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Session One

Contending With the Challenges of Nuclear Proliferation



Background Memo

The NPT's Midlife Crisis

Council of Councils Annual Conference

May 24–25, 2021

Rakesh Sood, Observer Research Foundation

In March 2020, the Nuclear Nonproliferation Treaty (NPT) turned fifty. The tenth Review Conference (RevCon), originally scheduled for April and May, was postponed to January 2021 and is now tentatively planned for August 2021 amid continued monitoring of the COVID-19 pandemic.

The NPT is often described as the cornerstone of the global nuclear order. It is among the most widely adhered to global treaties. All countries except four (India, Israel, and Pakistan never joined, and North Korea withdrew in 2003) are parties to the NPT. Despite its enviable record, a sense of disquiet and uncertainty surround the RevCon and its future.

Shaping of a Global Order

Any global order needs two enabling conditions: a convergence of interests among the present major powers to define a shared objective and an ability to package and present it to the world as a global public good. The conditions for nuclear order and the NPT were no exception.

In 1963, only four countries (the United States, France, the Soviet Union, and the United Kingdom) had tested a nuclear device when U.S. President John F. Kennedy sounded the alarm that by 1975 there could be as many as twenty countries with nuclear weapons. The Soviet Union shared similar concerns. This convergence of interests between the two Cold War adversaries enabled the NPT negotiations.

To make nuclear order attractive as a global public good, it was packaged as a three-legged stool: nonproliferation, obliging those without nuclear weapons to never acquire them and accept full-scope safeguards; disarmament, requiring the five countries with nuclear weapons (the United States, China, France, the Soviet Union, and the United Kingdom) to negotiate the reduction and eventual elimination of their nuclear weapons; and peaceful use of nuclear energy, guaranteeing non-nuclear weapons states full access to peaceful applications of nuclear science and technology.

Evaluating the NPT

Since the NPT was concluded, only the four countries outside the NPT have acquired nuclear weapons, bringing the total number of nuclear weapons states to nine, far fewer than Kennedy feared in 1963. By this measure, the NPT has been enormously successful, even though it has no means of dealing with these four states.

Among the oft-cited successes of the NPT is the dramatic reduction in the number of nuclear weapons from a peak of over 70,000 warheads in early 1980s to around 14,000 at present, with the United States and Russia accounting for over 12,500 of them. However, these reductions were a result of bilateral negotiations between the United States and Russia, reflecting the state of their relations. No negotiations have ever been held within the NPT framework. In fact, during the first fifteen years of the NPT, the U.S. and Soviet arsenals increased from below 40,000 to over 65,000, making it clear that the nuclear disarmament leg of the NPT was being ignored as the United States and Soviet Union embarked on a nuclear arms race.

Some claim that the NPT helped strengthen the taboo against nuclear weapons. However, a closer examination of recently declassified papers indicates that since 1970, there have been over a dozen instances where the United States and Soviet Union came close to initiating a nuclear exchange, many of which were based on system errors or misperceptions about the intentions of the other. Even today, with some nuclear weapons maintained on hair-trigger alert, the risk of an accidental or inadvertent nuclear exchange remains.

Today, the nuclear taboo is being challenged as major nuclear powers undertake research and development (R&D) for more usable low-yield nuclear weapons. Ballistic missile defense, hypersonic systems that carry both conventional and nuclear payloads, and growing offensive cyber capabilities further blur the line between conventional and nuclear weapons.

Challenges Before NPT RevCon

The NPT has reached the limits of its success as far as the proliferation objective is concerned. Further, its packaging as a balanced three-legged stool stands exposed as a wobbly, one-legged stool, for the NPT delegitimized proliferation but not nuclear weapons.

The clearest reflection of this growing frustration among the non-nuclear weapons states party to the NPT was the humanitarian initiative spearheaded by a coalition of nongovernmental organizations (NGOs) and civil society to negotiate a treaty prohibiting nuclear weapons. The Treaty on the Prohibition of Nuclear Weapons (TPNW) was concluded in 2017 and entered into force in January 2021, making it the only multilateral nuclear treaty to emerge since the NPT fifty years ago. (The Comprehensive Nuclear-Test-Ban Treaty was concluded in 1996 but is yet to enter into force after twenty-five years, indicating its political infirmity.) Each of the TPNW's eighty-six signatories and fifty-four ratifying states are members of the NPT in good standing.

For the first time, an NPT RevCon will take place with a new, unignorable divide between states that rely on nuclear weapons (or nuclear-armed allies) for their security and states that believe nuclear weapons are a threat to global security and accept that the NPT cannot be the route to nuclear disarmament.

However, the five nuclear weapons states party to the NPT are convinced that the TPNW undermines the NPT even though the TPNW's 140 signatories and ratifiers provide legitimacy.

Other divisive political challenges for the RevCon include Iran and the Joint Comprehensive Plan of Action, which was unilaterally discarded by the Donald Trump administration; a push by non-nuclear weapons states for substantive reductions in nuclear arsenals; lack of progress on the 1995 initiative for the Middle East as a zone free of all weapons of mass destruction; a U.S. push for universal adherence to the International Atomic Energy Agency Additional Protocol; and North Korea's nuclear arsenal, among others.

Redefining Success

For the last fifty years, a substantive consensus outcome has been the criteria for a successful RevCon. Yet anticipating the difficulties of a consensus, the NPT supporters are suggesting that the definition of a successful outcome should be reconsidered.

The NPT record indicates that no consensus was reached in 1980, 1990, 2005, and 2015. In 1995, despite the failure to reach consensus on a comprehensive final document, the critical objective of an indefinite and unconditional extension of the NPT was achieved (it had an original duration of twenty-five years). Some use this outcome to argue that a consensus final document need not be a true measure of success. Conversely, the 2000 and 2010 RevCons reached consensus after difficult negotiations, but none of the agreed steps or recommendations were ever implemented. Even these past agreements are unlikely to be endorsed today. The convergence of interests among the major powers has broken down, removing the basic political pre-condition for any progress.

Nuclear weapons-dependent states' suggest setting a lower bar for a successful outcome. Merely holding a conference should be enough, according to some, as this would avoid the acrimonious and time-consuming negotiations that create undue expectations. However, such an approach is at best a temporary resolution. Any permanent resolution would lie in accepting the limitations of the NPT and seeking to join the TPNW proponents in a constructive dialogue. This needs imaginative approaches and a shift from the zero-sum model of negotiation to a win-win outcome, preserving the NPT while looking beyond it. A mindset change is necessary for the NPT to overcome its midlife crisis.

Reinventing Nuclear Disarmament and Nonproliferation as Cooperative Endeavors

April 21, 2021

Łukasz Kulesa, Deputy Head of Research, Polish Institute of International Affairs

Council of Councils Global Governance Working Paper

The Challenge

Although virtually all countries—including the 191 states that are parties to the Nuclear Nonproliferation Treaty (NPT)—support the goal of complete nuclear disarmament, many disagree on the best way to achieve it. Two positions have emerged, with the five nuclear weapons states of the NPT (the United States, China, France, Russia, and the United Kingdom) and their allies on one side and supporters of the Treaty on the Prohibition of Nuclear Weapons (TPNW, [in force as of January 2021](#)) on the other side. The nuclear weapons states and their partners promote a gradual approach to disarmament and emphasize the continued importance of nuclear deterrence for their security, whereas supporters of the TPNW push for the abolition of nuclear weapons and an unconditional rejection of nuclear deterrence.

