that having a treaty is better than having none.

A flawed bargain

With the drafts of the superpowers evolved towards commonality by the end of 1967, it was becoming clear that their effort was to curtail the formation of new nuclear powers rather than commit to either a credible disarmament process or surrender their own development rights. The NNWS groupings at ENDC and UNGA, hence, demanded a quid-pro-quo that the nuclear powers should renounce their arsenals and further production in return for commitment of NNWS not to produce them. The run-up to the presentation of the draft treaty at the UNGA saw the NNWS asking the nuclear powers not to dictate obligations to others while possessing nuclear weapons and adopting no commitments for themselves.

Even as the superpowers contended that the treaty they drafted would check the spread of nuclear weapons and thus enhance the security of all nations, the non-aligned members continued to insist that the treaty should have provisions to ensure the complete cessation of production, freeze and reduction of stockpiles, assurance of security for non-weapon states, banning use of nuclear weapons, etc, and in principle be a logical treaty that “stops all proliferation.” While many of the superpower allies on both sides of the aisle expressed concern on these aspects, many of them, however, felt that the rigid non-aligned position was delaying an agreement on the primary objective of stopping the spread of nuclear weapons. A note from M.A. Husain, India’s representative at the ENDC, mentioned that the campaign on ‘vertical proliferation’ was weak as states viewed NPT as a means to prevent wider dissemination and that another instrument was needed to deal with disarmament.¹⁰

Nonetheless, the NNWS commune in general, and non-aligned members in particular, found the treaty text totally imbalanced and discriminatory; Articles I & II, they felt, had one-sided prohibitions on NNWS, and did not prohibit nuclear weapons on allied territory; the safeguards enshrined in Article III centred only on

¹⁰ Top secret note from M.A. Husain, “Non-Proliferation Treaty and Brief Answers,” April 18, 1968, P.N. Haksar Papers, IIIrd Installment, Subject File No. 2000, Nehru Memorial Museum and Library, New Delhi.

NWWS, while the restrictions on Peaceful Nuclear Explosion (PNE) technology was one-sided; Article VI did not provide for a time-limit to stop vertical proliferation or liquidation of existing arsenals while the undertaking to pursue disarmament in good faith was not a juridical obligation on the P-5.¹¹ In fact, the final months of the treaty negotiations saw acerbic divides on three issues, namely, safeguards, PNE and security guarantees.

The manner in which the safeguards system of the International Atomic Energy Agency (IAEA) was evolving even when the NPT negotiations were in progress with the NWS allowed to maintain ‘voluntary’ safeguards while the rest were subjected to comprehensive safeguards, seemed intrusive and discriminatory to the NNWS. Calling it thus at the ENDC, V.C. Trivedi termed the provisions for control as tantamount to a new form of economic colonialism. Similar voices of resistance were heard when the US proposed to prohibit PNE rights and instead offered to provide the technology on a commercial basis. The Indian representatives consistently termed the offer as ‘atomic apartheid’ and ‘commercial super-monopoly,’ and insisted that PNE rights need to be integral to all peaceful uses of nuclear energy.¹²

The other area which saw tempers fraying was on security guarantees related to assurances that a non-weapon state will be protected if subjected to threats of nuclear use by a nuclear-armed state. The NNWS wanted such assurances to be incorporated in the treaty text. The L.K. Jha mission to convince the nuclear powers to agree on a security guarantee framework drew a naught, after the US, despite initial thoughts of country-specific treaties, came around to support Moscow’s view that guarantees could be given to those who forego the right to develop nuclear weapons by signing the NPT.¹³ Eventually, the superpowers desisted from enshrining this in the treaty text and instead preferred a UN Security Council Resolution (255) soon after the NPT was passed at the UNGA.¹⁴

One treaty, many missions

Despite the posturing about the need to maintain balance between the three pillars of non-proliferation, disarmament and peaceful uses of nuclear energy, the treaty was clearly about non-proliferation, and more importantly, the superpowers’ focus was on horizontal proliferation. Despite common cause identified with the quest for

¹¹ [The Treaty on the Non-proliferation of Nuclear Weapons](#), UN, July 1, 1968.

¹² For a detailed analysis, See A. Vinod Kumar, “Between idealism, activism, and the bomb: Why did India reject the NPT?” in Roland Popp et.al (eds.), *Negotiating the Nuclear Non-Proliferation Treaty: Origins of the Nuclear Order* (Oxon, London, New York: Routledge, 2017).

¹³ The Indian government deputed senior bureaucrat, L.K. Jha, to Moscow, London and Washington with various proposals on security guarantees. Memorandum of Conversation, President Johnson with L.K. Jha, B.K. Nehru, V. Sarabhai and W.W. Rostow, Document 440, Foreign Relations of the United States (XXV), South Asia, Washington, April 19, 1967. Also see analysis in n.12.

¹⁴ [Resolution 255](#), UNSC, June 19, 1968.

a comprehensive disarmament instrument, the superpowers were able to reconcile their differences and draft a framework that fundamentally ensured that no additional nuclear power emerged on the scene and that their arsenals, which anchored the Cold War deterrence balancing, remained intact.

Even the promise of unhindered access to nuclear energy resources to fulfil the Atoms-for-Peace bargain, was a scheme subjected to the norms promulgated by the superpowers. Disarmament, as a result, was never seen as an integral mission, instead only an addendum to provide legitimacy for the NPT. As a result, the NPT text was weak on conceptualisation and largely ended up as a terse document that set the rules of the games, primarily for the NNWS, set a few common goals and engraved a declaration in its preamble that left the end-goal open-ended, vague and largely aspirational in both tone and content.

