



50th anniversary of the NPT: evolutions and prospects

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SUMMARY

50TH ANNIVERSARY OF THE NPT: EVOLUTIONS AND PROSPECTS.....	1
OVERVIEW	1
INTRODUCTION	3
1. A TREATY THAT MARKS THE EMERGENCE OF A NORM OF NON-PROLIFERATION (1968-1994).....	7
1.1. The bilateral will to limit the spread of nuclear weapons	7
1.1.1. Awareness on both sides of the Atlantic of the risks associated with the spread of nuclear weapons.....	7
1.1.2. Non-proliferation seen in a multilateral dimension	8
1.2. A compromise building a strong norm against nuclear proliferation.....	10
1.2.1. Three objectives responding to diverse priorities	10
1.2.2. The emerging role of the NPT in the fight against nuclear proliferation	12
1.3. A consolidation throughout the Cold War	13
1.3.1. Growing acceptance of the Treaty as a structuring element of the international order	13
1.3.2. A tenacious opposition inside and outside the regime.....	15
2. AN ESTABLISHED NORM INTERPRETED IN DIFFERENT WAYS (1995 - 2015).....	17
2.1. The indefinite extension of the Treaty in 1995	17
2.1.1. The extension of the Treaty: a major decision for the global order	17
2.1.2. More assertive political postures: the NPT as a reflection of the international system	19
2.2. Successes, tensions, and the integration of the Treaty into a more global regime	20
2.2.1. The NPT in the light of proliferation crises.....	20
2.2.2. The enhancement of the regime	21
2.3. A gradual reconsideration of the balance of the NPT.....	23
2.3.1. The “grand bargain” reinterpreted	23
2.3.2. Acceptance of a logic of step-by-step disarmament	24
3. 50 YEARS LATER: A RESILIENT BUT CHALLENGED REGIME	26
3.1. A difficult context 50 years after the entry into force of the Treaty	26

3.1.1. A permanent sticking point in discussions: the interpretation of Article VI	26
3.1.2. An arms control crisis that weakens the prospects for disarmament	27
3.1.3. A political exploitation of the Treaty that weakens its action	28
3.2. The continuing challenge of nuclear proliferation	29
3.2.1. An essential role in the fight against a persistent proliferation risk.....	29
3.2.2. Continued support, but a pause in the efforts to strengthen the system	30
CONCLUSION: WHAT ARE THE PROSPECTS FOR THE NPT?	32

50th anniversary of the NPT: evolutions and prospects

Overview

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) has structured international security for fifty years. With 190 States Parties, it is one of the most universal multilateral treaties. However, its interpretation has been the subject of debate since it was signed. Its fiftieth anniversary offers an opportunity to take stock of its achievements and to consider its future prospects.

From a historical perspective, the NPT reflects the Cold War context in which it was adopted. Indeed, it was the product of the two then-superpowers' will to limit the danger of the nuclear game by curbing the spread of weapons. The United States and the former USSR were its main architects, even if the two countries had to accept some concessions from non-nuclear-weapon countries when opening negotiations in a multilateral framework. In particular, provisions on the promotion of peaceful uses of nuclear energy and on disarmament were added during the negotiations.

During the Cold War, the Treaty was strengthened by the gradual accession of states, some of them after important debates. The accession of non-nuclear-weapon states such as the Federal Republic of Germany (FRG) and Japan were signs of the emergence of a strong norm against the proliferation of nuclear weapons.

As this norm has advanced, groups of non-nuclear-weapon states, both parties and non-parties of the Treaty, have increasingly and consistently stressed the need for further implementation of the disarmament obligations contained in Article VI of the Treaty, and for cooperation in the field of civil nuclear cooperation. These demands culminated in 1995, during the debates on the extension of the Treaty, initially concluded for 25 years. The 1995 NPT Review and Extension Conference was a major success for the non-proliferation regime in extending the NPT indefinitely. It illustrated the resilience of the Treaty and of the regime despite the proliferation crises it was facing at that time. It showed that for the vast majority of States Parties, this non-proliferation norm is a collective good that should not be conditioned by other objectives. However, its success requires nuclear states to make stronger commitments, particularly in the area of disarmament. 1995 marked the gradual acceptance by all States Parties of a reinterpretation of the Treaty based on three pillars: non-proliferation, peaceful uses and disarmament.

In this context, criticism remains strong regarding the implementation of the Treaty and in particular regarding what is perceived by a group of states as the lack of progress on disarmament. These disagreements have plagued the last Review Conferences, and now seem to complicate the strengthening of the non-proliferation regime.

Despite these sticking points, which seem likely to persist due to the current crisis in the arms control regime and the political exploitation of the divisions among the States Parties to the Treaty, the successes demonstrated by the Treaty after fifty years must be highlighted. First of all, the NPT has solidified a non-proliferation norm that has become indisputable among the overwhelming majority of its parties. Second, it has allowed the emergence of an implementation and verification regime (safeguards system) and the adoption of related norms (on the banning of nuclear tests, trade in nuclear materials, etc.). Finally, thanks to its normative power and its constraining force, it has succeeded in durably limiting the number of nuclear powers. The NPT thus remains a particularly valuable treaty whose contribution to international security is recognized. It is therefore necessary to continue seeking to remedy its weaknesses, to promote the implementation of all of its dimensions and to preserve the support of its States Parties for its final objective and the regime that surrounds it.

Introduction

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is one of the most universally accepted international legal instruments, but also one of the most debated. Signed in 1968 by 43 states, the Treaty entered into force in 1970 with three depositary states (the United States, the Soviet Union and the United Kingdom). The number of parties rose to 96 in 1975 and 132 in 1985. After the end of the Cold War and in the context of new fears about the proliferation of weapons of mass destruction, most of the countries that remained outside the regime decided to join it. As of 2020, 190 states are parties to the NPT; only four countries remain outside. South Sudan has not yet begun the process of joining the Treaty. India, Israel and Pakistan, three states with a military nuclear capability, chose to remain outside the regime. They are therefore not recognized as nuclear-weapon states (NWS) under the Treaty. The case of North Korea is particular: the country joined the NPT in 1985, but announced its withdrawal in 2003. Nevertheless, the IAEA Board of Governors and many States Parties consider this withdrawal to be inconsistent with the provisions of Article X of the NPT, and believe that Pyongyang is still bound by its obligations under the Treaty.

The NPT was conceived in a particular context, that of the Cold War, which has largely evolved over the past fifty years. Calls for measures to limit the spread of nuclear weapons began at the birth of the United Nations. But the NPT itself was originally conceived primarily to prevent proliferation in the developed world, among the allies of the United States, particularly in Europe (Germany, Italy...) and Asia (Japan). The United States feared that countries feeling threatened by the communist bloc might develop nuclear capabilities. Faced with this threat, Western Europe demanded not only strong nuclear protection, but also greater participation in nuclear affairs within the framework of NATO. The United States was concerned therefore primarily with the risk of proliferation within the Atlantic Alliance, especially following France's assertion of its status as an operational nuclear power in 1964. The Soviet Union, for its part, feared proliferation within the communist bloc (China had conducted its first test in 1964), but also wanted to avoid at all costs the prospect of a German nuclear weapon. Both the United States and the Soviet Union feared the risk of a catalytic war that they would not be able to control. Indeed, the two adversaries shared a clear common interest. The NPT is thus a product of the Cold War, or rather of an era of peaceful coexistence and cooperation between the two then-superpowers – what China and France, which initially remained outside the NPT for this reason, have sometimes called a “condominium.” Most of the preliminary negotiations on the NPT (in particular, on the content of its Articles I, II and III) took place between Moscow and Washington.

The NPT contains an intrinsic difference in status among signatories, which has been regularly denounced over the years as an injustice. Some have even characterized it as legalizing a situation of “nuclear apartheid.” **The NPT effectively froze the nuclear situation in 1968 as a means of compromise between realities (taking into account the existence of nuclear-capable states) and ambitions (reducing the dangers of proliferation).** The NPT is based on one agreement, or rather on a series of agreements. Schematically, those who commit to remain non-nuclear-weapon states (NNWS) have been **compensated in three ways**:

- ➔ A guarantee that other non-nuclear signatories will not become nuclear, and therefore that no country will lose a comparative advantage by joining the trea-

ty. This assurance is achieved through Articles I and II: the NNWS undertake not to acquire nuclear weapons, and the NWS undertake not to transfer nuclear weapons to the NNWS and not to assist them in acquiring such weapons. This was the spirit of the first UN General Assembly resolutions adopted at Ireland's initiative in the late 1950s and the focus of the early US-Soviet negotiations.

- ➔ The guarantee that the non-nuclear status will not be an obstacle to economic and scientific development in the nuclear field, and furthermore that NNWS' access to nuclear energy will be effectively facilitated. In essence, the NPT exchanges military proliferation for civil proliferation. This idea is embodied in Articles III, IV and V.
- ➔ The guarantee that the Treaty does not block the strategic situation for the foreseeable future, and that it is a temporary arrangement. This has helped countries choose cooperation over defection, but also has made the NPT a rather fragile instrument. This guarantee is the combination of three different provisions: the choice of a limited duration (Article X.2); the possibility of fairly easy withdrawal from the Treaty, including, implicitly, the development of nuclear weapons (Article X.1) if a country's supreme interests are at stake; and the commitment of all parties to work towards the cessation of the arms race, nuclear disarmament, and general and complete disarmament (Article VI).

The latter provisions (Articles IV and VI in particular) were inserted at the request of middle powers with nuclear programs, such as Brazil, India, Germany, Sweden, Canada and Italy. The NNWS have received additional safeguards over the years. All of them benefit from the Positive Security Assurances (PSA) and Negative Security Assurances (NSA) proclaimed in UN Security Council Resolution 255 (1968): the Security Council has a duty to assist any NNWS that falls victim to a nuclear attack. Negative Security Assurances are granted by the five NWS: in short, countries that renounce nuclear weapons are not threatened by nuclear weapons unless they are allies of a NWS.

In addition, the European NNWS benefit by specific compensation. NATO's nuclear planning mechanisms were overhauled by the creation of the *Nuclear Planning Group* (NPG) and the joint adoption of new guidelines for the use of nuclear power. The aim was for Europe to have a greater say in the Atlantic Alliance's nuclear strategy. In this way, countries agreeing with the status of NNWS obtained much more than the promises of nuclear energy and nuclear disarmament.

In its fifty years of existence, the NPT has been recognized as a major element of the international security system, regularly referred to as the "cornerstone" of the nuclear non-proliferation regime and praised for its ability to thwart the most pessimistic estimates regarding the spread of nuclear weapons – alarmist forecasts having probably played a role of mobilizing alarm signal. **The Treaty enforces the nuclear non-proliferation norm.** Indeed, fifty years after its entry into force, only four more states have nuclear weapons, one of whom acquired such weapons after withdrawing from the NPT. In fact, setting aside the case of North Korea, there does not seem to be a non-nuclear-weapon state today that has both the requisite capacity and the will to develop an operational nuclear arsenal in the near future, even if there is uncertainty about Iran's intentions.

Over the years and at the Treaty Review Conferences, the vast majority of the international community has reiterated its support for the regime, which was reflected in particular in 1995 by the extension by consensus of the Treaty for an indefinite period. Moreover, the Treaty is embedded in a broader set of norms and practices that not only better cement its non-proliferation objective, but also advance peaceful uses and disarmament.

Nevertheless, the Treaty has also suffered from recurring criticism, including regarding its implementation. Complaints about the discriminatory regime instituted by the NPT, the refusal of the NWS to share nuclear technology or to engage in disarmament negotiations began as soon as the NPT entered into force. The proliferating programs of Iraq, North Korea, Iran, and Libya revealed the limitations of the regime.

