

# The Non-Proliferation Treaty as a Conditional Norm

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## The Non-Proliferation Treaty as a Puzzling Success Story

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is an explicitly discriminatory treaty. It enshrines the right of a handful of “Nuclear Weapons States” (NWS) – the five that had tested a nuclear explosive device prior to January 1, 1967 – to possess nuclear weapons, while categorically ruling out the right to their possession by all others, the “Non-Nuclear Weapons States” (NNWS), even if they do not join the treaty. This basic inequity is only slightly moderated by the treaty’s other provisions (e.g., articles VI and X, respectively, on atomic energy and withdrawal). Not least due to the NPT’s discriminatory character, scholars and expert observers began forecasting its imminent demise not long after its inception. However, despite the NPT’s highly publicized difficulties with recalcitrant member-states such as Iran, the basic fact is that nearly all the states in the world are members in good standing of this treaty. In addition to its near-universal state membership, it has been progressively strengthened over the years and has also overcome numerous serious shocks. Indeed, by most measures – the number of states that are party to it, the number of states that have left or violated its terms, or the indefinite extension of the treaty in 1995 – the NPT is one of the most successful treaties of all time.\* But why? Our memo suggests an explanation for the NPT’s continuing strength that focuses on treatment of the NPT as a conditional norm.

Traditional explanations in international relations theory are inadequate to explain the NPT's resilience. Neoliberal institutionalists might view the NPT as a “bargain,” according to which the NWS provide civilian nuclear technology in exchange for the NNWS’s promise not to misuse it. The NWS also made a moral commitment in the NPT to work toward nuclear and general disarmament. However, the NWS have consistently failed to live up to their end of the bargain ever since the

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\* We do not include the fact of the very slow historical proliferation of nuclear weapons as proof of the NPT’s success, because that has causes that go far beyond the NPT. However the NPT probably has helped somewhat.

treaty was opened for signature. Indeed, as one of the U.S. delegates to the treaty negotiations put it, the NPT was “one of the greatest con games of modern times.”<sup>†</sup> It is often suggested that if the NWS do not start taking their treaty obligations more seriously, the NPT will collapse. Be that as it may, the fact is that this “con game” has survived, and indeed flourished, for over four decades.

Realists suggest a different answer to the puzzle of NPT resilience, simply that the superpowers imposed the NPT on other states, through a mix of offers of nuclear guarantees and threats to remove those guarantees. Realists also routinely argue that because the NPT is based on coercion, the treaty regime is inherently weak and, sooner or later, is likely to become irrelevant. However, there is little evidence for the contention that the superpowers coerced states *en masse* into joining the treaty when it was originally negotiated. A quarter-century later, in 1995, the NPT States Parties easily agreed to the treaty’s indefinite extension.

Constructivists generally argue that acceptance of a new international institution would come from a change in state identities or socialization into existing norms, both of which usually involve long-term processes. While such an approach may be useful in explaining the power of the NPT once it was established as an international norm, it is ill-equipped to explain the development of the NPT as a norm *per se*. Moreover, the NPT norm is quite unlike the norms constructivists usually study. Most international norms reinforce the bedrock constitutive norm of the international society of states: sovereign state equality. The non-proliferation norm violates this more fundamental norm of sovereign equality. It creates two classes of states: the nuclear “haves” and the nuclear “have-nots.” Why, then, have states accepted the NPT in such large numbers?

### **The Concept of Conditional Norms**

We suggest that the answer to this question lies in altering the typical constructivist understanding of norms. We agree with the constructivist focus on state identities and norms to explain outcomes. States are motivated to act in ways that are consistent with their identities, and norms provide appropriate guides to action. Moreover, identity groups such as transnational communities can be sites of learning, whereby domestic actors get new information and reformulate interests due to their interaction with international or transnational actors.