The broader increase of tensions between major powers and recent actions by some nuclear weapons states—including Russia's [continued development of new nuclear weapons technology \[PDF\]](#), the collapse of the Intermediate-Range Nuclear Forces Treaty, the [United Kingdom's decision](#) to increase the cap on its nuclear warheads, and the inability of the United States and Russia to agree on further nuclear reductions beyond the New Strategic Arms Reduction Treaty (New START)—have made a number of observers skeptical regarding the prospects, or indeed wisdom, of nuclear disarmament. North Korea's advanced nuclear weapons program and Iran's expansion of its nuclear activities beyond the limits of the Joint Comprehensive Plan of Action (JCPOA) add to the list of challenges.

A complete breakdown of the nonproliferation regime is unlikely. However, external crises and differences between nuclear weapons states and nonnuclear weapons states could seriously weaken the regime. A climate of mistrust will complicate the reduction of nuclear stockpiles, damage efforts to reduce nuclear risks, and impede a collective international response if, or rather when, a new nuclear proliferation threat arises. This in turn also increases the danger of one of the possessors actually using nuclear weapons.

Still, not all news is bad. The NPT Review Conference—which takes place every five years and charts the course for both nonproliferation and disarmament efforts—was postponed from [April 2020 to August 2021](#). This delay created some breathing room to revive the nuclear disarmament and nonproliferation agenda.

The recent [five-year extension](#) of the U.S.-Russia New START treaty also bodes well for the future. The Joe Biden administration is likely to put the United States on the path to arms control dialogue with

Russia and to reduce the role of nuclear weapons in the U.S. security strategy. One should also [expect](#) a more constructive U.S. approach toward its NPT obligations than the one demonstrated by the Donald Trump administration, as well as some willingness to reduce tensions over the TPNW.

Recommendations

To reverse the deterioration of trust and strengthen both nonproliferation and disarmament efforts, nuclear weapons states and nonnuclear states should pursue the following recommendations.

All NPT parties should recommit to the treaty's goals. A high-level recommitment to the goals of the NPT would benefit the regime itself and the upcoming review conference. The treaty is often described as [the cornerstone of the nuclear order](#). It provides a variety of goals: non-dissemination of nuclear weapons, technology, materials, and know-how by the possessors paired with commitment by nonnuclear participants to refrain from developing or acquiring these weapons; agreement by all parties to cooperate on peaceful uses of nuclear energy and technology; and commitment to disarmament. Article VI pledges “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.” These three pillars of the NPT are mutually reinforcing—and a lack of progress or setback in one area will inevitably harm other parts.

Given the disagreements over the relative importance of specific pillars (with some countries calling for concentrating on preventing nuclear proliferation and others on disarmament), NPT parties should focus their attention on areas of agreement. These points include the basic rationale underpinning the treaty (namely, avoiding the danger of nuclear war), the logic of its comprehensive three-pillar construction, and its continued relevance fifty-one years after entry into force. A joint recommitment declaration made by heads of state before or at the beginning of the review conference would provide a useful guideline for their diplomats: to work constructively toward strengthening the regime and to not obstruct its operations for parochial reasons, such as scoring points in bilateral or regional disputes. The leaders from the five permanent members of the UN Security Council (the United States, China, France, Russia, and the United Kingdom, known as the P5) could spearhead such a statement by committing themselves to the [Ronald Reagan–Mikhail Gorbachev principle](#) that “a nuclear war cannot be won and must never be fought.”

The P5 should announce new nuclear risk reduction measures. Over the past few years, the five NPT nuclear weapons states have declared interest in nuclear risk reduction measures but taken limited action. It is time to move from words to more concrete deeds. The UN Institute for Disarmament Research [suggests a variety of risk reduction measures](#). These measures range from a simple increase of transparency on nuclear stockpiles and doctrines, agreements between nuclear states on better political-military and military-to-military communication, and notifications of nuclear-related activities, all the way to restraint pledges and changes in operational procedures (for example, lowering nuclear forces readiness or slowing down decision-making on missile launches) to prevent incidents or accidents.

Before the NPT Review Conference in August 2021, the P5 should announce a set of risk reduction measures. These would most likely be modest, perhaps focusing on improving dialogue among

themselves and providing more transparency on stockpiles, but they should move beyond re-listing their past achievements. [Commitments \[PDF\]](#) to not increase the number of nuclear weapons systems and to refrain from nuclear testing would be much more significant, especially given concerns about the growing size of some nuclear arsenals and U.S. allegations about [Russia's nuclear testing record](#). If the P5 is unable to produce a joint statement, individual nuclear weapons states should move ahead with unilateral or bilateral risk reduction pledges and actions. This activity could challenge others to follow suit.

The United States and Iran should restore the JCPOA, and all NPT members should work toward universalizing some provisions of the deal. The JCPOA was an agreement reached in 2015 to address concerns that Iran could break from the NPT and build nuclear weapons. The agreement [elegantly](#) addresses this threat without infringing on Iran's right to enjoy the benefits of peaceful nuclear use. Reaching an agreement required painfully negotiating a mix of voluntary restraints on Iran's nuclear activities and an increased level of scrutiny from the International Atomic Energy Agency (IAEA). However, roughly a year after the United States unilaterally withdrew from the agreement in 2018, Iran [gradually ceased to comply](#) with specific elements of the JCPOA. As of March 2021, the proliferation risks resulting from the advancement of the Iranian program and its limitation of IAEA activities in the country have increased substantially. Despite the arrival of the new Biden administration, no clear diplomatic prospects for a revival of the agreement have emerged.

The JCPOA remains an experiment in managing the relationship between the nonproliferation and peaceful uses pillars of the NPT regime. If it fails, one can expect an increase in dual-purpose nuclear programs—with ostensibly civilian aims, but designed to leave open a quick route to nuclear weapons capabilities should such a decision be made. If the JCPOA holds, it not only would reduce the nonproliferation challenge specific to Iran but also should provide a powerful incentive to universalize voluntary restraints on sensitive nuclear technologies, such as uranium enrichment, reprocessing of nuclear fuel, plutonium extraction, and dual-purpose research; it would also support the case for increasing the verification capacity of the IAEA.

Nuclear weapons states should recognize the TPNW's contributions to the NPT regime. The TPNW is based on a [humanitarian discourse](#) highlighting the catastrophic consequences of any use of nuclear weapons. Unlike the NPT, which accepted the existence of five nuclear weapons states and aimed to integrate them within the regime (albeit with disarmament obligations), the TPNW rejects nuclear weapons and the practice of nuclear deterrence. Nuclear weapons states and their allies covered by a nuclear umbrella, such as North Atlantic Treaty Organization (NATO) members, predictably [opposed the TPNW](#), alleging that it could undermine the existing nonproliferation and verification regimes.

Prolonging this confrontation is in no one's interest. The TPNW creates [specific obligations](#) for its members—but it does not generate universal legal norms. At the next NPT Review Conference, recognizing the TPNW's entry into force and its contribution to the goals of the NPT is the obvious starting point. All sides would benefit from scaling down their confrontational narratives. The TPNW should be seen not as an alternative or threat but as a valuable addition to the NPT regime. Some of the questions the humanitarian discourse poses—such as how to assist victims of nuclear explosions, weapons production, and tests—should be taken up in the NPT forum. At the same time, members of

the TPNW should be ready to work with NPT countries that do not share their views to identify the next steps for a gradual approach to disarmament. They should also promote the highest possible nonproliferation standards among themselves, particularly the Additional Protocol to IAEA safeguards agreements, and work to address the TPNW's own verification and enforcement challenges.

The United States and Russia should agree on new nuclear arms reduction objectives. As possessors of over 90 percent of the world's nuclear weapons, the United States and Russia have a special responsibility. Although the gradual reduction in their arsenals falls short of NPT disarmament obligations, critics should not dismiss the progress they make. Universal nuclear disarmament is difficult to imagine without prior minimalization of U.S. and Russian nuclear stockpiles.

