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SWP Comment

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After the Review Conference: The NPT Remains Robust

Jonas Schneider and Liviu Horovitz

Originally scheduled for 2020, the 10th Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) had to be deferred four times. It was not until August 2022 that the 191 NPT states finally met. At least since Russia's invasion of Ukraine, observers had expected that the delegates would be unable to agree on a Final Document. Surprisingly, differences over nuclear disarmament did not play a role in the failure of the conference, despite the growing polarization over this issue since the entry into force of the Treaty on the Prohibition of Nuclear Weapons (TPNW) at the beginning of 2021. Russia alone was responsible for torpedoing the consensus. Conversely, all the non-nuclear NPT parties made major concessions in a bid to prevent the conference from failing. This shows that in a context of global tensions, nuclear disarmament is a lesser concern for the non-nuclear-weapon states (NNWS) than they themselves have long been suggesting. That the stability of the NPT does not depend on progress towards disarmament is good news. For Germany's National Security Strategy (NSS), it means that greater concessions to advocates of the TPNW are not necessary to protect the NPT.

Before it draws up its first-ever National Security Strategy, Germany must assess the health of the key pillars of the rules-based international order, which form the backbone of German security. If the condition of one or more of these pillars proved critical, Berlin would have to try to find a remedy. The NPT is one such regulatory pillar, and it is often said to be in deep crisis, with many states considering it no longer adequate and therefore on the brink of collapse. For this reason, it is very important that those drafting the NSS should know that the NPT

remains robust — even after this year's unsuccessful review conference.

Steadily declining expectations

After the failed 9th Review Conference of 2015, divisions between NPT states over nuclear disarmament deepened. Within the "Humanitarian Initiative," there was a group that wanted to draw up a treaty on banning nuclear weapons without involving the nuclear-weapon states (NWS) and



without imposing strict verification rules, and it was this group that eventually prevailed. The TPNW, which was adopted in 2017 and to which there are now 68 states parties, embodies this new, uncompromising stance on disarmament.

At the same time, existing divisions became more entrenched. The five NPT nuclear-weapon states (the United States, Russia, China, France and the United Kingdom) and the NATO states increasingly distanced themselves from efforts to conclude the TPNW: while, in 2014, almost all NATO countries had participated in the conference of the Humanitarian Initiative, it was only the Netherlands left attending the TPNW negotiations in 2016–17 (although, ultimately, The Hague, too, voted against the treaty). Once the TPNW had been finalized, NATO immediately formed a united front against it, and the NWS followed suit in 2018. NATO renewed its opposition in late 2020, shortly before the TPNW entered into force.

The TPNW dispute subsequently spilled over into the NPT framework, deepening the long-standing fault-line between the Global North (comprised of the NWS and US allies), which relies on nuclear deterrence, and the non-nuclear Global South. For this reason, many experts believed that because of the need for unanimity at NPT review conferences and in the absence of any significant progress towards disarmament, negotiations at future review conferences would prove extremely difficult.

The war in Ukraine buried the last hopes of a constructive 10th Review Conference. Moscow has violated fundamental nuclear norms – a nuclear power attacked a non-nuclear-weapon state – and thereby breached not only the UN Charter but also the negative security assurances it had given Ukraine in 1994, when Kyiv relinquished its “inherited” Soviet nuclear weapons and joined the NPT. Moreover, Moscow has been using nuclear threats to shield its war of aggression. Against this background, it seemed unrealistic to expect that the West would ignore Russia’s abuses or, equally, that the Kremlin would sign off on a document listing its international law violations.

In June 2022, the TPNW states met in Vienna for their first conference. The focus of the meeting was not on “closing ranks against Russia” but on further advancing the nuclear disarmament agenda. While the member states celebrated the agreed Action Plan and rebuked countries that rely on nuclear deterrence, they could not bring themselves to condemn Moscow’s nuclear threats. The final declaration condemned “any and all nuclear threats,” which many interpreted as criticism of NATO’s deterrence policy.

For their parts, NATO allies Germany and Norway, which attended the conference as observers, announced they did not plan to join the TPNW as membership would be incompatible with their participation in the NATO nuclear alliance.

In this doubly polarized situation, almost every expert assumed that the NPT Review Conference would fail – because of the dispute over nuclear disarmament and because of Putin’s “nuclear-shielded” invasion of Ukraine.

Why did the conference fail?

The review conference did indeed fail, but the reason came as a surprise. Russia’s nuclear threats and its attack against Ukraine played only an indirect role, while the disarmament dispute played no role whatsoever.

Rather, the main reason was an ad hoc problem: Russia refused to accept the language on the Zaporizhzhya nuclear power plant, which had become caught up in the hostilities. It is not known what exactly Moscow took issue with. Most likely, it was those passages that: 1) condemned the shelling of the power plant from a neutral stance (despite the lack of evidence, Russia wanted the Ukrainians to be named as the perpetrators); 2) deplored the loss of control over Zaporizhzhya “by the competent Ukrainian authorities”; and 3) called for restoring the safety and security of all Ukraine’s nuclear facilities “within its internationally recognized borders”.

None of these passages identified Russia as the party responsible for the security situation in Ukraine or the attacks on the power plant. Their implicit criticism of Russian actions was sufficient for Moscow to describe them as politicized. However, the Russian delegation did not even try to negotiate compromise language. It was only on the last day of the conference – when it was already too late – that Moscow requested any changes to wording.