However, constructivists often do not appreciate how underneath the broad canopy of norm acceptance, individual states routinely attempt to bend or change rules and norms to suit their particular interests and situations. Often the choice states make in the face of growing international norms is not to completely accept or reject those norms, but rather to reformulate them as *conditional norms* that limit the appropriateness of a given behavioral prescription to certain types of actors. Norms are held by identity groups, but the actors to whom the norm is believed to apply can differ from the holders of the norm. While the holders of norms are always limited (because identity groups are limited), the subjects of norms can be limited or unlimited. When norms are

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<sup>†</sup> Quoted in William Epstein, “The Last Chance: Nuclear Proliferation and Arms Control,” (New York: The Free Press, 1976), p. 118.

supposed to apply to all types of actors, they are *unconditional*. When the subjects are limited, we can call such norms *conditional norms*. Conditions are critical because they delimit the type of actors for whom a behavioral prescription legitimately applies.

De facto conditional norms are very common in international society. There are very different international expectations for the behavior of Liechtenstein and Japan. De jure conditional norms are rather less common. They do exist, however, for instance in the veto power of the United Nations Security Council P-5 or the Kyoto Protocol's acceptance that poor countries need not restrain their carbon emissions. Still other conditional norms are highly institutionalized, but not as laws or treaties per se: for example, macroeconomic statistics used to be organized around two systems, the System of National Accounts (SNA), used by most Western countries, and the Material Product System (MPS), which was once the standard for the USSR and other Comecon (Council for Mutual Economic Assistance) member-states. A conditional norm delineated the appropriateness of each system based on the type of economy: capitalist economies used the SNA and the command economies used the MPS.

Sometimes these de jure conditional norms are imposed by the powerful to justify some type of advantage, and sometimes they are "weapons of the weak" that enable the latter to wriggle free from some general rule. What is most interesting from a theoretical perspective, however, is that states might actually sometimes accept such formal differences as legitimate, in contrast to the conventional constructivist assumption of the inviolability of the fundamental international legal norm of sovereign equality. We argue that states can sometimes accept conditional norms, not simply because they recognize the reality of power differentials between states but rather as part of an implicit international legal principle of "separate but equal." In other words, in some cases, *all* states can come to believe that it is proper to apply different rules to different states – indeed, that it is more proper than applying the same rules to all states. This matters for the measurement of international stability, because what standard constructivism would perceive as a tension or contradiction in international society, we contend can actually be a case of legitimacy in diversity.

### **NPT as a Conditional Norm**

We argue that the NPT is a conditional norm and that understanding it as such clarifies the bases for its success. For the NPT, the condition is very clear: states with nuclear weapons as of 1967 are allowed to have them, while other states are not. This condition is usually considered the basis for the treaty's inherent instability, but when conditions are understood as legitimating clauses that make different behaviors not only acceptable but also appropriate, the condition may be what gives the norm its power.

By the 1960s, the United States, USSR, and other NWS had for practical purposes rejected the idea of nuclear abolition, although they continued to give it lip service. However, they saw a mutual self-interest in promoting the concept of nuclear non-proliferation as a conditional norm, because they wanted to stop other states from acquiring these weapons while keeping their own arsenals. The NWS interest in promoting the NPT as a formalization of the non-proliferation conditional norm is

relatively clear, although it should be noted that two NWS, France and China, rejected the treaty as discriminatory and only joined it in 1992. However, the key to the NPT's success was its acceptance by the NNWS. How could this have happened? It was not just the result of great power sticks and carrots.

While different NNWS had different reasons for signing on, one case, West Germany, merits special attention. If West Germany had not signed the NPT, the treaty would have been judged a failure. And when West Germany did sign the NPT, many other states followed suit. So why did West Germany join? Many top politicians in West Germany, including longtime Chancellor Konrad Adenauer, were fervently opposed to the treaty, seeing it as blatantly discriminatory. It was thanks to Willy Brandt and the SPD that West Germany embraced the conditional norm that the superpowers had laid out in the NPT. Why? Because, as Brandt explained at the September 1968 Conference of the Non-Nuclear Weapons States in Geneva, he saw joining the NPT as a means to the achievement of honor in international society.<sup>‡</sup> Brandt argued that having nuclear weapons may give a state power, but it should not be seen as giving it honor. On the contrary, abstaining from having nuclear weapons was the courageous choice and therefore deserved the world's acclaim. In other words, Brandt reframed nuclear weapons possession/abstention as a measure of moral courage instead of material power, and in this way he could view the NPT's conditional norm as actually favoring West Germany. Since Brandt's 1968 speech, many diplomats have ascended to the rostrum of NPT review conferences to call attention to their states' honorable abstention from nuclear weapons, and to encourage the nuclear weapons states to join their side by casting off their dishonorable arsenals.