Following the swift extension of New START, both sides should get ready to resume strategic stability talks. They should agree at an early stage that further reductions of nuclear weapons will constitute the main objective of discussions, even if they plan to cover a broader set of issues (including some conventional weapons and cyberspace). Presidents Joe Biden and Vladimir Putin should publicly direct their negotiating teams to strive for meaningful nuclear reductions involving [categories not included in previous agreements](#), particularly the so-called nonstrategic nuclear weapons and non-deployed warheads kept in storage.

Policymakers and experts should identify options to bring China and other countries into the nuclear arms control regime. While some experts may have exaggerated the challenge by raising alarm over the allegedly fast-growing Chinese nuclear arsenal, [China's lack of transparency and modernization efforts justly fuel anxiety](#). So far, the United States' attempts to work with China bilaterally or initiate trilateral U.S.-China-Russia negotiations have been rebuffed, with China arguing that its arsenal is much smaller than the United States'. However, the United States and Russia will have difficulty making greater nuclear reductions in the absence of more clarity about the trajectory of the development of China's nuclear arsenal. Russia has also raised questions about the inclusion of France and the United Kingdom in the reductions process.

A simple extension of the bilateral U.S.-Russia framework to China does not appear to be feasible. Negotiators could start by identifying a practical arms control agenda that would be attractive to China, probably involving questions of regional military balance and the U.S. military presence in Asia. Another option would be to broaden the group participating in the dialogue on further reductions. For example, once the United States and Russia make headway toward their new bilateral agreement, they could announce their intention to formally invite China, France, and the United Kingdom to talks.

Parties to the NPT and nuclear-armed states outside the NPT should jointly develop a credible road map to nuclear zero. Any decisive movement toward nuclear disarmament would require including nuclear-armed states that are not party to the treaty—India, Pakistan, and Israel (noting the latter's policy of neither confirming nor denying possessing nuclear weapons)—as well as addressing the special case of North Korea. Skeptics question the merits of even discussing global disarmament in the era of great power competition and increasing tensions between some nuclear-armed states. However, an in-depth examination of political, strategic, legal, economic, technical, and military conditions for nuclear disarmament could demonstrate the seriousness of the nuclear-armed states' disarmament pledges and

offer them an opportunity to discuss what a viable alternative to current deterrence policies could look like.

Discussions could be held under the auspices of the [Creating an Environment for Nuclear Disarmament](#) (CEND) initiative, launched by the United States in 2018. CEND has hosted representatives from more than thirty countries (including the P5, India, Israel, and Pakistan) for informal discussions. Although it remains to be seen whether the Biden administration will continue to support the initiative, CEND or its successor could identify the broader conditions that would stabilize the international security environment enough for the nuclear weapons possessors and their allies to formulate a global road map regarding stages and sequencing of nuclear disarmament. Designing new weapons of mass destruction-free zones in different parts of the world could be part of such an exercise.

Conclusion

These recommendations could help recast nuclear nonproliferation and disarmament as common endeavors that recognize and address each country's legitimate interests and priorities. The current regime will not survive if it is seen as a vehicle to protect the nuclear status quo for a few nuclear weapons states that only pay lip service to disarmament. Through their actions, those countries have to convince others that they mean business. The regime will also not be sustainable if some nonnuclear weapons states use it only to pressure nuclear weapons states to disarm, ignoring the reasons behind their reliance on nuclear deterrence. A comprehensive and balanced agenda is the only way forward.

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FOREIGN AFFAIRS

The Age of Strategic Instability

How Novel Technologies Disrupt the Nuclear Balance

BY ELIZABETH SHERWOOD-RANDALL

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For decades, American policymakers and military planners have focused on preserving what is known in the nuclear lexicon as “strategic stability.” During the Cold War, especially as mutual assured destruction became accepted logic between the United States and the Soviet Union, the pursuit of strategic stability provided a framework for managing the existential risks associated with massive nuclear arsenals. Under conditions of strategic stability, each superpower recognized that its adversary could massively retaliate against a nuclear first strike—which created a disincentive to resorting to nuclear weapons. Preserving confidence that each side had a “second-strike capability” thus became essential. And even with the collapse of the Soviet Union in 1991, strategic stability has continued to structure

thinking among policymakers and planners about how to create predictability in the nuclear relationship and reduce incentives to escalation.

Yet as the quest for strategic stability has continued to guide defense planning and arms control, it has become increasingly untethered from technological and geopolitical realities. Since 2011, tensions have been mounting in the U.S.-Russian relationship, giving rise to the very real possibility that some combination of deliberate actions, misunderstandings, miscalculations, and accidents could lead to nuclear escalation and catastrophe. After several decades of rules, agreements, norms, and human relationships fostering prudent behavior and shrinking nuclear arsenals—from the Cold War peak of more than 70,000 warheads, each side now retains between 6,000 and 6,500—arms control is being undermined and abandoned. Last August, U.S. officials withdrew from the Intermediate-Range Nuclear Forces Treaty, in reaction to evidence of Russia's noncompliance. In May, U.S. President Donald Trump announced his intention to withdraw from the Open Skies Treaty (which has allowed unarmed observation flights, in order to enhance transparency). The sole remaining U.S.-Russian agreement is New START, which limits the aggregate number of strategic offensive arms in each arsenal—and if that is not renewed in early 2021, it too will collapse. Meanwhile, new technologies are presenting their own challenges to long-standing thinking about escalation.

Accordingly, the traditional focus on strategic stability may no longer be sufficient to manage today's risks. Even with the resurrection of arms control agreements now being abrogated or dismantled, there is reason to doubt that strategic stability, at least as understood in the old paradigm, could be reestablished or preserved.

UPENDING THE PRECARIOUS BALANCE

To fathom the unprecedented nature of the challenges ahead, it is important to understand the logic that governed classic strategic stability—a logic driven by the imperative of discouraging escalation between two nuclear-armed superpowers. In this construct, both the United States and Russia (or, until 1991, the United States and the Soviet Union) believed that the other side lacked the capacity to threaten the “survivability” of its nuclear forces: each knew that after a nuclear attack, it would still have sufficient nuclear warheads and delivery systems (and the command-and-control network necessary to launch them) to retaliate. As a result, each side retained confidence that its second-strike capability would be preserved. This mutual recognition created a disincentive to strike first, since both Moscow and Washington knew that any nuclear attack would be met with a nuclear response—thereby maintaining a perilous but thus far real equilibrium.

That long-standing logic has been upended by new technologies and the spread of competition to new domains. For nuclear strategists of an earlier era, whatever the exigencies of calculating throw-weight, first- and second-strike capabilities, and missile ranges, the basic considerations were relatively simple: there was a fairly linear escalation ladder from conventional to nuclear weapons, with just two players involved. Policymakers and defense planners today have to contend with a system of complex interactions that are far less predictable and therefore harder to manage or control. Preserving stability and avoiding escalation become exponentially more difficult in this environment.

There is now a broader array of capabilities that can be considered “strategic”—meaning that their use can have consequences significant enough to potentially impair or disable the target’s ability to respond effectively and thereby to deter aggression. Once, this was the unique

purview of nuclear weapons. Now, advances both in nuclear weapons and their means of delivery and in other technologies and capabilities create new uncertainties that undermine deterrence and potentially create incentives for escalatory behavior.

On the classic nuclear front, Russia is working to achieve prompt, penetrating, and precise strikes on distant targets. This effort involves work on heavy intercontinental ballistic missiles, multiple hypersonic delivery systems, and novel weapons delivery capabilities, such as a nuclear-powered, nuclear-armed underwater drone. The Chinese nuclear arsenal is considerably smaller but also expanding and will benefit from China's investments in advanced technologies with military applications.