Thus, for half a century, the treaty has been regularly accused of being outdated, imperfect and permissive:

- ➔ outdated, because the conditions under which it was signed have changed. The dynamics of proliferation are now different. The links between proliferation, the arms race and the risk of catalytic warfare are no longer so close. The promises of “peaceful nuclear explosions” are forgotten (Article V). And the main proliferation risks now seem to come from isolated states that have a propensity to cheat or circumvent the established rules of the international game – and not from Western countries.
- ➔ imperfect, for three reasons. First, because it makes a legal distinction between civil and military applications of nuclear technology that is technically questionable. Second, because it contains a contradiction: the NPT recognizes that some states have the right to possess nuclear weapons, but at the same time suggests that nuclear weapons are very dangerous and should be abolished as soon as possible (Preamble and Article VI). Finally, the NPT does not provide precise definitions of key concepts such as “nuclear explosive devices” (Article I), “control”, “manufacture”, “acquire” (Article II), nor does it define what “nuclear energy for peaceful purposes” is (Article IV), or what exactly “cessation of the nuclear arms race at an early date” and “nuclear disarmament” are (Article VI).
- ➔ permissive, because the NPT allows any party to the Treaty to develop a “nuclear latency” capability. Parties have the right to demand the “fullest possible exchange” of nuclear technology without having to endure truly intrusive inspections. They can therefore, technically and legally, acquire the means to rapidly develop an operational nuclear device and then withdraw under Article X, which gives them this right in extraordinary circumstances.

Nevertheless, criticism of the NPT today is more concerned with the implementation of Article VI, regarding disarmament, which, in the opinion of a large number of States Parties, remains insufficient. Disagreements on this issue have been at the root of many debates at Review Conferences, and have been reflected in the inability of states to adopt a final document at several of these meetings, particularly in 2015. Such disagreements have since crystallized, with states particularly ambitious in terms of disarmament negotiating a Treaty on the Prohibition of Nuclear Weapons (TPNW) in 2017 – a treaty whose relationship with the NPT remains debated.

As some states look to the NPT as the only instrument capable of curbing the risk posed by nuclear weapons, others threaten to leave the regime (Iran, January 2020), and as disarmament efforts suffer setbacks, it is useful to reflect on the record and future of the NPT as it has just celebrated its fiftieth anniversary.

Admittedly, the NPT is far from being an optimal instrument, and it has shown its limitations. **But it is also the only universally accepted global norm against the further horizontal spread of nuclear weapons.** Without it, the international community would probably be unable today to agree on another such legally binding instrument. Efforts to preserve the Treaty are worthwhile because we live in a world where the dangers of proliferation are once again growing: energy needs are driving the spread of nuclear technologies, states are seeking ways to offset the primacy of Western military power, and North Korea's withdrawal has set a dangerous precedent. A second withdrawal could very well lead to a collapse of the entire regime. **There are compelling reasons to criticize the Treaty, but the fact remains that the international community would certainly be worse off without the NPT.**

This study therefore aims to put the NPT in context, but also to describe its evolution over the past fifty years. It recalls the major debates that have taken place, the objectives that have been assigned to it, and the interpretations that have been made of it. The study offers an assessment of this unique text, half a century after its entry into force, and questions its prospects.

1. A treaty that marks the emergence of a norm of non-proliferation (1968-1994)

1.1. *The bilateral will to limit the spread of nuclear weapons*

1.1.1. *Awareness on both sides of the Atlantic of the risks associated with the spread of nuclear weapons*

The Baruch Plan and the discussions at the United Nations in 1946 on the international control of nuclear technologies illustrated the immediate awareness of the risk associated with the spread of nuclear weapons.¹ However, the failure of the negotiations led to an unprecedented period of proliferation with the launch of multiple nuclear programs with more or less military purposes, four of which resulted in a nuclear test twenty years later.

This situation created a limited and fluctuating awareness. In the United States, the MacMahon Act of 1946 sought “to preserve the secrecy and confidentiality of information related to the use and applications of atomic energy”.² Nevertheless, under Eisenhower, when the USSR had already demonstrated its nuclear capacity, the United States adopted a more flexible policy. The *Atomic Energy Act of 1954* became the structuring text of American policy in this area, making it possible to launch numerous cooperation programs with allies. These exchanges nevertheless provided for American control over the fuel cycle and a commitment to ensure that the activities carried out were peaceful in character.³

For its part, the USSR, at the time, was little concerned by the risks linked to proliferation, which were studied only through the prism of the East-West confrontation. Moscow played an important role in assisting China in its nuclear program. When relations between the two communist powers deteriorated from 1958 onwards, the USSR decided to be much more vigilant in its transfers of nuclear technology. This resulted in the cessation of several cooperative projects and the decision to no longer assist states, including allies, in the acquisition of technologies related to the exploitation of fissile material, and to demand guarantees on the civilian nature of systems developed in cooperation.⁴

Moreover, Moscow chose to defend much stricter positions in terms of non-proliferation in order to denounce NATO’s project to build the Multilateral Force (MLF). This integration proposed from 1960 onwards was in fact criticized as a pretext for disseminating nuclear weapons within NATO and particularly in the Federal Republic of Germany (FRG), a prospect feared by Moscow.

All of these fears, and in particular the growing development of nuclear capabilities in Europe and Asia, led the United States and the Soviet Union to consider bilateral rapproche-

¹ Allan S. Krass, Peter Boskma, Boelie Elzen, Jim A. Smit, *Uranium Enrichment and Nuclear Weapon Proliferation*, Stockholm International Peace Research Institute, Taylor & Francis Ltd, London and New York, 1983.

² Gregg Herken, *The Winning Weapon: The Atomic Bomb in the Cold War 1945-50*, Knopf, New York, 1980.

³ Harold Nieburg, *Nuclear Secrecy and Foreign Policy*, Public Affairs Press, Washington, D.C., 1964.

⁴ William Potter, “The Soviet Union and Nuclear Proliferation,” *The Slavic Review*, vol. 44, n° 3, Autumn 1985.

ment to encourage the adoption of measures to prevent this proliferating phenomenon.⁵ The Chinese tests of 1964 played a catalyzing role in this area, leading to the exchange of draft treaties on both sides. The two countries therefore entered a process of negotiating a regime reconcilable with their main security interests. The two countries were the ones proposing model treaties and negotiating the objectives and terms of the regime, including agreeing on an acceptable safeguards system and resolving their differences over NATO's nuclear mission.

Nevertheless, this bilateral negotiation gradually became part of a multilateral format, allowing for marginal changes to the initial negotiating framework.

1.1.2. Non-proliferation seen in a multilateral dimension

The UN procedures that led to the adoption of the NPT were widely promoted following the signing of the treaty to respond to criticisms of an American-Soviet agreement negotiated to the detriment of the non-nuclear-weapon states. While the actual contributions of the international community were more limited than is generally accepted, it is nevertheless important to note the political process of bringing the debates into a multilateral framework and the contributions of other states to the adopted text.⁶

Indeed, the origin of the Treaty can be found in the draft resolutions submitted by Ireland to the United Nations General Assembly in 1958 and 1959. These texts argued, among other things, that the spread of nuclear weapons could make nuclear disarmament more difficult, and could increase the risk of a general nuclear war in a chain reaction. Proliferation was therefore not yet really considered at the time as a danger *in itself*.

Non-proliferation negotiations began at the United Nations with the now famous 1958 "Irish resolution", which pointed to the "*dangers inherent in any further spread of nuclear weapons*" and called on states to ban atmospheric nuclear testing and not to transfer nuclear weapons to other states.⁷ The resolution started from the premise, which tended to become consensual at the time, that the greater the number of nuclear states, the greater the risk. For Frank Aiken, Irish Foreign Minister at the time, the priority was general nuclear disarmament, but since this prospect was distant, it was essential to act immediately through intermediate measures (test ban, non-proliferation, nuclear-weapon-free zones). He indicated that the objective of nuclear disarmament is all the more complex as the number of nuclear states increases.⁸ From 1959, the United States supported the Irish resolution⁹ and participated in its formulation,¹⁰ but it was not until 1961 that a resolution was adopted with

⁵ Michael O. Wheeler, "American Foreign Relations and the Development of Nuclear Non-Proliferation Policy, 1939-1968", paper delivered at the 25th Annual Conference of the Society for Historians of American Foreign Relations, Princeton, NJ, 24-26 June 1999.

⁶ Roland Popp, Liviu Horovitz, Andreas Wenger (ed.), *Negotiating the Nuclear Non-Proliferation Treaty*, CSS Studies in Security and International Relations, Routledge, New York, 2017.

⁷ Irish Draft Resolution Introduced in the First Committee of the General Assembly: "Further Dissemination of Nuclear Weapons", A/3974, 17 October 1958.

⁸ Frank Aiken, 970th meeting of the 13th Session of the GAOR, 31 October 1958: "*The failure to halt the spread of nuclear weapons during the long period of negotiations on general disarmament was likely to make those negotiations abortive*".

⁹ William Bader, *The United States and the Spread of Nuclear Weapons*, New York, Pegasus, 1968.

¹⁰ Roland Popp, Liviu Horovitz, Andreas Wenger, *op. cit.*

the support of the two major powers calling for the negotiation of a treaty including two crucial prohibitions of the future NPT, namely the prohibition for NWS to “yield control [of nuclear weapons] and to communicate the information necessary for their manufacture to states which do not possess them” and for the NNWS to “manufacture [and] acquire ... such weapons.”¹¹

With this support and the adoption of political declarations in favor of non-proliferation by Washington and Moscow as early as 1961, negotiations began within the framework of the Eighteen Power Committee on Disarmament (ENDC¹²), within which the two superpowers presented bilaterally negotiated models for treaties as early as 1965.

The main stumbling blocks at that time remained the MLF as far as the Soviet Union was concerned, and a breakthrough was only possible when the US administration considered renouncing this arrangement in return for Moscow’s tacit acceptance of the stationing of US weapons under US control on the territory of Alliance members.¹³ But for European countries in particular, and also India, acceptance of a system of external guarantees was a major difficulty. The Europeans were concerned about considerations of commercial confidentiality concerning their nuclear industries and preferred to involve only Euratom in their safeguard mechanisms. But they also defended political interests, such as the question of the potential nuclear status of a “federalized” Europe.¹⁴ Among the first proposals made by ENDC members was the possibility of including security guarantees or considering the implementation of nuclear-weapon-free zones.

The United States and the USSR agreed in 1967 on an identical version of the Treaty, which was modified at the margin in the new version proposed at the ENDC in 1968. Among the articles that appeared following the intervention of members of the Commission was Article IV on “the peaceful use of nuclear energy,” which was notably pushed by Mexico and Brazil in return for renouncing military use. Mexico was also a major player in the implementation and strengthening of Article V, on peaceful explosions. Finally, it should be noted that the US-Soviet version did not contain articles dealing with disarmament, but only with the objectives recalled in the preamble. Article VI as it is now known was initially evoked by the United Arab Republic, then formally proposed by Mexico, and supported by India, Romania and Brazil. The wording chosen appears to be a compromise between more ambitious calls for disarmament and the desire to avoid thwarting the initial objective of the Treaty, namely the horizontal non-proliferation of nuclear weapons.¹⁵

¹¹ “Prevention of the wider dissemination of nuclear weapons”, UNGA Resolution, A/RES/1665(XVI), 4 December 1961.

¹² Acronym for *Eighteen-Nation Committee on Disarmament*. Ancestor of the Conference on Disarmament, the ENDC actually included 17 active countries since France had decided not to participate in the negotiations (Brazil, Bulgaria, Burma, Canada, United States, Ethiopia, India, Italy, Mexico, Nigeria, Poland, Romania, United Arab Republic, United Kingdom, Sweden, Czechoslovakia, USSR).

¹³ George Bunn, “The Nuclear Nonproliferation Treaty: History and Current Problems”, *Arms Control Today*, December 2003.

¹⁴ This option was preserved in the final version of the NPT, and the FRG and Italy ratified it with reservations specifically stating that the NPT did not oppose the unification of Europe as a nuclear power.

¹⁵ Mohamed Shaker, *The Nuclear Non-Proliferation Treaty: Origins and Implementation, 1959-1979*, Oceana Publications, London, 1980.