### **The Future of the NPT**

The concept of the NPT as a conditional norm suggests that the problem of instability identified by the NPT's critics may be much less severe than they think. The NPT does not necessarily violate the basic principle of sovereign state equality. States can come to understand that different rules are appropriate for different states in different contexts. Indeed, Willy Brandt taught the NNWS to conform proudly rather than begrudgingly to the norms the treaty sets for them.

Moreover, the non-proliferation conditional norm is much stronger now than it was in 1968. Although conditional norms may start out as creative and controversial instrumental strategies, over time they can come to be seen as simply normal, part of the natural order of international society. The success of the NPT today is not primarily based on states calculating whether or not to be in it, even if they probably did make such a calculation when they initially joined. Today, even states that may privately disagree with the non-proliferation norm do not find it easy to publicly reject it, for if they do so they risk social sanction not only by NWS but also by fellow NNWS.

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<sup>‡</sup> From Willy Brandt, "Konstruktiver Beitrag zur friedlichen Nutzung der Kernenergie," *Bulletin* (Presse- und Informationsamt der Bundesregierung) Nr. 109, September 4, 1968, pp. 932-4.

However, the lack of full understanding of the sources of the NPT's success, which is most marked among the NWS, may lead to actions that undermine the norm's stability in the future. For instance, the recent "exception" the Nuclear Suppliers Group (NSG), pushed by the United States, carved out for nuclear-armed India to import nuclear technology and other strategic technologies is quite problematic from a conditional norms perspective. Although India is a special case because it never joined the NPT, if states are free to choose which set of rules applies to them, the conditional norm will quickly lose its force. We can already see that the exception the NSG made for India has led China to support making an exception for Pakistan.

Meanwhile, Iran has certainly challenged the NPT by violating various International Atomic Energy Agency (IAEA) safeguards, perhaps on the way to building a nuclear weapon. However, in our view, the birth of an Iranian bomb would not necessarily undermine the conditional *norm* of non-proliferation. The norm against murder does not collapse just because a murder occurs. Indeed an Iranian nuclear breakout might actually strengthen the non-proliferation norm, by causing NNWS to line up and once again reaffirm their belief that non-proliferation is honorable and proliferation should be condemned – as happened after North Korea tested its bombs, for instance.

We do see a different, more subtle, challenge to the non-proliferation norm in the U.S. *reaction* to Iran's activities. The United States has essentially argued that Iran must cease enriching uranium due to its history of violating IAEA safeguards and its belligerent rhetoric. It has a point. However, Iran also has a point that the NPT permits all states to engage in nuclear development and even uranium enrichment for peaceful purposes. Willy Brandt himself fought tooth and nail to ensure that the acceptance of NNWS status would not imply any restrictions in terms of civil nuclear energy applications. We are not suggesting that Iran's IAEA safeguards violations should go unpunished, but rather that care must be taken to ensure that the punishments are not perceived by *other* NNWS as reshaping the NPT's commitment to civil nuclear energy, which might lead to the perception of the NPT as a codification of great power domination. In contrast to the United States, Russia has played a positive role in this regard by supporting the development of the Iranian nuclear reactor at Bushehr, which has a theoretically possible but unrealistic relationship to a possible eventual Iranian nuclear bomb.<sup>§</sup> Along these lines, including other NNWS such as Brazil and Turkey in the P5+1 group that negotiates with Iran (thereby making it a P5+3) would also be helpful.

Finally, although our conditional norms argument suggests that the non-proliferation norm can survive more or less indefinitely even if the NWS retain their arsenals, an attempt by one or more NWS to join the NNWS club would nonetheless greatly reinforce the norm. The recent actions of the United States and Russia on New START and their renewed discursive commitment to eventually abolishing nuclear weapons are therefore quite positive. These actions and statements directly support the

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<sup>§</sup> All indications are that if Iran tried to build the bomb, it would be with highly enriched uranium.

NNWS belief in not only the legitimacy but also the good sense of their choice of nuclear abstention, which is the ultimate foundation of the NPT's strength.