Beyond nuclear, cyberspace is the realm that has garnered the most widespread public attention thus far. Cyberspace is both a warfighting domain and a capability that can be deployed in other domains. With respect to strategic stability, cyber gives adversaries the ability to disable a country's way of life by stealthily attacking its "soft underbelly" rather than by using classic, observable military capabilities. U.S. policymakers and strategists have begun discussing whether the United States should threaten a nuclear response to a debilitating wide-scale attack on energy infrastructure, with the goal of deterring any such attack. Adding this to the list of *casus belli* for nuclear response could serve as a deterrent, but it would also open up a new escalatory pathway without clear firebreaks.

Space has also become a contested domain, with similarly worrying implications for strategic stability. Space capabilities are integral to enabling or disabling critical capabilities in other domains; satellites, for example, are essential to both military and civilian communications, and adversaries have targeted them in order to challenge U.S. dominance. American defense planners are wrestling with the implications for deterrence and stability:

what if, for example, U.S. satellites that provide early warning of missile launches were damaged or disabled?

Biotechnology is another area with potentially strategic implications. Innovation has spawned new capabilities that have enormous positive potential, especially in advancing health science and generating new therapeutics for the prevention and treatment of a wide range of diseases. However, these developments also have a darker side and could be weaponized with potentially strategic effects. At the end of 2016, the President's Council of Advisors on Science and Technology offered a warning: "While the ongoing growth of biotechnology is a great boon for society, it also holds serious potential for destructive use by both states and technically-competent individuals with access to modern laboratory facilities." For example, if a deadly virus was discovered to have been engineered and conveyed to a specific country, would that be interpreted as a strategic attack that would warrant a strategic response? There is no established logic to a reality in which new technologies can have the kind of existential impact that was once unique to nuclear weapons.

THE INSTABILITY OF COMPLEXITY

The development and interplay of these new capabilities present significant challenges to policymakers and defense planners whose training and experience have been based in linear nuclear strategizing. At the moment, some of the most forward-looking thinking is taking place in U.S. military organizations charged with ensuring the nuclear deterrent and facing the practical, operational challenges presented by emerging adversarial capabilities. General John Hyten, then commander of U.S. Strategic Command and current vice chairman of the Joint Chiefs of Staff, observed in 2017, "It's now a multipolar problem with many nations that have nuclear weapons, . . . and it's also multidomain. . . . We have adversaries that

are looking at integrating nuclear, conventional, space and cyber, all as part of a strategic deterrent. . . . We can't [assume] that having 1,550 deployed strategic nuclear weapons under the New START Treaty somehow deters all our adversaries. It doesn't."

A useful framework for taking stock of this new reality comes from work on understanding the behavior of complex adaptive systems (CAS). A complex adaptive system is a system that is inherently anarchic, lacking in central control or coherent governance. Yet its elements interact and impact one another and the entire system. Originally developed to model systems that defied computer-based simulation, CAS evolved to anticipate heterogeneous and often multidimensional system dynamics in a broad range of contexts.

Some key characteristics of complex adaptive systems are especially relevant to a warfighting environment. They involve interactions between or among asymmetric capabilities, and what happens at the level of the entire system cannot necessarily be predicted by the nature of the components of that system. This means that understanding the dynamics of nuclear escalation will not necessarily allow a decision-maker to understand what happens when nuclear, cyber, and biological threats interact. In addition, the response of a system to a specific input may be disproportionate to that input, which makes outcomes unpredictable. In a conflict, what one side perceives to be a limited, measured action might have an outsize effect, leading to misinterpretation and escalation.

Altogether, it has become far more difficult to predict behaviors, interactions, and outcomes. With more and new players, domains, and capabilities, and no rules of the road governing usage, classical notions of strategic stability offer scant guidance. Deterrence now has to work across a much broader and more complex landscape. And less predictability can lead

to preemptive behavior, with catastrophic consequences, and more hedging, which can accelerate arms races, as nations seek confidence that their own interests are protected when adversaries field new weapons.

BEYOND ARMS CONTROL

Accordingly, simply returning to traditional arms control will be far from adequate to address the dangers of today's and tomorrow's realities. Arms control among the major nuclear powers should remain a goal, but policymakers will also have to enlarge the problem set in order to effectively address the interplay of existing and new capabilities.

The United States can play a major leadership role in both reducing tensions and building new norms. U.S. strategists and planners need to undertake a broad and integrated effort to develop a framework for synchronizing deterrence across multiple platforms—and for developing a related framework that addresses the implications for strategic stability. This will require working through a wide range of scenarios and exploring multiple escalation pathways, and doing so in coordination with allies in order to build confidence and predictability and avert preemptive escalatory behavior in a far more dynamic environment.

Washington should also try to start a new high-level dialogue with Moscow about strategic stability, despite the current state of the U.S.-Russian relationship. During other tense moments in the past, nuclear talks have helped reestablish predictability, created a check on arms racing, and ultimately enabled each to be confident that it had adequate capabilities to hold the other at risk, which discouraged escalatory behavior and preemptive first strikes. At times, such conversations have even succeeded in persuading both sides to reduce their reliance on nuclear weapons. If government-to-government relations are too fraught to begin these discussions, Track II dialogues could be used to generate initial options.

China poses a very different challenge. While the United States and Russia retain the world's largest nuclear stockpiles and have decades of experience in managing their strategic competition, China has an estimated arsenal in the low couple of hundreds. Given the substantial asymmetry in the nuclear domain, the focus with China must be on the growing competition for the technology edge in many of the new strategic domains identified here, including cyber, space, and bio, and in the enabling technologies of future warfare such as artificial intelligence and quantum computing. In order to avoid future arms racing that mimics the madness of the height of the Cold War, the United States and China should begin a serious exchange about establishing guardrails and potential constraints on the most destabilizing capabilities.

The United States and other countries with substantial strategic arsenals bear a unique responsibility for managing these new geostrategic and technological realities. Over time, dialogues among leading powers about the range of new capabilities could produce a comprehensive and integrated view of the battle space that enables thorough consideration of interactions that are possible across multiple domains. If sustained by determined leadership and informed by science, these processes could eventually lead to the creation of a more stable overall balance.

As anyone who has taken part in U.S. strategic exercises knows, the timeline for making decisions about launching nuclear weapons in an actual crisis would likely be very short, with inadequate information and immense pressure to act. Given the proliferation of new warfighting tools with strategic effects, American leaders now have to consider even more complex conditions—and yet still find ways to manage uncertainty, reduce the risks of miscalculation, and strengthen incentives for rational behavior and restraint. Only by doing so, and working to develop common

understandings with allies and adversaries alike, can they reestablish confidence that they can avert escalation that may otherwise engulf the world.

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RUSSIA AND GLOBAL SECURITY RISKS

EXPERT OPINIONS

From the Cold War Era to a New Nuclear Weapons Limitation Mechanism

17.04.2020

Richard Weitz , Tamara Kolesnikova

Is it possible to move from the bilateral relations of the Cold War era to the creation of a new, multilateral system for limiting nuclear weapons? Russia and the United States have faced a number of fundamental problems that require deep rethinking. In recent decades, both states have maintained a range of arms control agreements that have ensured the nuclear safety of many countries. These agreements were mainly based either on a universal model, such as the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), or existed as a result of bilateral cooperation. However, this effective system has been destabilised by a number of factors, of which it is advisable to single out the main ones: the return to a rivalry between the superpowers, the development of superior weapons technology, and its broader distribution. First of all, it is necessary to note a sharp increase in the competition between the great powers, which has manifested itself in mutual accusations regarding the fulfilment of the existing agreements.