On June 12, 1968, the United Nations General Assembly was called upon to vote on the final text. 95 states voted in favor, 21 abstained (France, India, Spain, Portugal, Brazil, Argentina, Saudi Arabia, Burma and thirteen African states) and four voted against the Treaty (Albania, Cuba, Tanzania, Zambia).¹⁶ The Treaty was opened for signature on July 1st, 1968, and the depositary states (the United States, the United Kingdom, and the USSR) collected 50 signatures immediately, with Ireland receiving the privilege of signing first. The Treaty entered into force on March 5, 1970, after ratification by the three depositary states and forty other states.

1.2. A compromise building a strong norm against nuclear proliferation

1.2.1. Three objectives responding to diverse priorities

The main objective of the drafters of the NPT was to create a norm against the development of nuclear weapons by more states, at a time when new entrants were emerging as nuclear states (France, China), and when many others were developing programs compatible with the ambition to have nuclear weapons (India, Japan, but also many European countries, such as Germany, Sweden, Switzerland...). **The basic principle of the Treaty was that it was preferable to restrict the possession of nuclear weapons to those states that already had them, because the increase in the number of nuclear powers would lead to an uncontrolled increase in nuclear risk.**

This reasoning was not accepted by the entire international community, and some states, such as France and India, denounced the unfairness of the regime as a factor that rendered it illegitimate. But for the majority of states that signed and ratified it quickly, the calculation was different and they believed that their security would be better assured by renouncing nuclear weapons and thus supporting a world where nuclear weapons remained confined to a few possessor states.

The history of the NPT has popularized the idea of a “grand bargain” between NWS and NNWS at the time of the signing of the Treaty, with the latter pledging to renounce to nuclear weapon in exchange for commitments to disarmament and cooperation on peaceful uses. This reading was in fact constructed years after the signing of the Treaty. It masks the fact that in 1968, a large majority of states signing the Treaty had no military nuclear ambitions and therefore did not need to be coaxed to accept this status.¹⁷ Moreover, the main

¹⁶ “Treaty on the Non-Proliferation of Nuclear Weapons”, UNGA Resolution, A/RES/2373(XXII), 12 June 1968.

¹⁷ See in particular the statement of an American representative in Geneva in 1968: “*The tendency to view a commitment to nuclear disarmament by the nuclear weapon states as a quid pro quo for the renunciation of nuclear weapons by other states fails to take into account the actual intention and situation of the overwhelming majority of non-nuclear-weapon states...the vast majority of such states have no intention, desire or indeed any early prospect of producing or acquiring nuclear weapons or other nuclear explosive devices. Moreover, those who look for a quid pro quo seem to consider this treaty as if it were a commercial contract in which each party seeks to trade off concessions in order to gain equal financial or trade benefits. However, the nonproliferation treaty is not that kind of agreement; its primary benefit accrues to all of us directly in the form of enhanced security and not as a result of balanced concessions. It seems quite evident that the primary benefit conferred by this treaty is the assurance it provides, in the first instance, to the non-nuclear-weapon states that their non-nuclear neighbors or rivals will not have to assume the enormous expenditures, and the serious security risk, of acquiring nuclear weapons*” (“Statement by the United States Representative (De Palma) to the Eighteen Nation Disarmament Committee: Nonproliferation of Nuclear Weapons”, in Documents on Disarmament-1968, 6 February 1968).

states involved, and obviously the Soviet Union and the United States, were very concerned about the implementation of Article I of the Treaty, which prohibits transferring nuclear weapons to an NNWS or assisting it in acquiring such weapons, as well as the implementation of Article II, which prohibits NNWS from acquiring nuclear weapons. The NWS therefore considered themselves to be as committed as the NNWS by this non-proliferation agreement and they concretely renounced practices that might have been considered, such as the implementation of the MLF by NATO.¹⁸ The history of the negotiations shows in particular the difficulty of the two then-superpowers to agree on the wording of the first two articles of the Treaty. Conversely, the articles dealing with disarmament and peaceful uses were added as a result of amendments by ENDC members at the end of the process.

This does not mean that the NPT was not adopted in a spirit of compromise, only that the generally accepted triptych (non-proliferation in exchange for disarmament and peaceful use) was consolidated *a posteriori*. At the time of signature, the inclusion of Article IV was extremely important for states invested in the civil nuclear economy and which feared restrictions on their industrial activities in the field. Thus, while during the discussions between 1965 and 1967, some questioned the relevance of allowing NNWS to develop the fuel cycle autonomously, the countries concerned, particularly in Europe, as well as some developing countries, wanted to ensure that non-proliferation was not used as a pretext to restrict their access to civil nuclear technologies. The wording of Article IV, which is relatively vague, helps to reassure states of their ability to reconcile NNWS status with an ambitious nuclear program.¹⁹ This reassurance was particularly necessary in view of the control system implemented by Article III, under the auspices of the IAEA. This system seemed intrusive to many states concerned about preserving the confidentiality of their nuclear industries. For developing countries, these obligations could be interpreted as a desire to preserve the monopoly of Western states on the peaceful uses of nuclear energy, particularly in the energy field. It therefore appeared essential to balance these constraints by including an article recalling the principle of the inalienable right to develop “*research, production and use of nuclear energy for peaceful purposes*”. Moreover, the two main negotiators agreed to include the idea of “*facilitating the widest possible exchange in this field*” to satisfy some developing countries without, however, committing themselves to concrete cooperation programs.²⁰

Moreover, Moscow and Washington also agreed to a reference to disarmament in a specific article, and not only in the preamble as initially envisaged. Article VI was called for in particular by Mexico on behalf of a group of Non-Aligned Movement (NAM) countries that wanted to ensure that the principle of non-proliferation did not replace the idea of disarmament. In fact, given that the NPT was negotiated at the same time as the Partial Test Ban Treaty, the first reflections on a Fissile Material Cut-Off Treaty and the beginning of US-Soviet agreements on the limitation of strategic arsenals, it was logical to present the NPT as contributing to a global disarmament objective. This principle was recognized by the head of the US Arms Control and Disarmament Agency William Foster, who in 1968 believed that “*there is a subject on which everyone agrees. The Non-Proliferation Treaty could be a step toward*

¹⁸ Roland Popp, Liviu Horovitz, Andreas Wenger, *op. cit.*

¹⁹ Chris Ford, “Nuclear Technology Rights and Wrongs: The NPT, Article IV, and Nonproliferation”, in Henry Sokolski (ed.), *Reviewing the Nuclear Nonproliferation Treaty*, Carlisle PA: Strategic Studies Institute, 2010.

²⁰ William Burr (ed.), *The Nuclear Non-Proliferation Treaty and the Mexican Amendments: The Negotiating Record*, Briefing Book n° 629, *National Security Archives*, George Washington University, 24 May 2018.

*considering further nuclear disarmament measures, and indeed, a step toward our ultimate goal of general disarmament”.*²¹

The purpose of Article VI was to present a measure of compromise between certain states wishing to show a concrete link between non-proliferation and disarmament, and the United States and the Soviet Union, which were particularly opposed to this idea. Indeed, a majority of delegations did not wish to introduce too close a link between the two obligations so as not to threaten the emerging non-proliferation norm. For example, the Mexican representative to the ENDC, Jorge Castañeda y Álvarez de la Rosa, in 1967, considered that “to stipulate that the Non-Proliferation Treaty should include specific disarmament measures to be carried out by the nuclear powers in the immediate future would be tantamount to opposing the very existence of the Non-Proliferation Treaty.”²²

In particular, Canada and the United Kingdom supported the idea of an abstract objective of disarmament without a concrete obligation to do so.²³ The resulting Article VI signaled two things. First, those NNWS that accepted the NPT without further disarmament assurances did so on the basis that a non-proliferation norm was of sufficient value on its own and that it should not be undermined by being coupled to more complex disarmament measures.²⁴ Nevertheless, the Treaty was negotiated and adopted at the United Nations with the idea that it contributed to overall progress on disarmament. Moscow and Washington realized, in presenting their draft treaties to the ENDC from 1967 onwards, that the text could only receive broad support if it addressed the issue of disarmament.

The drafting of the Treaty therefore fostered the links between non-proliferation, peaceful uses and disarmament, even though the respective obligations on the last two “pillars” are much vaguer and the signatories to the Treaty recognized that its “raison d’être” was the non-proliferation of nuclear weapons.²⁵

1.2.2. The emerging role of the NPT in the fight against nuclear proliferation

Although the adoption of the Treaty at the UN General Assembly showed broad support among UN member states for the principle of non-proliferation, the acceptance of this norm among states with nuclear technologies, in a context marked by the conflicting nature of the Cold War, was gradual.²⁶

Thus, as soon as discussions took place at the United Nations, several states signaled their opposition to the regime by not participating in the negotiations (like France), or by ensuring that their allies did not support the adopted text (like the People’s Republic of China, which

²¹ Conference of the 18th Nation Committee on Disarmament: Final verbatim record of the 376th meeting, held at the Palais des Nations, Geneva, ENDC/PV.376, para. 37, 11 March 1968.

²² Conference of the 18th Nation Committee on Disarmament: Final verbatim record of the 331st meeting held at the Palais des Nations, Geneva, ENDC/PV.331, paras.18, 17 September 1967.

²³ Chris Ford, “Debating Disarmament, Interpreting Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons”, *The Nonproliferation Review*, vol. 14, n° 3, November 2017.

²⁴ Matthew Harries, “Disarmament as Politics: Lessons from the Negotiation of NPT Article VI”, *Research Paper*, International Security, Chatham House, May 2015.

²⁵ Mohamed Shaker, *op. cit.*

²⁶ Jacek Durcalek, “The Nuclear Non-proliferation Treaty at Fifty: a Midlife Crisis”, *NATO Review*, 29 June 2018.

was deprived of a seat at the United Nations until 1971). The French and Chinese opposition can be explained by their refusal to see nuclear issues confiscated by the two major powers and to have to bow to their strategic concerns.

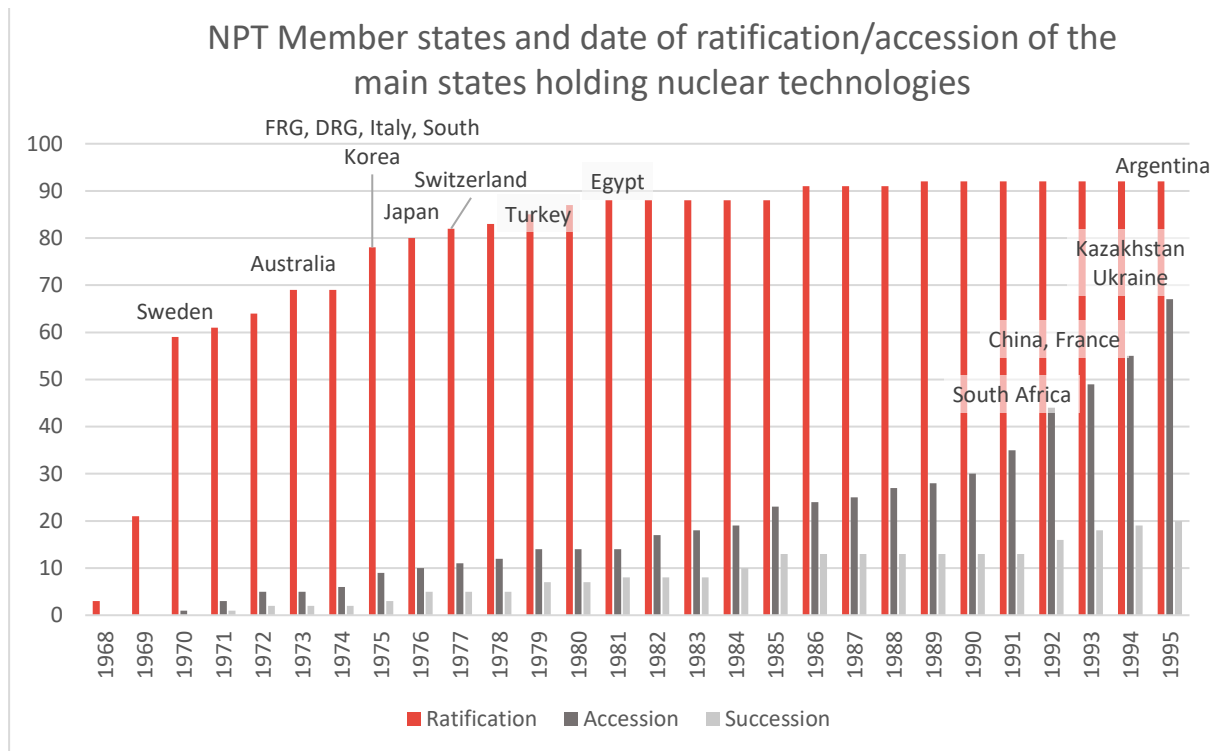
Moreover, among the states questioning the advisability of launching a national nuclear program, many abstained from voting in favor of the NPT (Argentina, Brazil, India...) or waited before signing and ratifying the Treaty. Thus, countries that were particularly hesitant about the nature of their nuclear program took several years to decide whether or not to sign the Treaty. This was notably the case for the Federal Republic of Germany (FRG), Japan or even Switzerland.