The preamble of the NPT for instance called for the

“conclusion of an agreement on the *prevention of wider dissemination of nuclear weapons*, ... achieve at the earliest possible date *the cessation of the nuclear arms race* and to undertake *effective measures in the direction of nuclear disarmament* ... facilitate the *cessation of manufacture of nuclear weapons, liquidation of all existing stockpiles ...*, and *elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament* under strict and effective international control.”¹⁵

The preamble, thus, does not set forth a single-point objective of either a world without nuclear weapons, total elimination or for delegitimizing nuclear weapons. Instead, it clearly conceives of an *agreement on the prevention of wider dissemination of nuclear weapons*. The supposed end-goals of cessation and elimination are described as happening only *pursuant to* a treaty on general and complete disarmament, including nuclear disarmament. The crafty manner in which disarmament provisions were incorporated was evident when Article VI goals were listed as a common obligation for all, instead of the P-5, and the sequential placing of nuclear disarmament as a progressive addition to an all-encompassing treaty on general and complete disarmament. It was not until the review and extension conference in 1995 that the superpowers agreed to enshrine and endorse the “ultimate goals of complete elimination and a disarmament treaty.”¹⁶

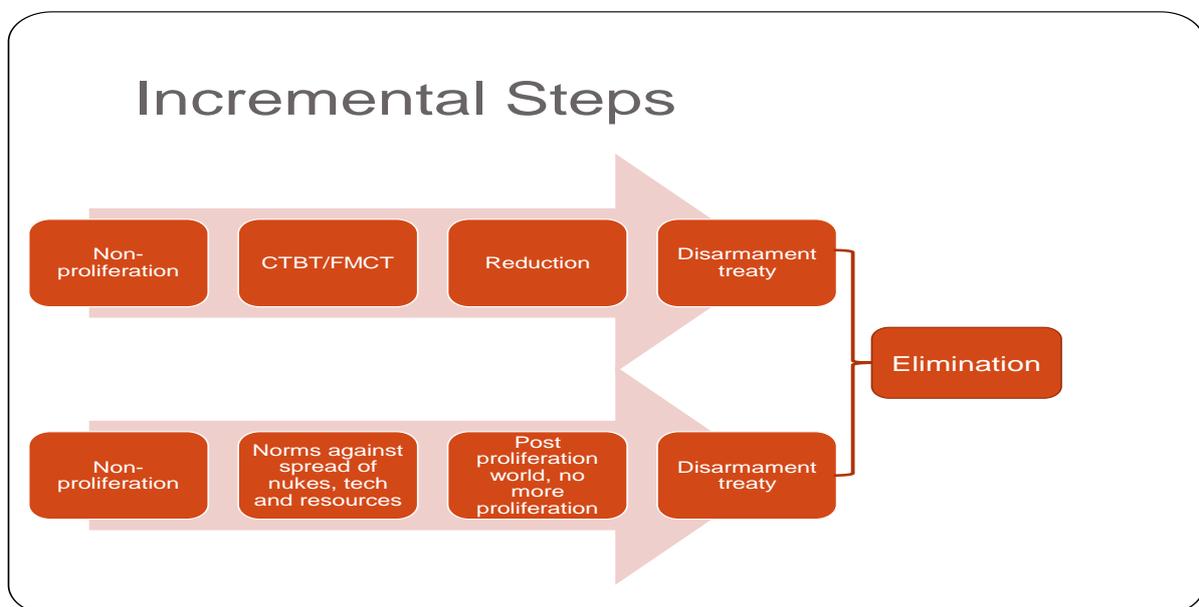
The hurried formulation of a legal instrument favourable to its drafters stymied the scope for conceptual clarity on the objectives of the exercise, resulting in a multi-directional pursuit of perceived end-goals. This was evident in the subsequent

¹⁵ [The Treaty on the Non-proliferation of Nuclear Weapons](#), UN, July 1, 1968.

¹⁶ [Decision 3, Extension of the Treaty on the Non-Proliferation of Nuclear Weapons](#), NPT/CONF.1995/32 (Part I), Annex.

development of two parallel approaches which signified the treaty’s inability to propound non-proliferation as either a means or the end. The two approaches, sometimes overlapping and sometimes conflicting, could be illustrated thus:

- (a) Non-proliferation was to establish a global framework to inhibit the spread of nuclear weapons alongside a series of calibrated measures and initiatives, pursued in a parallel and phased manner, that could set conditions for disarmament, through a collective outcome or even a stand-alone instrument;
- (b) Non-proliferation could facilitate the progress towards a tipping point, a post-proliferation world, from where proliferation no longer happens and sets the conditions for disarmament, abolition or elimination to be initiated through a stand-alone treaty.



In Summary

No promising ideas and initiatives are currently in circulation that could provide a stimulus for the NPT to be routed towards a new direction. The Covid contagion in all likelihood will force a postponement of the 2020 RevCon. Even as there are no significant global campaigns of note ahead of the upcoming RevCon, unlike the Humanitarian Consequences initiative prior to the 2015 RevCon, the silence of the actors that propelled the Treaty on the Prohibition of Nuclear Weapons (TPNW), is conspicuous. That the 50th anniversary of the entry-into-force of the NPT has passed as a non-event is symbolic of the status-quoism associated with the treaty’s insupplantable existence.

About the Authors



A. Vinod Kumar is Associate Fellow at the Manohar Parrikar Institute for Defence Studies and Analyses, New Delhi.

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