At the same time, China and Russia have reached an unprecedented new level of defence cooperation. They are increasingly negative about the extended deterrence guarantees that the US provides to its allies in Europe and Asia. The argument that the United States not only protects the countries under the American “nuclear umbrella,” but also reduces their desire to develop their own nuclear programmes is no longer convincing enough for Beijing and Moscow. China and Russia also share concern over the American Missile Defence (ABM) system, are critical toward the sanctions policy, even if it affects third parties and is rooted in nuclear non-proliferation considerations. At the moment, the only areas where Russia, the United States and China have come to an agreement are horizontal nuclear non-proliferation among other states or non-state actors and rejection of a treaty banning nuclear weapons. The development and implementation of the latest military technology is another destabilizing factor in the arms control system. Currently, there are

types of weapons that are not nuclear, but have equal potential in conflict and are comparable in combat effectiveness to nuclear weapons. First of all, there are concerns about strategic missile defence systems that undermine the offensive-defensive balance. In addition, strike weapons and cyber weapons do not at all fit into the existing arms control framework. Finally, the proliferation of modern military technology outside of Russia and the United States also poses a serious challenge. Despite the difference in views between the Russian Federation and the United States, Moscow and Washington are increasingly striving for an expanded approach.

In particular, China is the most worrisome, and is seen as a major long-term threat to the US. The Trump administration has accepted the Russian argument that any arms control system should also cover China. Beijing is building up its nuclear potential and resolutely rejects participation in the arms control process, citing the incomparable scale of the nuclear resources of the Russian Federation, the United States and China. However, it is known that China is already ahead of Russia and the United States in the development and creation of medium-range ballistic missiles, which are the basis of the country's arsenal.

The Strategic Offensive Arms Treaty (New START) expires in February 2021. If the New START expires without a replacement or extension, Moscow and Washington, for the first time in half a century, will not have a valid bilateral strategic nuclear arms control treaty. The prolongation of this agreement will provide the Russian Federation and the United States with additional time to resume formal multilateral negotiations regarding the discussion of a more comprehensive agreement on further restrictions on nuclear weapons with the possible inclusion of new countries and weapons systems in the framework of a future treaty. Some Russian experts note that it is not possible to replace the agreement on the reduction of strategic offensive weapons before the expiration of the current version. It will take at least six months for Russia to formally extend the existing contract by amending the relevant federal law. However, if that happens, both parties can continue to observe the provisions of the agreement while waiting for ratification; this is what was done in 2010-2011. Over time, however, it will be necessary to move beyond the bilateral approach established during the Cold War to the creation of a new multilateral system for limiting nuclear weapons and developing functional mechanisms to ensure the mutual control of their implementation. In the foreseeable future, given the confident rapprochement between Russia and China, Moscow can play an important role in maintaining a dialogue with Beijing to increase transparency and mutual understanding between the three superpowers; in particular, to share positive experiences on key arms control issues, including a verification mechanism. Such consultations could reduce Washington's (and Moscow's) concern over military plans and the pace at which China builds up its nuclear missile arsenal. The Valdai Discussion Club could be a suitable platform for research on this issue.

Views expressed are of individual Members and Contributors, rather than the Club's, unless explicitly stated otherwise.

CONFLICT AND LEADERSHIP

EXPERT OPINIONS

Nuclear Arms Control in the 2020s

06.04.2021

Steven Pifer

The agenda for nuclear arms control and related issues in the 2020s is a broad one. As the United States, Russia and others figure out how to maintain and enhance strategic stability in a multi-player, multi-domain world, Washington and Moscow will continue to have a central role, writes [Steven Pifer](#), a fellow at the Robert Bosch Academy and a retired US Foreign Service officer.

The Biden administration sees arms control as a tool that can advance security and stability. It will seek to engage Russia on further nuclear arms reductions and other measures. Arms control in the 2020s will reflect continuity with earlier efforts—nuclear arms reductions will remain a bilateral matter between Washington and Moscow—but also contain new elements. That reflects the fact that strategic stability has become a more complex concept.

Start with Strategic Stability

Donald Trump was the first American president in 50 years to reach no agreement in the area of nuclear weapons. President Biden sees arms control as an important policy tool. On his first full day in office, he agreed to extend the 2010 New Strategic Arms Reduction Treaty (New START) for five years. His administration plans to do more. On February 3, Secretary of State Blinken [said](#) Washington would “pursue with the Russian Federation, in consultation with Congress and US allies and partners, arms control that addresses all of its nuclear weapons.”

This will not happen immediately. The administration needs to get its team in place. It will conduct a review of US programs and doctrine, which may be broader than the nuclear posture reviews conducted by past administrations.

The first serious US-Russian engagement on nuclear arms issues will likely occur in strategic stability talks. The classic definition of strategic stability is a situation in which neither side has an incentive, in a severe crisis or conventional conflict, to use nuclear weapons first. For five decades beginning in the 1960s, strategic stability was based largely on comparing US and Soviet strategic offensive nuclear forces. If each side had the ability, even after absorbing a massive first strike, to retaliate with devastating consequences, neither had an incentive to use nuclear weapons.

Third-country nuclear forces such as China need to be factored in. In addition to nuclear weapons, the model should take account of missile defense, precision-guided conventional strike, space and cyber developments.

US-Russian strategic stability talks should address all these factors. They should also address doctrine. Case in point: escalate-to-deescalate. Most Russian experts assert that this never became official Russian doctrine. However, the Pentagon believes it has, and that influenced the 2018 US nuclear posture review. At the least, each side appears to believe that the other has lowered the threshold for using nuclear weapons. That should leave no one comfortable.

Nuclear Arms

Formal nuclear arms negotiations will, for the foreseeable future, remain a bilateral US-Russian matter. That is due to the disparity in numbers. [According to the Federation of American Scientists](#), the United States has about 3,600 nuclear warheads in its active stockpile, while Russia has about 4,300. No third country has [more than about 300](#).

The Trump administration tried to bring China into a US-Russia negotiation, but it never articulated a plan for doing so. That is no surprise. Washington and Moscow would not agree to reduce to China's level, nor would they agree to legitimize a Chinese build-up to their levels, and China would not accept unequal limits.

New START caps the United States and Russia each at no more than 700 deployed intercontinental ballistic missiles (ICBMs), submarine-launched ballistic missiles (SLBMs) and nuclear-capable bombers and no more than 1,550 deployed strategic warheads. Those limits will remain in force until February 2026.

However, New START's limits do not cover 60-65 percent of the active nuclear stockpiles of the two countries. Reserve (or non-deployed) strategic nuclear warheads, and non-strategic nuclear warheads—whether deployed or non-deployed—are unconstrained.

After the Cold War, the United States dramatically reduced its non-strategic nuclear weapons, eliminating all sea-based and land-based systems. Today, the only US non-strategic nuclear weapon is the B61 gravity bomb. Russia, on the other hand, [maintains](#) a large number and variety of non-strategic nuclear warheads—close to 2,000 for land-, sea- and air-based delivery as well as for defensive systems. This raises concern that Russia might be postured to use such weapons in a conflict.

The US military maintains more reserve strategic warheads. This reflects a desire to hedge against technical surprises or adverse geopolitical developments. The US military has implemented New START reductions in a manner that would allow it, should the treaty collapse, to add or “upload” warheads on ICBMs and SLBMs that now carry fewer than their capacity. As Russia modernizes its strategic ballistic missiles, it also is [expanding](#) its upload capacity.

The logical next step for the United States and Russia would entail negotiation of an agreement with an aggregate limit covering all their nuclear warheads. (Retired but not yet dismantled warheads could be dealt with separately.) An aggregate limit could offset reductions in Russia's numerical advantage in non-strategic nuclear warheads with reductions in the US numerical advantage in non-deployed strategic warheads.