Nevertheless, the adoption of the NPT marked the acceptance by some 100 states of the non-proliferation norm, a major diplomatic achievement for its main initiators. Indeed, until 1968, the United States, the United Kingdom and the USSR could only rely on their commercial and industrial policies to control the risk of proliferation. In addition to the intrinsic limits of export controls, this policy was accompanied by political criticism of the illegitimacy of erecting barriers to access to technologies for the greatest number. The existence of a globally accepted standard, plus the involvement of an objective international agency (IAEA), made it possible to respond to this criticism by making non-proliferation a shared objective and in the interest of all rather than the privilege of the most industrially advanced states.

1.3. A consolidation throughout the Cold War

1.3.1. Growing acceptance of the Treaty as a structuring element of the international order

Beyond the founding signature of some 50 states in 1968, the subsequent ratification of the Treaty during the Cold War by a few states which had developed particularly ambitious nuclear programs signaled the growing acceptance of the nuclear non-proliferation norm enshrined in the NPT.



These decisions to join the NPT were favored by several elements and were not without very tense debates in some cases.

Thus, countries such as the FRG, Italy or the Netherlands made known, during negotiations, their reservations about a Treaty that codified the difference in status between different European states and limited the possibilities of strengthening NATO's extended deterrence. In this context, the presence of Article X, which offered the possibility of withdrawing from the Treaty "*in the exercise of national sovereignty*" and if "*exceptional circumstances*" compromised "*the supreme interests of a country*", on the one hand, and which, on the other hand, limited the initial duration of the Treaty to 25 years, was essential. Indeed, at the time, these states and others in similar circumstances had a very negative perception of committing indefinitely to an asymmetric order and perpetually renouncing a nuclear capability.

According to some American diplomats at the time, the "conversion" of these states to the NPT was favored by the fact that the Treaty allowed a certain nuclear latency, and in particular did not prohibit the production of fissile material, including in quantities that could quickly serve military ambitions.²⁷

But as far as the allies of the US were concerned, the decision to join the Treaty as an NNWS was taken in consideration of the additional security guarantees that could be obtained from Washington in exchange for renouncing a nuclear program, regardless of the actual progress of such a program. Thus, within NATO, the allies sought, following their signature of the NPT, to obtain a more important role in the implementation of the Alliance's policy of extended deterrence.

²⁷ Richard Rosecrance, "After NPT, What", Policy Planning Council, Department of State, 28 May 1968.

For other states, such as Australia or Japan, regional dynamics also favored the decision to join the regime, insofar as these states saw the Treaty as an opportunity to support a virtuous regional non-proliferation circle. The regional logic played a more political role for states such as Mexico, which, thanks to their efforts also to create nuclear-weapon-free zones, enhanced their diplomatic weight, especially in the multilateral context.

Finally, the norm-setting power of the NPT gradually became apparent from the period 1968-1970 through the construction of real identities of non-nuclear states, based both on popular opposition to the project of developing a military nuclear program, but also on a national consciousness favorable to the idea of disarmament and concerned with preserving the image of a nation that supported international law. This internalization of the NNWS status was studied for Sweden,²⁸ but also for Switzerland, where adhering to the norm of non-proliferation enabled Bern to remain faithful to a humanitarian identity.²⁹ The respect for the established norm in the decision of states to ratify the NPT as NNWS, and not to position themselves in a rebellious attitude, was emphasized as one of the factors that allowed the NPT to acquire an ethical and identity dimension and to make the refusal to join the regime appear *a contrario* as deviant and blameworthy behavior.³⁰

However, this emergence of the NPT as an accepted norm was only gradual, given the reservations initially expressed by some countries and the relatively limited strategic role played by the Treaty in the last twenty years of the Cold War. Indeed, the NPT tended to have a moderate role due to continued proliferation outside the Treaty (Israel, India, Pakistan), encouraged by lax policies of some nuclear suppliers, or the increased focus on arms control agreements during this period.

1.3.2. A tenacious opposition inside and outside the regime

While the number of States Parties to the NPT grew steadily between 1970 and 1995, the Treaty continued to be viewed with some mistrust and even outright hostility by some countries, whether or not they were signatories to it.

Thus, as regards the FRG or Italy, the governments continued to express reservations regarding the differentiated statutes and accepted to join the Treaty only insofar as its duration was set at 25 years (while leaving open, in their interpretative declarations, the possibility of a European nuclear option).³¹ Until about 1975, the implementation of IAEA safeguards for the member countries of Euratom was difficult and the subject of bitter negotiations.

Outside the NPT regime, France, India, China, Pakistan, Brazil or Israel were all states that were particularly critical of the Treaty and developed nuclear programs at varying levels of advancement. As for France, its refusal to join unequal treaties, which manifested the su-

²⁸ Thomas Jonter, *The Key to Nuclear Restraint*, Palgrave Macmillan, United Kingdom, 2016; Eric Arnett, "Norms and Nuclear Proliferation: Sweden's Lessons for Assessing Iran", *The Nonproliferation Review*, vol. 5, n° 2, winter 1995.

²⁹ Ursula Jasper, "The Ambivalent Neutral. Rereading Switzerland's Nuclear History", *The Nonproliferation Review*, vol. 19, n° 2, 2012.

³⁰ Maria Rost Rublee, *Nonproliferation Norms. Why States Choose Nuclear Restraint*, Athens/London: University of Georgia Press, 2009.

³¹ Camille Grand, "The European Union and the Non-Proliferation of Nuclear Weapons", *Chaillot Papers*, Institute for Security Studies, n° 37, January 2000.

perpower status of the United States and the USSR and symbolized a “condominium” that it rejected, was affirmed as early as the negotiation of the Partial Test Ban Treaty (1963). Even if in the case of the NPT, France enjoyed the status of a nuclear-weapon state, it seemed inconsistent to support this asymmetrical approach – which did not prevent Paris from progressively respecting the obligations of the Treaty, including by showing more prudence in its exports of sensitive technologies from the mid-1970s onward. Moreover, Paris also expressed reservations about the safeguards regime in place, the disarmament obligation contained in Article VI of the Treaty and the principle of ending nuclear testing set out in paragraph 12 of the Preamble.³²

At the same time, China made similar criticisms, arguing that the NPT was an instrument adopted to allow the “superpowers to maintain their nuclear monopoly.”³³ Its refusal to join the Treaty was also a message of solidarity to the community of non-nuclear-weapon states, which it considered unfairly harmed by the Treaty.

India and Pakistan adopted a different but understandable posture: although not included in the category of NWS, they nonetheless pursued nuclear ambitions which were illustrated in 1974 by a “peaceful detonation” ordered by New Delhi. For India, it was contrary to its security interests to definitively renounce the acquisition of a military nuclear program, especially in a context where China was demonstrating its capacity in this domain. In 1968, Indira Gandhi thus indicated to the Lok Sabha that India “*would be guided entirely by its own clairvoyance and considerations of national security.*”³⁴ In addition to a logic of security, India developed at the time an argument rejecting the Treaty for reasons of injustice: the NPT was then perceived as the symbol of “nuclear colonialism” and India refused to have its policy imposed on it by the great powers represented in the P5.³⁵ In fact, India had defended since 1948 the idea that the mastery of technology was essential for the economic development of countries as well as their security, and that it had to be exercised in full sovereignty. This prefigured the country’s systematic opposition to any control over its nuclear program, starting with its opposition to the creation of the IAEA.³⁶ One of the fundamental reasons for this refusal was a political opposition to any discriminatory system, in line with New Delhi’s foreign policy objectives at the time. The unacceptability of the Treaty was recalled by Prime Minister Rajiv Gandhi in 1988, when he proposed to open negotiations on a new treaty to replace the NPT after its possible expiration in 1995.³⁷

Criticism also existed within the regime, and as early as 1975, a discourse emerged from some states, particularly the non-aligned states, on the poor implementation of the Treaty by the NWS states. At that time, the President of the Review Conference echoed this argument, stating that the NNWS “*look forward to concrete and binding results in the ongoing*

³² Pascal Boniface, “Deterrence and Non-proliferation: a Difficult, Necessary, but Broken Balance”, *Politique étrangère*, vol. 60, n° 3, 1995.

³³ Renmin Ribao, “Premier Zhou Enlai Greets the Twelfth World Conference Against Atomic and Hydrogen Bombs”, August 1966.

³⁴ Indira Gandhi, “Response to the Lok Sabha”, 5 April 1968, quoted in Gopal Singh, S.K. Sharma (ed.), *Documents on India’s Nuclear Disarmament Policy, Indira Gandhi Era*, volume II, New Delhi, Anamika, 2000.

³⁵ Michael J. Sullivan III, “India and the NPT”, *Pacific Affairs*, Vol. 43, n° 3, Fall 1970.

³⁶ “Indian Attitudes on International Atomic Energy Controls”, *Pacific Affairs*, vol. 43, n° 3, Fall 1970.

³⁷ Rajiv Gandhi, Address to the Third Special Session on Disarmament of the UN General Assembly, 9 June 1988.

bilateral negotiations, leading to an end to the quantitative and qualitative arms race and to substantial reductions in the volume of nuclear weapons."³⁸ Five years later, States Parties were unable to agree on a final document due to the lack of progress on a Test Ban Treaty.³⁹ At successive Review Conferences (1985, 1990), the Non-Aligned Movement showed concern about the slow pace of implementation of Article VI of the Treaty.⁴⁰

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The first twenty-five years of the NPT were a success from a membership perspective, with a vast majority of the international community choosing to join the regime as NNWS, despite some initial hesitations. However, some states, especially those most invested in military nuclear programs (India, Pakistan, South Africa, and Israel), remained outside the program and could therefore continue their proliferating activities. Moreover, the acceptance of constraints on civil programs and commercial practices was very slow. Finally, within the regime, some states challenged the implementation of the Treaty, particularly with regard to its preamble and Article VI. However, the non-proliferation norm gradually gained legitimacy and even acceptance – including among some non-signatory states such as France, China, or India, which gradually begun adopting practices aimed at limiting the dissemination of military nuclear technologies. This growing acceptance of the merits of non-proliferation became a reality in 1995 with the indefinite extension of the Treaty.

2. An established norm interpreted in different ways (1995 - 2015)

2.1. The indefinite extension of the Treaty in 1995

2.1.1. The extension of the Treaty: a major decision for the global order

When it was adopted, the NPT was signed for a period of 25 years, a criterion considered essential by a number of member states, such as the FRG and Italy, in particular, which refused to commit themselves definitively to a differentiated status and wanted to be able to reconsider their decision in the light of changes in their security situation.

At the end of this period, many states, most notably four of the NWS, felt that the Treaty should be extended indefinitely for several reasons. First, the NPT represented a global norm against the proliferation of nuclear weapons. Second, it supported the safeguards system overseen by the IAEA. In this context, it legitimized restrictions on certain transfers of materials and technology and conditioned them to a peaceful nature, while formalizing the objec-

³⁸ Final Declaration of the Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 30 May 1975, ACDA, *Documents on Disarmament*, 1975.