Strong drive for consensus reflects states' key priorities

While Russia rejected the final draft, consensus could have been reached on all points except Zaporizhzhya. Indeed, on the last day of the conference, many countries thought an agreement was possible. That the NPT states would have adopted the draft unanimously had it not been blocked by Russia is surprising. The text contains only vague commitments to disarmament; all the well-known demands are missing – something that had been deemed inadmissible by some TPNW parties before the conference. Specifically, the draft

- does not include any concrete and binding demands that the NWS fulfil their nuclear disarmament pledges;
- merely calls for dialogue to address the concerns of the NNWS about the modernization of nuclear arsenals;
- does not explicitly condemn threats of nuclear strikes;
- does not include a general commitment never to use nuclear weapons;
- does not call for refraining from using nuclear weapons first (no first use);
- does not call for a moratorium on the production of weapons-grade fissile materials;
- does not call for the members of nuclear alliances to reduce the role of nuclear weapons in their security doctrines;
- does not mention the Declaration and Action Plan on nuclear disarmament agreed by the TPNW conference in June.

Many of these “gaps” appeared during the final days of the conference, when the

relevant demands were removed from the draft – reportedly under pressure from the NWS and their allies.

As a result, many NNWS were unhappy; some went as far as to complain that the nuclear powers were acting irresponsibly. The TPNW parties stressed that the text fell dramatically short of what needed to be done in terms of disarmament to address the nuclear threat. Among disarmament advocates from civil society, the criticism was even harsher: according to one non-governmental organization, the draft text was a “dangerous disappointment” while the NPT had become a mere “zombie”.

Despite this criticism, all the participating NNWS – and thus all the TPNW members at the table – agreed to the draft. Russia's objections to the final wording meant there was no consensus; but had Russia not dissented, NNWS dissatisfied with the text, including, for example, Austria and New Zealand, would not have blocked the draft. And, by their own admission, they would have refrained from doing so in order to demonstrate support for the NPT as a pillar of the existing order at a time of enormous upheaval and uncertainty.

This behaviour is remarkable. It substantiates the criticism voiced before the conference that certain assumptions about what holds the NPT together – and these are assumptions rarely challenged in Germany – do not reflect reality. The NPT is frequently portrayed as a delicately balanced system of rules in three areas: nuclear disarmament, non-proliferation and the peaceful uses of nuclear energy. It is often assumed that if obligations and pledges are not fulfilled in one of these areas, overall treaty compliance will be eroded and the stability of the NPT as a whole undermined.

Recent research on the NPT calls this assumption into question. It posits that balanced implementation in the three areas is necessary only when it comes to the *further development* of the NPT: stricter non-proliferation rules, for example, would have to be offset by meaningful steps towards disarmament. But the stability of the NPT *in its current form* does not depend on this bal-

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ance. The NPT will remain stable as long as the NNWS refrain from developing nuclear weapons and do not withdraw from the treaty. The recent research outlines three reasons why states remain within the NPT framework and adhere to their non-proliferation commitments:

First, the NPT parties would face severe sanctions if they were to withdraw. This is because the major powers have been united – at least until now – over the need for treaty enforcement. In the past, hardly any NNWS has been willing to bear the costs of such sanctions.

Second, countries withdrawing from the NPT or obtaining nuclear weapons would damage the international nuclear legal order. Many states, however, value the legally binding renunciation of nuclear weapons by their neighbours. Virtually no goal is worth destroying this reliable world order. This is especially true for medium-sized powers, which could build nuclear weapons but do not need to as they can rely on the NPT. In fact, there are dual benefits for many medium-sized powers, including Germany: they can remain NNWS while enjoying nuclear protection as US allies.

Third, NPT withdrawals and illicit weapons programmes would undermine the overarching rules-based international order of which the NPT is a core part. But a world in which states no longer abide by such fundamental agreements would not be desirable; this applies especially to small and weak countries, which are less able to defend themselves against larger states that break the rules.

Crucially, both the legal nuclear order and the rules-based international order are currently under pressure as a result of Russia's war against Ukraine. In this volatile and uncertain environment, a majority of states favoured seeking to mend this state of affairs rather than exacerbate it by allowing the NPT conference to fail. That is why all NNWS were willing to agree to a draft text that did not advance nuclear disarmament.

Implications for the German NSS

Putin's war challenges nuclear norms, the international order and cooperation to prevent proliferation. Yet, it is extremely unlikely that the war will seriously undermine the NPT's foundations: the great powers have not become more tolerant towards proliferation; the medium-sized powers still value their neighbours' formal renunciation of nuclear weapons; and the West is defending the rules-based order so that wars of aggression are not becoming the norm.

As the calculations of almost all NNWS are influenced by at least two of these three factors, the treaty remains robust. Withdrawals and successful weapons programmes that violate the NPT are exceedingly rare; exceptions (such as North Korea) emerge only in extreme situations. To an overwhelming majority, it makes little sense to damage the NPT simply to protest against systemic injustice – the costs would be far too high. Moreover, it would become much more difficult to achieve disarmament goals if the current order were to unravel.

The German NSS should aim to strengthen the external factors that underpin the NPT's stability. To this end, Berlin should 1) seek to preserve the rules-based order, specifically the prohibition on the use of force; 2) condemn and punish illicit nuclear weapons programmes and nuclear blackmail; and 3) make clear that NPT withdrawals will be sanctioned even if they do not take place in conjunction with rapid nuclear weapons acquisition.

At the same time, the NPT's stability does not depend on equal progress being made with regard to its three pillars. For this reason, German concessions to TPNW advocates are not expedient from a security perspective. As the modernization of nuclear arsenals will continue, a TPNW observer status will not help Berlin persuade parties to the treaty to adopt stricter non-proliferation rules. Nor does Germany need to build "bridges" to the TPNW to stabilize the NPT: the forces holding the NPT together have already laid a solid foundation.

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