For a notional agreement, assume an aggregate limit of no more than 2,500 total nuclear warheads. Within that aggregate, there could be a sublimit of no more than 1,000 deployed strategic warheads on deployed ICBMs, SLBMs and any new kinds of strategic systems with deployed warheads—the weapons most readily launched. This approach would treat bomber weapons as non-deployed, since they are not maintained on board aircraft. Ideally, all nuclear weapons other than those on deployed strategic delivery systems would be kept in storage. A new agreement could also lower the New START limits on deployed delivery systems and deployed and non-deployed launchers.

This would be ambitious. That said, it would leave each nuclear superpower with eight times as many nuclear weapons as any third country. Even if the agreement did not entail such dramatic reductions, the structure would, for the first time, capture all US and Russian nuclear warheads.

Washington and Moscow could ask China, Britain and France to undertake unilateral commitments not to increase their nuclear weapon numbers as long as the United States and Russia were reducing theirs and agree to limited transparency measures to provide confidence that they were abiding by those commitments.

This US-Russian agreement would require new verification measures to monitor numbers of nuclear weapons in storage. That likely will make both sides' militaries uncomfortable. But both have adjusted to uncomfortable monitoring measures in the past.

Some arms control experts assess that an agreement limiting all nuclear weapons, particularly non-strategic nuclear arms, is too ambitious and have suggested alternative approaches. One would expand New START's limits to capture systems such as intercontinental ground-launched boost-glide missiles and nuclear-powered torpedoes, ban other new kinds of strategic systems, and reduce the ratio of deployed strategic warheads to deployed strategic delivery systems, but would not attempt to [constrain non-strategic nuclear weapons](#).

[Another alternative](#) would require that non-strategic nuclear weapons be relocated away from bases with associated delivery systems to a small number of storage sites, with monitoring activities designed to verify the absence of nuclear weapons at the bases housing delivery systems, not at confirming or monitoring the number of weapons in storage. While originally suggested for Europe only, it could be broadened to apply on a global basis.

A third alternative would simply seek to lower New START's limits. Hopefully, however, the US and Russian governments will demonstrate greater ambition.

Other Possible Issues on the US-Russia Agenda

Arms control may enter new territory in the 2020s on issues and types of weapons that, while not nuclear arms, still affect strategic stability. They could be discussed in US-Russian strategic stability talks. If a mandate were agreed, they could be spun off into separate negotiations.

One set of issues concerns missile defense. The US ground-based mid-course defense (GMD) system is designed to defend against rogue states, such as North Korea, not against a Russian or Chinese ballistic missile attack. Russian officials in the past have nevertheless indicated an interest in constraining missile defenses. Whether they will insist on negotiating on missile defense in connection with a next round of nuclear arms negotiations remains to be seen.

US missile defenses now and for the foreseeable future pose no serious threat to Russian strategic ballistic missiles, a point Russian officials sometimes appear to acknowledge. (China, with a much smaller strategic force, has greater grounds for concern, though the performance of GMD system has not been particularly good.) On the other hand, it would not seem difficult to craft an agreement covering strategic missile defenses such as the GMD system and Moscow missile defense system that would apply constraints but still leave the United States room for capabilities to defend against a North Korean ICBM attack. What would prove difficult would be the Washington politics, where Republicans oppose any limits on missile defense.

Another issue is precision-guided conventional strike weapons. In some cases, these can fulfill missions that previously required nuclear weapons. Air- and sea-launched cruise missiles have been in the US inventory for decades and now in the Russian inventory. Both sides are developing hypersonic weapons. With the demise of the 1987 Intermediate-range Nuclear Forces Treaty, there is the 9M729 ground-launched cruise missile and likely other future intermediate-range missiles. It would be difficult to devise an arrangement that constrained all such weapons, but US and Russian officials might consider whether a subset poses a particular threat to strategic stability and should be subject to negotiation.

One possibility would seek to ban nuclear-armed intermediate-range missiles. Another possibility, though it has drawbacks, would build on the Russian idea for a moratorium on the deployment of intermediate-range missiles in Europe, provided that it would mean relocation of 9M729 missile systems out of Europe.

Operations in space—used for early warning, command, control and communications and other purposes—also can affect strategic stability. A broad agreement banning the militarization of space is difficult to envisage. However, US and Russian officials [might explore](#) more limited measures, such as keep-out zones around certain declared satellites, a ban on anti-satellite tests that generate orbital debris and a ban on emplacing weapons in space designed to strike targets on the Earth.

As for the cyber domain, traditional arms control measures appear ill-suited.

In contrast to nuclear arms reductions, which will remain a US-Russia issue in the 2020s, some related issues might be considered on a broader basis. For example, China increasingly appears a peer competitor with the United States and Russia in space operations. Moreover, China has many intermediate-range missiles. It remains in the US interest to engage China in strategic stability talks. At some point, trilateral or multilateral discussions might be appropriate. The agenda for nuclear arms control and related issues in the 2020s is a broad one. As the United States, Russia and others figure out how to maintain and enhance strategic stability in a multi-player, multi-domain world, Washington and Moscow will continue to have a central role. There is much that could be done to enhance stability and strengthen global security.

Washington and Moscow will have to overcome the mistrust created by violations of earlier arms control agreements and take an innovative approach, even if certain problems prove insoluble, at least in the near term. But they have an opportunity, and an obligation, to try.

Views expressed are of individual Members and Contributors, rather than the Club's, unless explicitly stated otherwise.

Nuclear Non-Proliferation Treaty 50 years on: Where does Africa stand?



Image: Getty, Monty Rakusen

5 Mar 2020

Research by

Jo-Ansie van Wyk and Yarik Turianskyi

Today marks 50 years since the Nuclear Non-Proliferation Treaty (NPT) entered into force. Resting on three pillars – nuclear disarmament, nuclear non-proliferation and the peaceful use of nuclear technology – it was intended to provide stability and security in an uncertain world.

Despite the lofty ideals and commitments of the 191 state signatories to the NPT, it remains contentious, especially in the run-up to the NPT Review Conference, which takes place this year in New York from 27 April to 22 May.

SAIIA's newly established [Atoms for Africa's Development Project](#) explores how African countries can benefit more from the peaceful application of nuclear technology to support the region's development aspirations. This is a topic that should receive more attention from delegations at the upcoming NPT Review Conference.

The polemical nature of the treaty and its implementation rest on several aspects. Essentially a grand bargain between the nuclear weapons states (NWS) and the non-nuclear weapons states (NNWS), the NPT is accused of nuclear apartheid because of the significant rights the former enjoys over the 'have nots'. NWS are those states that had tested and deployed nuclear weapons and devices by 1968 and include China, France, Russia, the UK, and the US. While they may develop ongoing nuclear technology and weapons, they are obliged by the NPT to ensure that these military devices and technology are not transferred to other states.

The view that nuclear weapons and related nuclear technology are a sign of state power, prestige and security has inspired some to actively aspire to this status. Israel (an undeclared nuclear weapon state), India, North Korea and Pakistan are all examples. India conducted its first successful nuclear bomb test, the so-called Smiling Buddha test on 18 May 1974, while Pakistan detonated six nuclear devices in May 1998. Since 2006, North Korea has actively conducted nuclear tests with increasing ambition and aggression. More recently, Iran has shown ambition to develop military grade nuclear enrichment capacity, but this ambition is hemmed in by stiff international opposition and sanctions.

Cold War over, but stockpiles remain high

The nuclear arms race reached its pinnacle during the Cold War. Since the collapse of the Soviet Union, nuclear stockpiles globally have declined, but still remain very high, while modernisation of arsenals continues. The latest figures released by the authoritative Stockholm International Peace Research Institute

(SIPRI) estimate that 13,865 nuclear and related warheads are still kept in the arsenals of nine states.