³⁹ John B. Rhineland, Adam M. Scheinman (ed.), *At the Nuclear Crossroad. Choices about Nuclear Weapons and Extension of the Non-proliferation Treaty*, University Press of America, Lanham, 1995.

⁴⁰ 3rd Non-Proliferation Treaty Review Conference, Working Paper, Group of Non-Aligned and Neutral States, NPT/CONF.III/32, September 4, 1985. "*The fact remains that the achievement of the goal spelled out in Article VI of a cessation of the nuclear arms race 'at an early date' now 15 years after the entry into force of the Treaty appears to be a more distant possibility than ever. The major nuclear weapon Powers should be reminded of their solemn undertaking under Article VI and that nuclear disarmament cannot be replaced by so-called crisis management or manipulation of the bilateral security balance under a consistent growth of their arsenals*".

tive of disarmament for the nuclear-weapon states.⁴¹ At the opening of negotiations, States Parties were divided between those who wanted an indefinite extension (notably NATO, the EU, the OSCE) and those who favored an extension for a limited period (*a priori* 25 years, or shorter), in particular the NAM. These states made several proposals during the 1990-1995 review cycle to negotiate the “indefinite” option in exchange for greater disarmament commitments, including the adoption of a binding timetable for the dismantling of nuclear arsenals.⁴² Indeed, it seemed unfair to them to extend indefinitely a discriminatory status (to their disadvantage, as NNWS), without any dated assurance that this status would end through the implementation of Article VI.⁴³

The context of the 1995 conference was contrasted, with, on the one hand, clear progress in the area of non-proliferation (the implementation of the START agreements, repatriation to Russia of Soviet weapons from Ukraine, Belarus and Kazakhstan, and dismantling of the South African arsenal). In addition, key states such as China and France joined the NPT. However, the development of the North Korean nuclear program was a cause for concern, as were the undisguised nuclear ambitions of India and Pakistan. Moreover, Israel’s unclaimed nuclear status was a source of contention in the Middle East. At the global level, the promoters of indefinite extension had to respond to accusations of the Treaty’s lack of effectiveness, demonstrated for some by the difficulties encountered by the IAEA in detecting Iraq’s proliferating program; but also the slow progress in disarmament (lengthy negotiations on the Comprehensive Nuclear Test Ban Treaty (CTBT) and the Fissile Material Production Ban Treaty (FMCT) in particular).

In this context, the 1995 Review Conference was preceded by a climate of anticipation, with intense diplomatic campaigns on the part of the main protagonists, the publication of numerous books and resolutions on the importance of the event as well as the politicization of positions. Its outcome was very uncertain at the time of the opening of the debates, and many feared that exposing these internal divisions would weaken the regime at a crucial period.⁴⁴

The indefinite extension of the Treaty during the 1995 conference was the subject of very intense negotiations between states with very different visions. As such, it has been described by some as “*one of the most difficult challenges in the history of multilateral diplomacy*” to reach consensus in 1995.⁴⁵ The final decision was helped by the Clinton administration’s diplomatic efforts to convince certain key states (South Africa, Indonesia, etc.) of the merits of indefinite extension. As a compromise, the NWS agreed to a “global agreement” on three points. The first concerned the strengthening of the Treaty’s review cycles, with the provision of three preparatory committees, in a logic of responsibility of the states with regard to their obligations but also of prospective discussion on the future of the regime. The second component included the adoption of a set of principles and objectives, which comprehended a program of work in the field of disarmament. The latter was based in particular

⁴¹ George Bunn, “The NPT and Options for its Extension in 1995”, *The Nonproliferation Review*, Winter 1994.

⁴² Jim Wurst, “NPT Meeting Launches Preparations for 1995”, *Basic Reports*, n° 30, May 21, 1993.

⁴³ George Bunn, *op. cit.*

⁴⁴ Jayantha Dhanapala, Randy Rydell, *Multilateral Diplomacy and the NPT: An Insider’s Account*, UNIDIR, 2005.

⁴⁵ Randy Rydell, “Looking Back: The 1995 Nuclear Nonproliferation Treaty Review and Extension Conference”, *Arms Control Today*, vol. 4, 2005.

on the adoption of a CTBT, a FMCT, and substantial reductions in the arsenals of the NWS. The principles also addressed NWS security assurances *vis-à-vis* the NNWS and the IAEA safeguards system. The third decision, linked to the other two, was the indefinite extension, while a final element referred to the objective of creating a zone free of weapons of mass destruction (WMD-Free Zone) in the Middle East, an important element in ensuring the support of the countries of the region to the extension of the Treaty.⁴⁶

2.1.2. More assertive political postures: the NPT as a reflection of the international system

While closing with a consensus decision, the 1995 NPT review and extension Conference confirmed a trend that was already observable during the first Review Conferences of the Treaty, namely the repercussion in the forum of various fault lines within the international order. Notably, during the Cold War, the United States and the Soviet Union decided to present a common front for the adoption of the Treaty and the implementation of joint non-proliferation efforts. The East-West ideological divide was thus not reflected in the NPT order in any significant way.⁴⁷ On the other hand, the NWS/NNWS division and the perception by many states of having a discriminatory regime imposed on them have led them to use the NPT and its review cycles to advocate political positions, to this day.

Indeed, while most states adhere to the NPT for security reasons and because of a cost-benefit calculation deemed favorable,⁴⁸ the unequal nature of the Treaty makes it difficult for some to support it openly, particularly for political reasons. Indeed, to many states, the Treaty appears to contravene a fundamental value that is critical to their national identity, namely justice and equality among states.⁴⁹ In the context of post-colonial struggle and the contestation of a world order dominated by a few Western powers, some states, particularly within the NAM, see the Treaty as a reflection of an iniquitous order that must be challenged. In this context, the very purpose of the Treaty, namely non-proliferation, is taking a back seat to the debates held within the regime, particularly at the Review Conferences. These challengers, such as Brazil, Indonesia, Malaysia, Egypt and Mexico, consider that it is in their interest to call for an early end to the differentiated regime between the NWS and the NNWS, through the rapid implementation of Article VI of the Treaty, *i.e.* the abolition of NWS status. This ambition goes hand in hand with, and continues to accompany, the efforts of non-aligned states and their partners to build a perceived fairer international order, for example by promoting reform of the UN Security Council.⁵⁰

⁴⁶ Final Document of the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.1995/32, Annex: Decision entitled “Strengthening the Review Process for the Treaty”, Decision entitled “Principles and Objectives for Nuclear Non-Proliferation and Disarmament”, Decision entitled “Extension of the Treaty on the Non-Proliferation of Nuclear Weapons”, and Resolution on the Middle East, 11 May 1995.

⁴⁷ William C. Potter, Sarah Bidgood (ed.), *Once and Future Partners: The US, Russia, and Nuclear Non-proliferation*, Adelphi Book n° 464, IISS, London, 2018.

⁴⁸ Bruno Tertrais, “Saving the NPT: Past and Future Non-Proliferation Bargains”, paper presented at the NPEC conference, “Is Nuclear Proliferation Inevitable?” held in Paris, France, November 2004.

⁴⁹ Harald Müller, Carmen Wunderlich (ed.), *Norm Dynamics in Multilateral Arms Control: Interests, Conflicts, and Justice*, *Studies in Security and International Affairs*, University of Georgia Press, Athens, GA, 2013.

⁵⁰ Emmanuelle Maitre, “Disarmament Diplomacy: Motivations and Objectives of the Main Actors in Nuclear Disarmament”, *Recherches & Documents*, FRS, n° 3/2019, March 2019.

In the same vein, the case of the NPT is used to make political claims about sovereignty: the Treaty and its inspection regime are seen by some states as efforts by other states, Western ones at that, to restrict the sovereignty, political or economic, of developing countries. Beyond the calls for better implementation of Article VI, the Non-Aligned Movement in particular therefore places considerable emphasis on Article IV in the broader political context of denying any control over (or impediment to) their economic development or access to technology.⁵¹

The 50-year existence of the NPT thus reflects to a large extent political postures and the evolution of power relations between states and coalitions, the importance of which has been identified.⁵² Moments of convergence and dynamism in the regime, particularly as reflected in the Review Conferences that resulted in the adoption of consensus outcome documents, occurred when the NWS appear to have compromised and responded to the demands of groups such as the NAM or more moderate coalitions such as the New Agenda Coalition (NAC). But the life of the Treaty is also marked by purely political phenomena, with, for example, a hardening of relations between States Parties during George W. Bush's highly divisive presidency, exemplified by the tense 2005 Review Conference.⁵³

2.2. Successes, tensions, and the integration of the Treaty into a more global regime

2.2.1. The NPT in the light of proliferation crises

While the end of the Cold War raised questions about the relevance of the NPT for the new era, the proliferation crises in the decade 1990-2000 showed the relevance of preserving, and even strengthening, the norm against the proliferation of nuclear weapons.

North Korea raised doubts as soon as it acceded to the NPT in 1985, with the late implementation of a safeguards agreement with the IAEA in 1992. From the very first inspections, the Agency questioned the data transmitted by the North Korean authorities, and in April 1993, the Board of Governors concluded that the country was not respecting its commitments under the safeguards agreements. The crisis that began alternated between periods of negotiations and opening, and phases of acceleration of the North Korean nuclear program, which culminated in October 2006 with the testing of a first nuclear weapon at the Punggye-ri site.

In 1991, the war in Iraq brought to light Saddam Hussein regime's research into uranium enrichment, with the construction of two plants and the acquisition of many components related to this operation. The Security Council ordered Baghdad to destroy all equipment for military purposes, an obligation verified by the IAEA until 1998.

In Libya as well, the acquisition of natural uranium and centrifuge components and the construction of a pilot enrichment plant were not declared to the IAEA. The country agreed to

⁵¹ *Ibid.*

⁵² Jayantha Dhanapala, Randy Rydell, *op. cit.*

⁵³ Mario Carranza, "Can the NPT Survive? The Theory and Practice of US Nuclear Non-proliferation Policy after September 11", *Contemporary Security Policy*, n° 3, vol. 27, 2006.

cease all military nuclear activity following negotiations with the United States and the United Kingdom in 2003. In addition, Syria built a reactor in the Deir ez-Zor region from 2001 to 2007 without referring to the IAEA. The reactor, developed with the assistance of North Korea, with the possible aim of developing plutonium with military purposes, was destroyed by an Israeli raid in 2007.

As far as Iran is concerned, the crisis began in 2002 when the IAEA became aware of the existence of undeclared nuclear facilities, and in particular a clandestine enrichment plant at Natanz. For nearly fifteen years, a few states encouraged Tehran to return to its commitments. These efforts were partly unsuccessful, which resulted in the transfer of the Iranian file by the IAEA board of governors to the UN Security Council. In 2015, after a new long phase of negotiations, Iran accepted limits on its nuclear program in exchange for the lifting of sanctions and agreed to highly intrusive verification and inspection measures (Joint Comprehensive Plan of Action, JCPOA).

These different programs found different outcomes between 1995 and 2020, with the majority of them coming to an end. Nevertheless, the longevity of the Iranian and especially North Korean crises, as well as the nuclear tests carried out in 1998 by two of the states that remained outside the regime, India and Pakistan, raised questions in the 2000s about the sustainability of the NPT. Despite these doubts, the international community reaffirmed its support for the Treaty in 2000. Moreover, the parties showed their commitment to the regime by using the IAEA's tools and mechanisms to resolve these crises, even by presenting them to the UN Security Council. The decisions taken in these *fora* are relatively well implemented by member states. As a result, the NPT's resilience to these crises and the resolution of some of them has tended to reinforce its relevance in the post-Cold War environment, but also to encourage the enhancement of the regime to make it more effective and more capable of detecting and managing violations.

2.2.2. *The enhancement of the regime*

While the extension of the NPT reinforced its legitimacy and its centrality to international security, States Parties at this time also succeeded in strengthening the Treaty through its progressive integration into a broader regime.

Thus, with regard to the main objective of combating proliferation, States Parties capitalized on post-Cold War proliferation experiences to negotiate more effective instruments. In particular, from 1993 onwards, many states wished to remedy the demonstrated inadequacies of the IAEA Comprehensive Safeguards Agreements, defined in 1971 and amended in 1983 (INFCIRC/153). The IAEA Secretariat therefore implemented a program to better detect possible clandestine diversion of nuclear technology for military purposes (Program 93+2). This objective was pursued in the context of the existing legal framework, with new obligations concerning the construction of facilities or the transfer of certain materials. But it also required the adoption of new regulations, and in particular INFCIRC/540, known as the Additional Protocol and defined in 1997, which enabled a much more comprehensive approach to a country's nuclear activities and in particular allowed IAEA inspectors to request inspections at sites not declared by a state's authorities. Since 1997, 134 states have signed an Additional Protocol, and 14 have signed one without implementing it. Iran also committed to implement the terms of the Additional Protocol by 2015. These developments have enabled

the IAEA to profoundly review its working methods and to ensure in a more reliable and integrated manner the compliance of states with their obligations under Article II of the NPT.⁵⁴

At the international level, the commitment to non-proliferation was also reiterated with the creation of new nuclear-weapon-free zones, particularly in Africa (Pelindaba Treaty, 1996), Southeast Asia (Bangkok Treaty, 1995) and Central Asia (Semipalatinsk Treaty, 2006).

At the same time, other complementary measures were strengthened to implement the objectives of the Treaty. As early as 1975, the major suppliers of nuclear technology adopted common principles to guide their transactions and tried to harmonize their policies in this area within the Nuclear Suppliers Group (NSG). In particular, the NSG was reinvigorated in 1992 with the adoption of new provisions aimed at preventing the transfer of certain dual-use goods.

The United Nations Security Council was also mobilized with the adoption of sanctions against proliferating regimes, designed to make the acquisition of sensitive technologies more complex. In the wake of the large-scale terrorist attacks of the early 21st century, much attention turned to the risks of nuclear terrorism or the diversion of weapons of mass destruction to non-state actors. The Security Council adopted Resolution 1540, which committed all states to strengthen their national laws to combat the proliferation of WMD to non-state actors. In parallel, the Bush Administration also focused on the effective implementation of non-proliferation obligations by creating an international cooperation program seeking to curb trafficking in weapons of mass destruction, their means of delivery, and related materials (Proliferation Security Initiative).

On another level, the adoption of the CTBT in 1996 responded to a strong demand from a very large part of the international community and strengthened the NPT across its non-proliferation and disarmament dimensions. In the framework of the implementation of Article VI, the Treaty continued to be strengthened from 1995 onwards through the implementation of bilateral agreements, in particular the START agreements. The New Start, signed in 2010, provided for further reductions in arsenals. In addition, the Obama Administration initiated three Nuclear Security Summits (NSS) in 2010, 2014 and 2016 that focused at the highest level on the responsibilities of the NWS.

All of these instruments and initiatives complement the relatively succinct text of the Treaty to ensure the implementation of its main objectives. In addition, some Review Conferences adopted relatively detailed final documents containing additional commitments. These texts added to the initial corpus of the NPT and contributed to a progressive review of the balance between its three pillars and of its functioning.

⁵⁴ Kelsey Davenport, "IAEA Safeguards Agreements at a Glance", *Fact Sheets & Brief*, Arms Control Association, October 2019.

2.3. A gradual reconsideration of the balance of the NPT

2.3.1. The “grand bargain” reinterpreted

The NPT is mainly the result of an American-Soviet desire to stop the spread of nuclear weapons. The articles devoted to peaceful uses and disarmament and the role played by the NNWS in the adoption of the Treaty are relatively marginal. Nevertheless, from the moment the text was signed, its promoters insisted that negotiations within the ENCD were opened, that states such as Ireland, Mexico or the United Arab Republic participated largely in its drafting; and that the NPT was therefore not only the result of a bilateral American-Soviet effort. Thus, in order to enhance the value of the Treaty, its signatory states defended the balance of a treaty based on three notions: non-proliferation, peaceful uses and disarmament. This rhetoric was aimed above all at encouraging the ratification of the Treaty by as many states as possible.

In 1995, the bitterness of the negotiations for the indefinite extension of the Treaty led to a new emphasis on some articles, and, in particular, led to new disarmament commitments from NWS. For this reason, some states believe that the indefinite extension has been conditional, and that it has allowed the NPT to be reoriented in a way that is more favorable to a range of states, including the NAM.⁵⁵

For some analysts, 1995 reinforced the existence of a link between non-proliferation and disarmament, with states publicly insisting that their compliance with non-proliferation rules had strong parallel expectations of disarmament.⁵⁶ This argument does not imply a change in the legal interpretation of the Treaty, and the clear non-proliferation obligations – which are much vaguer in terms of disarmament and peaceful uses – remain as such. Similarly, the fact that states chose to support indefinite extension despite strong criticism of Article VI implementation shows that in a context of proliferation concerns, the community of States Parties considered that the non-proliferation norm remains positive for their security. At the political level, however, it is impossible to ignore the fact that many states made this choice with circumspection and with the clear expectation that it would be accompanied by further progress on disarmament. This hope was fueled in particular by the end of the Cold War and the possibilities offered in terms of dismantling the American and Soviet arsenals, the near-universalization of the Treaty thanks to the accession of countries such as France and China, but also countries that renounced being nuclear powers such as Ukraine, Kazakhstan or Belarus. Of course, this optimism was also nourished by the dismantling of South Africa’s nuclear weapons and the progressive role played by the country since its entry into the NPT as an NNWS.

In addition to this emphasis on disarmament, the period following the 1995 extension also coincided with a renewed emphasis on the question of peaceful uses. Promoters of the “inalienable right” to access technologies in this domain were defended by Brazil, for example,

⁵⁵ “Delegate Perspectives on the 1995 NPT Review and Extension Conference”, A Series of Interviews Conducted by Susan B. Welsh, *The Nonproliferation Review*, Spring-Summer 1995.

⁵⁶ Jeffrey Knopf, “Nuclear Disarmament and Nonproliferation: Examining the Linkage Argument”, in Jeffrey Fields (ed.), *State Behavior and the Nuclear Nonproliferation Regime*, University of Georgia Press, Athens, GA, 2014.

but also by Iran in a diplomatic posture allowing it to defend its activities against accusations, particularly America's.⁵⁷

In this context, the reference to “three equal pillars”, and the need for parallel progress to justify the proper implementation of the Treaty, spread in diplomatic speeches, first in the declarations of the non-aligned countries, but rapidly also among states such as Canada and in the official documents agreed on after the meetings of signatories.⁵⁸ The idea that the three pillars are of equal importance was reinforced by certain practices, such as the separate consideration of each pillar during Review Conferences. This was extended beyond the realm of non-aligned demands in 2009, when President Obama appropriated the rhetoric of the “*grand bargain*” in his famous speech in Prague.⁵⁹ The US administration and NATO have since used this terminology, indicating that the three pillars are “*mutually reinforcing*” and form a “*remarkable balance*.”⁶⁰

It is indisputable that the NPT is primarily concerned with non-proliferation from a historical and legal point of view (which is essential in the debates on compliance by the NWS). But it has also become impossible not to recognize the strength of the political commitments to disarmament and peaceful uses, which are now essential components of the Treaty.

2.3.2. Acceptance of a logic of step-by-step disarmament

While the community of signatory states has gradually accepted the idea of a pillar devoted to disarmament, it also has supported a logic of phased disarmament that has been validated in the last three action plans adopted by consensus. The first step in this process was the approval of the 1995 Principles, which, among other things, emphasized the importance of negotiating the CTBT. This step was taken in 1996, with a moratorium respected by all the NWS on the end of nuclear testing.

In 2000, the Review Conference validated by consensus (for the first time since the Treaty was signed) a final document negotiated by the participants. Against all expectations, a compromise was reached in difficult political circumstances, notably following the rejection of the CTBT by the US Senate.⁶¹ The final document contains 13 “*concrete steps for the progressive and systematic implementation of Article VI of the [NPT] and the 1995 Decision*”. These included a commitment to work towards the entry into force of the CTBT, to negotiate a FMCT, to conclude a START III agreement, and various steps towards irreversible and total

⁵⁷ Dean Rust, “How We’ve Come to View the NPT: Three Pillars”, in Henry Sokolski, *Nuclear Rules, Not Just Rights: The NPT Reexamined*, Nonproliferation Policy Education Center, 2017.

⁵⁸ “States parties [...] underscored that the Treaty rests on three pillars – nonproliferation, disarmament and peaceful nuclear cooperation – and agreed that these pillars represent a set of interrelated and mutually reinforcing obligations and rights of States Parties” (Preparatory Committee for the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, NPT/CONF.2005/PC.III/WP.27, 10 May 2004).

⁵⁹ “Remarks by President Barack Obama”, Hradcany Square, Prague, Czech Republic, 5 April 2009 (“*The basic bargain is sound: Countries with nuclear weapons will move towards disarmament, countries without nuclear weapons will not acquire them, and all countries can access peaceful nuclear energy.*”).

⁶⁰ “NATO and the Non-Proliferation Treaty”, Fact Sheet, NATO, March 2017.

⁶¹ Tariq Rauf, “Ambassador Abdallah Baali on the 2000 NPT Review Conference”, *The Nonproliferation Review*, Vol. 7, n° 3, Fall/Winter 2000.

disarmament (unilateral reductions, transparency, reducing the role of nuclear weapons in doctrines, lowering alert levels, etc.).⁶²

These steps were for the next ten years considered important political guidelines, and most states asserted their willingness to implement them. Thus, following the difficult Review Conference of 2005, France published a document in 2010 presenting its implementation of the 13 measures of 2000.⁶³ This official working document indicated a desire to recognize the 2000 Final Document as part of the NPT-related corpus, and the interpretation of the measures described as political commitments. Thus, the post-2000 review of the implementation of the Treaty in practice also included an analysis of the progress made on the 13 steps. One of these measures was the publication of reports on the implementation of the Treaty, a practice that began in 2005.

In 2010, at the end of the Review Conference, the States Parties agreed on a new action plan which included 64 actions, more or less concrete, covering the three pillars of the Treaty. These actions were described as an extension of the 13 actions of 2000.⁶⁴ Throughout the review cycle, the states demonstrated the importance they attached to this compendium. Thus, in 2015, France recalled that it is *“deeply committed to the implementation of its commitments under the Treaty and the 2010 Action Plan, which remains our roadmap.”*⁶⁵ This commitment has been reiterated since then, including following the 2015 Review Conference, for which no final document was adopted. In 2017, for example, the Chinese delegation continued to call for the implementation of the document.⁶⁶

Since 2015 however, the United States and some other states have limited references to the 2010 Action Plan. For example, a US representative expressed the view that decisions taken at Review Conferences only made sense in the context in which they were taken.⁶⁷ However, a large majority of states continue to consider that these texts represent important political commitments and that it is essential for the NWS in particular to be accountable for the way in which they implement these actions.

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⁶² “Review of the operation of the Treaty, taking into account the decisions and the resolution adopted by the 1995 Review and Extension Conference”, 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, NPT/CONF.2000/28 (Parts I and II), New York, May 2000.

⁶³ Nuclear disarmament: France’s concrete commitment – Implementation by France of the “13 Practical Steps” contained in the 2000 Review Conference Final Document, Working paper submitted by France, May 2000.

⁶⁴ “Conclusions and recommendations for follow-on actions”, 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Volume I, NPT/CONF.2010/50 (Vol. I), New York, May 2010.

⁶⁵ Review Conference of the States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons (New York 27 April - 22 May 2015), Statement by Jean-Hugues Simon-Michel, Permanent Representative of France to the Conference on Disarmament, General Debate, 28 April 2015.

⁶⁶ Statement by the Chinese Delegation at the First Session of the Preparatory Committee for the 2020 NPT Review Conference on Nuclear Disarmament, 9 May 2017.