According to SIPRI, at least 3,750 nuclear weapons are deployed with operational forces, whereas almost 2,000 are kept in a state of 'high operational alert'. Despite joint Russian-American efforts over many years to reduce their nuclear stockpiles, US President Donald Trump announced early in his tenure that his government would develop its nuclear arsenal despite these commitments.

The success of the NPT has thus been limited. Nuclear disarmament has not been achieved, despite a reduction in stockpiles. Moreover, new nuclear powers have emerged. While India and Pakistan remain at odds with each other due to historic and ongoing rivalries, North Korea is increasingly flexing its nuclear muscle in Asia.

Illicit nuclear proliferation also continues. In 2020 the International Atomic Energy Agency's Incidence and Trafficking Database (ITDB), based on voluntary information supplied by 139 states, reported that 189 'incidents' were reported in 2019. These included 'unauthorised activities and events' involving nuclear and radioactive materials, as well as 'trafficking and malicious use' of these materials.

Where does Africa fit in?

At least 34 African states contribute information to the ITDB as the continent is a major global supplier of uranium. Beside the use of uranium in nuclear weapons, this resource is also used for peaceful purposes, such as electricity generation and nuclear medicine applications. Global uranium demand is rising as more states develop nuclear energy generation projects. The number of nuclear power plants globally is 449, with the most of these situated in the US (96), France (58), China (48), Japan (37) and Russia (36). Currently, 52 nuclear power plants are under construction, mostly in China.

In Africa, South Africa remains the only country with a nuclear research reactor and the continent's only nuclear power plant. As the country grapples with increased energy insecurity, the expansion of nuclear energy production is on the agenda. South Africa's future nuclear expansion plans nonetheless remain unclear due to political and financial considerations. Elsewhere on the continent, Ghana, Kenya, Nigeria, Morocco and Egypt, have active nuclear research and

development programmes under way focusing on the peaceful use of nuclear energy.

African states will participate in the forthcoming review conference of the NPT, with nuclear disarmament high on the African agenda. In fact, the continent expressed these sentiments as early as 1964 when the OAU adopted the Cairo Declaration, which resulted in 2009 in the entry into force of the Pelindaba Treaty, the African Nuclear-Weapon-Free Zone Treaty.

African states remain concerned about the discriminatory nature of the NPT. Nuclear weapon states repeatedly call for nuclear non-proliferation but are slow to commit to total nuclear disarmament. [Article IV of the NPT](#) is an important reference point for African countries as it refers to all states' 'inalienable right' to develop nuclear energy for peaceful use. The [peaceful application of nuclear technology for development purposes](#) – especially with reference to developing regions like Africa which explicitly support a nuclear weapons-free world through the Pelindaba Treaty – should be an important point on the international disarmament agenda. Broadening the debate and fairness in treating the 'haves' and the 'have nots' are crucial for the NPT going forward to ultimately achieve its aims.

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NATO and the Treaty on the Prohibition of Nuclear Weapons

Steven Hill



03

NATO's concerns about the TPNW

NATO's two chief concerns about the TPNW can be summarized as: that the treaty does not reflect the contemporary security environment; and that it would undermine the NPT and broader cooperation towards nuclear disarmament.

Background: TPNW negotiations and approval at the UN

The evolution of the TPNW from proposal stage to negotiations was closely followed within NATO.²⁷ Prior to any discussions about a new treaty, Norway supported the series of conferences on humanitarian impacts of nuclear weapons states, hosting the first one in 2013. Despite this, most of the Allies positioned themselves against the new treaty even before negotiations formally began in 2017. Although some Allies had participated in some of the conferences on the humanitarian impacts of nuclear weapons that preceded the TPNW negotiations, only one of the then 29 Allies – the Netherlands – decided to participate in the treaty negotiations. The other 28, together with a number of NATO partners, decided not to take part, and some Allies issued statements criticizing the draft.²⁸

²⁷ For a contemporaneous article that describes this process and some legal background on the factors behind NATO's position, see Hill, S., and Lemétayer, D. (2019), 'The Treaty on the Prohibition of Nuclear Weapons: A Legal View from NATO', *NATO Legal Gazette*, 39, https://www.act.nato.int/images/stories/media/doclibrary/legal_gazette_39.pdf (accessed 24 Nov. 2020).

²⁸ For a concise description of the negotiating process, see Mills, C. (2020), 'Negotiating a Treaty on the Prohibition of Nuclear Weapons', House of Commons Library, Briefing Paper Number 7986, 16 November 2020, <https://commonslibrary.parliament.uk/research-briefings/cbp-7986> (accessed 24 Nov. 2020). The P3 (France, the UK and the US) issued a joint statement on the day the TPNW was adopted. US Mission to the United Nations (2017), 'Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption', 7 July 2017, <https://usun.usmission.gov/joint-press-statement-from-the-permanent-representatives-to-the-united-nations-of-the-united-states-united-kingdom-and-france-following-the-adoption>.

The Netherlands positioned itself differently to other NATO Allies during the negotiations. As such, its national positions are worthy of particular consideration. An important reason behind the Netherlands' decision to participate in the negotiations was a motion proposed in the States General (the Netherlands parliament) on 28 April 2016, urging the government 'to devote itself actively' and participate in the international negotiations.²⁹ Moreover, at the time, the Netherlands was chairing the 2017 NPT Preparatory Committee in Vienna and needed to be fully aware of the range of disarmament processes. Notwithstanding its participation in the TPNW negotiations, the Netherlands still took the weighty decision to call a vote on the draft treaty, and to vote 'no';³⁰ this was the only vote against the draft. The other NATO Allies, together with many NATO partners, had decided not to participate in the process and thus did not vote. In an explanation of the country's vote, the Netherlands representative pointed to the incompatibility of the treaty with the country's NATO obligations and its commitment to NATO, as well as to the 'inadequate verification provisions' and to the fact that the treaty 'undermines the Non-Proliferation Treaty'.³¹ These reasons would ultimately be reflected in the Alliance's statement on the TPNW. At the same time, the Netherlands also tried to strike a balance looking towards the future:

We still have a lot of work ahead of us. We have heard many times that this treaty is not aiming to weaken existing instruments but to encourage their further implementation. All of us who support nuclear disarmament must ensure that, and refocus our efforts so that we can look forward towards further progress.³²

Back at NATO headquarters in Brussels, Allies were having lengthy discussions about how best to position themselves as regards the TPNW. The NAC statement's timing – issued on 20 September 2017, the day the treaty was opened for signature in New York – was not coincidental. Rather, the statement was envisioned as a key move in NATO's response to the TPNW. Its content was carefully negotiated during the intervening period between the UN vote and the opening of the TPNW for signature. As NATO's then deputy secretary general, Rose Gottemoeller, put it in a meeting at the Vatican later that year: 'Such statements are rare and an indication of how seriously the Alliance takes this debate.'³³ It was particularly rare – perhaps unprecedented – for the NAC to comment on a treaty that had not even entered into force and that its members had declared they did not support.

Although the 2018 Brussels Summit declaration featured two full paragraphs on nuclear policy, it did not mention the TPNW.³⁴ Neither did the more concise

²⁹ House of Representatives of the States General (2016), Citizens' initiative 'Sign against nuclear weapons', No. 11, 28 April 2016, https://nonukes.nl/wp-content/uploads/2016/06/BZ119750C_Motion-Servaes-PvdA-C.S._NL-should-actively-work-start-negotiations-international-treaty.pdf (accessed 24 Nov. 2020).