“The Action Plan agreed upon in the 2010 NPT RevCon, which includes a detailed roadmap for advancing international nuclear disarmament process, constitutes a valuable consensus reached by all parties after repeated negotiations, and should be continually implemented in a balanced manner .”

⁶⁷ “Defining U.S. Goals for the NPT: An Interview with U.S. Ambassador Jeffrey Eberhardt”, *Arms Control Today*, March 2020 (*“Previous commitments cast a pretty wide net [...]: decisions of review conferences, as embodied in final documents, are political commitments. They are taken in the context of the time in which they are achieved.”*).

Twenty-five years after its entry into force, the NPT received a form of plebiscite when it was extended indefinitely by all its signatories in 1995. But this period also corresponds to a time of contestation of the regime, with the development of several programs, particularly in Asia and the Middle East. Faced with this threat, the signatory states succeeded in strengthening the non-proliferation regime by confirming the inclusion of the Treaty in a broader set of norms and initiatives aimed at limiting the dissemination of sensitive technologies. At the same time, groups of NNWS groups succeeded during this transition period in gaining political acceptance for a reinterpretation of the Treaty that revalues the objectives of disarmament and the peaceful uses of nuclear energy. At the time of the 50th anniversary of the NPT, this reorientation around three “balanced” pillars is not without connection to the frustration of some of the parties, even if the non-proliferation norm still appears strong.

3. 50 years later: a resilient but challenged regime

3.1. A difficult context 50 years after the entry into force of the Treaty

3.1.1. A permanent sticking point in discussions: the interpretation of Article VI

Article VI of the NPT states: *“Each Party to the Treaty undertakes to 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.”* **Two interpretations of this article have clashed since the Treaty was signed.** The first, widespread among NNWS and disarmament activists, focuses on its spirit. According to this school of thinking, Article VI is at the very heart of the Treaty, the essential counterpart to the provisional recognition of the existence of nuclear weapons. It implies that the NWS must progressively reduce their arsenals, if necessary unilaterally, with the ultimate goal of renunciation. It is therefore currently not implemented in good faith.

The second, which is that of most NWS, focuses instead on its letter and the intent of the negotiators. It believes that Article VI is only one of the commitments of the Treaty among others, and the history of its inclusion in the Treaty confirms, *a contrario*, the impossibility of seeing it as a legally binding disarmament obligation. Compliance with this article is more an obligation of means (“pursue negotiations on measures”) than an obligation of result. It concerns all States Parties and all arsenals, not only nuclear, creating two parallel obligations (cessation of the nuclear arms race on the one hand, elaboration of a treaty on general and complete disarmament on the other). The elimination of nuclear weapons as such and without progresses on other areas is not mentioned at all. Although one of the paragraphs in the preamble of the Treaty refers to *“the intention to achieve the cessation of the nuclear arms race at the earliest possible date and to take effective measures leading to nuclear disarmament”* and thus singles out nuclear weapons, it does not mention their complete elimination. The latter is, however, clearly mentioned in another paragraph but which states that the elimination of nuclear weapons is to be achieved within the framework (*“under”*) of a treaty on general disarmament: *“the liquidation of all existing stockpiles of such weapons, and the elimination of nuclear weapons and their means of delivery from national arsenals*

pursuant to a treaty on general and complete disarmament under strict and effective international control". The arms race, in the sense of the Cold War (at the time the Treaty was signed), is well and truly over. The arsenals of the NWS have all been and continue to be reduced. Moreover, the cessation of nuclear testing – mentioned in the preamble of the treaty – has been imposed on all NWS. According to this interpretation, NWS are therefore implementing Article VI in good faith. Moreover, the idea that the pursuit of nuclear disarmament is a condition for non-proliferation has not been demonstrated either in law or in fact. Quite the contrary: the disarmament initiatives made by the nuclear-weapon states since 1987 have had no impact on the nuclear programs of India, Iraq, Iran, Israel, Libya, North Korea and Pakistan.

These two visions are difficult to reconcile. NNWS have no trouble pointing out that the preamble to the Treaty, the Political Declarations at the end of the Review Conferences, as well as the advisory opinion of the International Court of Justice in 1996 (confirming the existence of an obligation to negotiate and conclude nuclear disarmament negotiations) tend to consolidate their interpretation. For their part, NWS have stronger legal arguments.⁶⁸

3.1.2. An arms control crisis that weakens the prospects for disarmament

Since the first Review Conference, some States Parties have been opposing the NPT with regards to the implementation of Article VI and the disarmament efforts of the NWS. Criticism was notable during periods of development of the arsenals of the United States and the Soviet Union, or during nuclear testing campaigns. Nevertheless, the progress made in nuclear disarmament after the Cold War has not put an end to these objections. Post-Cold War hopes have been dashed by the inability of the NWS to rid themselves of still massive nuclear arsenals and to negotiate and implement long-standing agreements.

In particular, the adoption of a CTBT was desired and expressed from the preamble of the Treaty: despite its signature in 1996, the rejection by the US Senate in 1999 and the inability of the Treaty to progress towards entry into force since that date are very negative signs for the regime. Likewise, the impasse in the Conference on Disarmament in Geneva (unable to make progress on the draft FMCT) is a source of frustration, especially since these two treaties are presented as logical extensions of the NPT.

After a period of enthusiasm coinciding with President Obama's desire to reduce the role of nuclear weapons in the US security strategy and to make further reductions, frustration has grown among some NNWS due to the failure to implement these announcements. Indeed, the hardening of relations between nuclear powers coincided with a halt in bilateral and unilateral measures to reduce arsenals. Moreover, certain existing agreements are being dismantled (ABM Treaty, INF Treaty) and there is great uncertainty about the future of the START Treaties, the main vectors of disarmament since 1991. While at least four states continue to increase their nuclear arsenals, including three outside the NPT, the prospects for disarmament are now very weak and the progress presented by the NWS as evidence of their implementation of Article VI (transparency measures, completion of a glossary, work on verification) is perceived as modest or even insignificant by a growing number of NNWS.

⁶⁸ Bruno Tertrais, *op. cit.*

In this context, the American initiative “Creating the Environment for Nuclear Disarmament” risks remaining insufficient to create a consensual dynamic in this area.

The NWS are also accused of undermining the NPT beyond the issue of disarmament, especially given New Delhi’s exemption from the NSG rules. Indeed, members of the suppliers group agreed to normalize their trade relations with India despite its refusal to sign the NPT, a move that many perceive as weakening the non-proliferation norm⁶⁹ and signaling the practice of “double standards” by Western countries.⁷⁰ The exit of the United States from the JCPOA is another additional factor fueling disagreements among states on NPT implementation.

Beyond the cyclical difficulties that characterize arms control, structural problems, such as the irrelevance of certain bipolar agreements or the asymmetrical development of arsenals, contribute to widespread pessimism regarding the plausibility of further reductions in nuclear arsenals in the coming years. Without a realistic prospect of progress on disarmament, and while the project of a WMDFFZ in the Middle East remains an abstraction, the NPT risks remaining subject to strong tensions and a politicization of its implementation.

3.1.3. A political exploitation of the Treaty that weakens its action

Since its creation, the NPT has served as a political forum to express broader criticism of the policies of the two great powers or the structuring of the international order. But in the face of the lack of progress on disarmament, this role seems to be increasing and political postures are stifling the ability to advance the non-proliferation regime.

On the one hand, some states continue to use this forum to challenge an unequal international order, to claim their sovereignty and to denounce any measure perceived as neo-colonialist or favoring the political or economic hold of the most developed states over emerging countries. The principle of justice and equal treatment is also vehemently claimed. These postures are sometimes defended ideologically, in opposition to what might appear to be the immediate security interests of certain states.⁷¹ In this context, the strongest criticisms are directed in particular at the United States, and a number of states take advantage of the forum offered by the NPT to express their grievances over US policy.

Calls for disarmament are also increasingly formulated ideologically. Thus, for some states (Austria, Ireland, New Zealand...), the humanitarian risk posed by nuclear weapons cannot be justified by any security argument and it is therefore necessary to review disarmament policies through associating a humanitarian approach. This activist policy is in some cases supported by opposition to civilian nuclear power, which is perceived as unacceptably dangerous.⁷² The advocates of this line of thinking completely contradict the approach of the NWS, particularly on progressive disarmament, negotiated and dependent on security conditions. Based on the notion of urgency and the principle of the immorality of nuclear wea-

⁶⁹ Bernard Gwertzman, “Scheinman: New U.S.-India Agreement Undercuts U.S. Allegiance to Nonproliferation of Nuclear Weapons”, Council on Foreign Relations, 3 November 2015.

⁷⁰ Oliver Meier, “The US-India Nuclear Deal: The End of Universal Non-Proliferation Efforts?”, *International Politics and Society*, n° 4, 2006.

⁷¹ Emmanuelle Maitre, *op. cit.*

⁷² *Ibid.*

pons, the humanitarian argument can, however, rely on a community of NGOs and responds to the concerns of many states.⁷³

Disagreements over the best way forward on disarmament have led to numerous initiatives since 2010, and the “humanitarian initiative” led to the adoption of the Treaty on the Prohibition of Nuclear Weapons (TPNW) in 2017, adopted at the UN by 122 states. This Treaty is highly criticized by the NWS and a number of allies as insufficient to build a regime for the elimination of nuclear weapons in the long term and representing a competing norm that could weaken the NPT in the short term.⁷⁴

The adoption of an “alternative treaty”, which now has 84 signatures and 50 ratifications and will enter into force in January 2021, illustrates the fact that a growing number of states do not find themselves so aligned with the vision enshrined in the NPT and no longer perceive the Treaty as satisfactory for their interests. It increases the polarization between different groups within the regime, a division that could be particularly detrimental to effectively responding to future violations of the NPT and will likely make it difficult to strengthen the Treaty in a consensual manner.⁷⁵

3.2. *The continuing challenge of nuclear proliferation*

3.2.1. *An essential role in the fight against a persistent proliferation risk*

Despite difficulties, fifty years after its adoption, the NPT still seems to be unanimously recognized for the role it has played in the fight against proliferation. Indeed, even if it is true that many NNWS never had the ambition, the desire or the means to acquire a nuclear military capability, the role of the Treaty in creating an effective norm that convinced some states not to embark on this type of program has been convincingly demonstrated.⁷⁶ This achievement should not be minimized: history has rarely seen states voluntarily give up a component of power and the possibility of developing the most sophisticated weapons, if that goal were available to them.⁷⁷ While 28 countries have seriously considered a military nuclear program, there are now nine nuclear powers, and only two of the “renouncers” have been forced to do so by external powers. This self-conviction of the vast majority of NNWS to renounce possession of nuclear weapons seems to point to the normative power of the Treaty and its capacity to take into account the strategic imperatives of states.⁷⁸

⁷³ “Que faire du traité sur l’interdiction des armes nucléaires ?”, *Revue de défense nationale*, n° 809, avril 2018.

⁷⁴ “North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons”, Press Release (2017) 135, NATO, 20 September 2017.

⁷⁵ Harald Müller, “The Future of the Non-proliferation Treaty”, in Luciano Maiani, Said Abousahl, Wolfgang Platinno (ed.), *International Cooperation for Enhancing Nuclear Safety, Security, Safeguards and Non-proliferation – 60 Years of IAEA and EURATOM*. Proceedings of the XX Edoardo Amaldi Conference, Berlin: Springer, 2018.

⁷⁶ Maria Rost Rublee, *op. cit.*

⁷⁷ Harald Müller, “The Nuclear Non-proliferation Treaty in Jeopardy? Internal Divisions and the Impact of World Politics”, *The International Spectator*, IAI, 2017.

⁷⁸ Harald Müller, Andreas Schmidt, “The Little-Known Story of Deproliferation: Why States Give Up Nuclear Weapons Activities”, in William Potter, Gaukar Mukhatzhanova (ed.), *Forecasting Nuclear Proliferation in the 21st Century. Vol. I: The Role of Theory*, Stanford, CA: Stanford University Press, 2010.

By limiting the number of nuclear powers, the NPT has undoubtedly also reduced the risk of nuclear confrontation.⁷⁹ This does not mean that the Treaty has fully achieved its objective. First of all, three states have claimed nuclear status since 1995 by conducting nuclear tests. Among them, North Korea represents a unique case of denunciation of the Treaty. In addition, Israel completes the trio of states that have never joined the NPT but have military nuclear capabilities.

While military and political developments in the Middle East have led to the cessation of programs in certain countries (Iraq, Syria), the case of Iran remains worrying. In addition, other states have recently made statements questioning the robustness of the NPT norm, in particular Saudi Arabia⁸⁰ and Turkey.⁸¹ While these states do not currently engage in prohibited activities, their statements show that a new breach of the NPT, with the nuclearization of Iran, for example, could permanently undermine the regime.

3.2.2. Continued support, but a pause in the efforts to strengthen the system

In this context, the support of States Parties to the NPT is regularly reaffirmed, but this support is not necessarily accompanied by a will to strengthen of the regime.

By remaining active members of the Treaty, NWS and NNWS have consistently suggested since 1995 that they still subscribe to a risk analysis according to which their security is all the more assured when there are few nuclear powers.⁸²

Despite criticism of the regime and its implementation, no other states have placed themselves in violation of their obligations since 2015, and no states have suggested withdrawing from the Treaty in response to the lack of progress on disarmament. In addition, 136 states have adopted an Additional Protocol to their safeguards agreements with the IAEA, which shows that despite the vehement refusal of some to generalize this practice (Brazil, Egypt), the vast majority of NPT states consider this strengthened inspection system to be a norm. Finally, most states support the international sanctions that have been adopted against “proliferating” states, and in particular against Iran (Security Council sanctions from 2006 to 2015) and North Korea (since 2006). The implementation of these sanctions has given rise to debate and has been considered with reluctance by some non-aligned countries, but even countries such as South Africa, Egypt or Mexico voted for them when they were present at the UN Security Council.

That said, it is undeniable that the current context, fifty years after the entry into force of the Treaty, is not conducive to a strengthening of the regime. The lack of progress on disarmament, and the failure to make progress on some of the commitments made in 1995 (such as the entry into force of the CTBT or the establishment of a WMDFZ in the Middle East) are sticking points at Review Conferences that make it difficult to discuss non-proliferation as such. The desire of several countries, including NWS, to formally call for the Additional Pro-

⁷⁹ Harald Müller, “Icons Off the Mark. Waltz and Schelling on a Perpetual Brave Nuclear World”, *The Nonproliferation Review*, vol. 20, n° 3, 2013.

⁸⁰ Patrick Wintour, “Saudi Crown Prince Warns it will Build Nuclear Bomb if Tehran does the Same”, *The Guardian*, 15 March 2018.

⁸¹ Shannon Bugos, “Turkey Shows Nuclear Weapons Interest”, *Arms Control Today*, October 2019.

⁸² Zachary Davis, “The Realist Nuclear Regime”, *Security Studies*, vol. 2, n° 1, 1995.

TOCOL to become the new standard for safeguards on civilian nuclear programs has systematically failed. More broadly, the desire of some nuclear technology supplier countries, including the United States, to restrict the transfer or development of enrichment and reprocessing technologies in more countries is not unanimously supported, either in the discussions around the Treaty or in the NSG. While the risk of proliferation associated with these technologies is regularly evoked,⁸³ many NNWS (such as South Africa, Brazil, etc.) claim that Article IV allows them to set up this type of activity, for reasons of political or economic sovereignty in particular.⁸⁴ This controversy plays an important role in the discussions around the Iranian program, since Tehran receives the support of many non-aligned countries in its claim to be able to maintain enrichment activities on its soil. Aside from economic considerations, some states refuse new requirements in terms of non-proliferation so as to prevent increasing what seems to them to be unbalanced implementation of the NPT.⁸⁵

Moreover, efforts to regulate the right of withdrawal also regularly fail: several states would like the conditions provided for in Article X of the Treaty to be tightened up, and at the very least, would like to make sure that a state should not be able to use the nuclear technologies developed when it joined the Treaty to develop a military program following its withdrawal.⁸⁶ Proposals are also being developed, without success, to ensure that the Security Council automatically reacts in the event of an unjustified withdrawal or violation.⁸⁷

When the JCPOA was adopted in 2015, some raised the idea that certain measures imposed on Iran, particularly with regard to controlling its activities and limits on research into high-intensity explosives and the militarization of nuclear materials, would become a generally applicable norm for all NNWS.⁸⁸ However, these proposals would most likely be viewed with considerable hostility by most non-aligned states, and they are not the subject of formal proposals in the NPT forum.

At the last Review Conference leading to a final document in 2010, no progress was made on these flaws in the regime, and it seems unlikely that the NPT can be strengthened in the coming years due to the crystallization of political opposition to what now appear to be illegitimate demands by the NWS and their allies. In this context, the capacity of the Treaty to respond effectively to future proliferation crises raises questions.

⁸³ Chris Ford, *op. cit.*

⁸⁴ Jack Boureston, Jennifer Lacey, "Shoring up a Crucial Bridge: South Africa's Pressing Nuclear Choices", *Arms Control Today*, 2007.

⁸⁵ Harald Müller, "The Nuclear Non-proliferation Treaty in Jeopardy? Internal Divisions and the Impact of World Politics", *op. cit.*

⁸⁶ Bruno Tertrais, *op. cit.*

⁸⁷ Pierre Goldschmidt, "Nuclear Renaissance and Non-Proliferation", 24th Conference of the Nuclear Societies, February 19-21, 2008.

⁸⁸ R. Scott Kemp, "The Iran Nuclear Deal as a Case Study in Limiting the Proliferation Potential of Nuclear Power", *Nature Energy*, vol. 4, 2019; "Policy Memo: The Iran Nuclear Agreement: Could it Inform Future Nonproliferation and Disarmament?", Stanley Foundation, 11 November 2016; Thomas Pickering, "JCPOA: A New Gold Standard for Non-Proliferation Agreements", Atlantic Council, 7 June 2017.

Conclusion: what are the prospects for the NPT?

50 years after its ratification, the NPT's record remains highly controversial. At one extreme, for the very few states that refuse to join it, it remains a profound failure: India, for example, has described the NPT as discriminatory, violated by its State Parties and in a state of collapse in Asia. A former Indian minister said that the Treaty “cannot be amended” and “therefore legitimizes the possession of nuclear weapons.”⁸⁹ Moreover, the NWS are accused of having been “active collaborators or silent spectators” in proliferation matters.⁹⁰

On the side of the most critical States Parties, especially the non-aligned, the picture is more nuanced, but remarks are recurrent to note the lack of progress on disarmament, but also the fact that some nuclear states have remained outside the regime. Nevertheless, even a state like Egypt notes the contribution of the Treaty to international security.⁹¹

From this point of view, opinions remain very convergent on the positive role played by the NPT in halting the spread of nuclear weapons. It should be noted, however, that almost all analyses judge the NPT's record on the basis of the progress made in non-proliferation, certainly, but also in disarmament and, to a lesser extent, on the question of peaceful uses.⁹² In this area, judgments are necessarily more reserved: while many point to the capacity of the Treaty to bring about a political norm in favor of disarmament, the numerous disappointments in this area are recognized.⁹³

This broadening of the original objectives also leads to more skepticism about the ability of the Treaty to retain its central and recognized character in the future, given the anticipated difficulties in continuing the progress made in disarmament at the end of and after the Cold War.

Fifty years after its entry into force, the NPT also retains inherent weaknesses in its initial purpose, for which few solutions seem possible in the short term: the system of guarantees has been strengthened but improvements are still considered necessary by many, the export control mechanisms have shown their limits, and the question of the right of withdrawal has not been resolved. More problematically, the Treaty does not propose an effective mechanism for managing relations with *de facto* NWS, and obliges its signatories to diplomatic contortions that risk being increasingly out of step with strategic reality, particularly with the addition of North Korea to the list.

While the fault lines run deep on the issue of disarmament, opposition could also grow on the peaceful use of nuclear technologies. Indeed, more and more states are showing their

⁸⁹ Jaswant Singh, “Against Nuclear Apartheid”, *Foreign Affairs*, September-October 1998.

⁹⁰ Jaswant Singh, “Indian Statement on the NPT”, Speech to the Lok Sabha, May 9, 2000.

⁹¹ Statement by H.E. Ambassador Alaa Youssef, Permanent Representative of the Arab Republic of Egypt to the United Nations Office, Geneva, The Second Session of the Preparatory Committee to the 2020 NPT Review Conference, General Debate, Geneva, April 2018.

⁹² See for example: Michael E. O'Hanlon, Robert Einhorn, Steven Pifer, Frank A. Rose, “Experts Assess the Nuclear Non-Proliferation Treaty, 50 Years after it Went into Effect”, *Order From Chaos*, Brookings Institution, 3 March 2020; Jacek Durcalek, *op. cit.*; Tytti Erästö, “Fifty Years of the NPT – Cause for Celebration or Commemoration?”, *WritePeace Blog*, SIPRI, 23 May 2019.

⁹³ Sara Kutchesfahani, “The NPT at 50: A Staple of Global Nuclear Order”, *Arms Control Today*, June 2018.

reserve in the face of these technologies and their dissemination, such as Austria, a spearhead in the fight for the abolition of nuclear weapons.⁹⁴ In this context, a new imbalance could emerge in the implementation of the three pillars.

The Review Conference scheduled for 2021 will therefore open in a climate of great uncertainty about the future of the Treaty. However, the regularly announced “crisis” of the regime should not make us forget the official support that all the parties still have for the Treaty, and the absence of any alternative mechanism that could take into account the strategic interests of the states. As long as the NPT’s inherent calculation is perceived to be correct, one can assume that a majority of its States Parties will strive to work towards its viability.

► An irreplaceable standard

The intensity of the debate around the NPT precludes any consideration of its revision. Opening up the possibility of revising this or that provision of the treaty would in fact be tantamount to opening a veritable Pandora’s box, since many states or groups of states would then seek to put forward their own interests and would no doubt not hesitate to “take hostage” the proposed revisions. There is, in fact, a tacit consensus that it is impossible to revise the 1968 text.

The NPT is a very imperfect instrument with obvious weaknesses. However, there is no alternative to its preservation; if the Treaty were to collapse, the international community would lose a vital political barrier against further nuclear proliferation. The preservation of the Treaty is subject to three conditions. First, it seems crucial to avoid a second withdrawal – for example Iran’s. One could say that there is a “North Korean exception”: North Korea has always been a particular problem, since it had announced (before suspending it) its withdrawal from the Treaty shortly after joining it.⁹⁵ Second, it is important that the Parties to the Treaty seek a new consensus on the interpretation of the disputed articles, particularly Article VI on disarmament. Finally, there remains a need to improve the texts, practices and institutions that complement the NPT and thus to attempt to remedy its shortcomings or defects.

⁹⁴ General Statement by Ambassador Thomas Hajnoczi Federal Ministry for Europe, Integration and Foreign Affairs, Austria at the Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, New York, 29 April 2019 (“Austria fully acknowledges the inalienable right to peaceful uses of nuclear energy as established by article IV of the NPT. This does however not entail a commitment of States party to the NPT to use nuclear energy for power generation, or to support and promote such use by others. Rather, the UN Conference on Sustainable Development held in Rio de Janeiro in 2012 favoured national policies using an appropriate energy mix based on individual national circumstances. In line with this principle, Austria has chosen not to use nuclear energy for power generation. It is our assessment that the risk of accidents at nuclear power stations [...] is bigger than the potential benefits this particular application of nuclear energy brings. Also the problem of the safe and long-term disposal of radioactive waste has not been solved yet in a satisfactory manner. [...] Historically peaceful programmes have in a number of cases been the point of departure for military nuclear programmes. States that do choose to use nuclear energy for power generation notwithstanding should do so applying the highest standards of safety, security, waste management and non-proliferation possible.”)

⁹⁵ Even today, there is no agreement between the Parties as to the exact status of this country with regard to the Treaty.

Les opinions exprimées ici n'engagent que la responsabilité de leur auteur.