³⁰ See United Nations General Assembly (2017), *Vote Name: Item 9, A/CONF.229/2017/L.3/Rev.1, Draft treaty on the prohibition of nuclear weapons*, 7 July 2017, https://s3.amazonaws.com/unoda-web/wp-content/uploads/2017/07/A.Conf_.229.2017.L.3.Rev_.1.pdf (accessed 24 Nov. 2020).

³¹ Kingdom of the Netherlands (2017), *Explanation of vote of the Netherlands on text of Nuclear Ban Treaty*, 7 July 2017, <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2017/07/Netherlands-EoV-Nuclear-Ban-Treaty.pdf> (accessed 19 Dec. 2020).

³² *Ibid.*

³³ NATO (2017), 'Remarks by NATO Deputy Secretary General Rose Gottemoeller during a panel discussion on Perspectives for a World Free from Nuclear Weapons at Vatican City', 10 November 2017, https://www.nato.int/cps/en/natohq/opinions_148789.htm (accessed 24 Nov. 2020).

³⁴ NATO (2018), 'Brussels Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Brussels 11–12 July 2018', 11 July 2018, https://www.nato.int/cps/en/natohq/official_texts_156624.htm, paras 35–36 (accessed 24 Nov. 2020).

outcome document of the 2019 meeting of NATO leaders in London.³⁵ However, NATO's three nuclear weapon states regularly make their position on the TPNW known.³⁶ Secretary General Stoltenberg and other Alliance leaders also periodically address the TPNW. In November 2020, for example, at NATO's Annual Conference on Weapons of Mass Destruction, Arms Control, Disarmament and Non-Proliferation, Stoltenberg said:

I know that there are those that look at the Treaty on the Prohibition of Nuclear Weapons – or the Ban Treaty – as an alternative solution to eliminate all nuclear weapons. At first glance it seems attractive. But the reality is that it will not work. The Ban Treaty has no mechanism to ensure the balanced reduction of weapons. And no mechanism for verification. Moreover, it has not been signed by any state that possesses nuclear weapons. Simply giving up our deterrent without any guarantees that others will do the same is a dangerous option.³⁷

Most recently, the December 2020 NAC statement recalls that:

NATO is a defensive Alliance. The fundamental purpose of NATO's nuclear capability is to preserve peace, prevent coercion, and deter aggression. A world where the states that challenge the international rules-based order have nuclear weapons, but NATO does not, is not a safer world. [...] We call on our partners and all other countries to reflect realistically on the ban treaty's impact on international peace and security, including on the NPT, and join us in working to improve collective security through tangible and verifiable measures that can reduce strategic risks and enable real progress on nuclear disarmament.³⁸

Concerns set out in the NAC statements

NATO's concerns about the TPNW, as articulated in the NAC statements of September 2017 and December 2020, can be boiled down into two main points. First, the TPNW does not reflect the contemporary security environment – notably, the increase in global tensions over the past decade. The treaty would not achieve its aims because it fails to include the main threat actors within that environment. Second, the TPNW would undermine the NPT and broader cooperative efforts towards nuclear disarmament.

The two brief NAC statements did not much elaborate on the reasons behind these concerns. This has been both an advantage and a disadvantage. On the one hand, it is likely that the relative brevity of the statements helped achieve consensus. Moreover, they give officials a clear and concrete statement of policy to cite. On the other hand, the lack of elaboration of the arguments makes it more difficult to respond in real time to the pushback generated by the statements among TPNW supporters. This is particularly so when the arguments made are the result of fairly detailed legal analysis and tend to be issued in the form of a 'debunking of myths'.

³⁵ NATO (2019), 'London Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in London 3–4 December 2019', https://www.nato.int/cps/en/natohq/official_texts_171584.htm (accessed 24 Nov. 2020).

³⁶ For example, in the UN Security Council's February 2020 open meeting on how to strengthen the NPT, France, the UK and the US reaffirmed that they will not sign or ratify the TPNW. See UN Security Council (2020), S/PV.8733, 26 February 2020, <https://undocs.org/Home/Mobile?FinalSymbol=S%2FPV.8733> (accessed 19 Dec. 2020).

³⁷ NATO (2020), 'Speech by NATO Secretary General Jens Stoltenberg at the 16th Annual NATO Conference on Weapons of Mass Destruction, Arms Control, Disarmament and Non-Proliferation'.

³⁸ NATO (2020), *North Atlantic Council Statement as the Treaty on the Prohibition of Nuclear Weapons Enters Into Force*.

In short, the debate on the TPNW seems to be polarized into two basic camps, with much mutual rebutting of the other side's arguments but little dialogue. In order to identify how this gap might be bridged, while avoiding more divisiveness, NATO's concerns are worth unpacking and evaluating against the critiques.

The TPNW's effectiveness in today's security environment

One concern expressed in the NAC statements has to do with the security environment and NATO's conclusion, mentioned above, that 'conditions for achieving disarmament are not favourable today'.³⁹ The relevant language from the 2017 statement reads:

The ban treaty, in our view, disregards the realities of the increasingly challenging international security environment. At a time when the world needs to remain united in the face of growing threats, in particular the grave threat posed by North Korea's nuclear programme, the treaty fails to take into account these urgent security challenges.⁴⁰

The only specific situation referred to in the 2017 statement is the crisis around the nuclear programme pursued by North Korea, which is mentioned twice in the document. However, the statement recalls the 2016 Warsaw Summit, the communiqué of which listed 'Russia's destabilising actions and policies'.⁴¹ While the 2020 statement only refers to the 'increasingly challenging international security environment' in general terms, since 2019 NATO has mentioned China's link to nuclear issues with increasing frequency.

NATO's approach is based on the belief that security conditions and progress on nuclear disarmament are inherently interlinked.

NATO's approach is based on the belief that security conditions and progress on nuclear disarmament are inherently interlinked. As the NAC put it in 2017: 'Seeking to ban nuclear weapons through a treaty that will not engage any state actually possessing nuclear weapons will not be effective, will not reduce nuclear arsenals, and will neither enhance any country's security, nor international peace and stability.'⁴² Rather, the TPNW – if applied to NATO – would represent a type of unilateral nuclear disarmament that would not be rewarded by improvements in adversary behaviour or other positive changes in the international security environment.

The main critique of NATO's position stems from the same notion about interlinkage, but draws an opposite conclusion. In fact, TPNW supporters might not necessarily disagree with NATO's threat assessment about Russia and North Korea. Rather, their

³⁹ NATO (2017), *North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons*.

⁴⁰ *Ibid.*

⁴¹ See NATO (2016), *Warsaw Summit Communiqué*, para. 10. ('Russia's destabilising actions and policies include: the ongoing illegal and illegitimate annexation of Crimea, which we do not and will not recognise and which we call on Russia to reverse; the violation of sovereign borders by force; the deliberate destabilisation of eastern Ukraine; large-scale snap exercises contrary to the spirit of the Vienna Document, and provocative military activities near NATO borders, including in the Baltic and Black Sea regions and the Eastern Mediterranean; its irresponsible and aggressive nuclear rhetoric, military concept and underlying posture; and its repeated violations of NATO Allied airspace.')

⁴² NATO (2017), *North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons*.

argument is that the two tracks (i.e. nuclear non-proliferation and disarmament) need to move more in parallel. Security conditions will never be wholly favourable for nuclear disarmament. Instead of taking the sequential approach of focusing on the need for security conditions to improve in the first instance, disarmament progress can itself create better security conditions and thus should be pursued. TPNW supporters see the treaty as having symbolic value, serving as a moral compass and thus a source of indirect influence on the future trajectory of nuclear disarmament.

In the foreseeable future, it remains unlikely that TPNW supporters will be able to convince NATO Allies to change their assessment of the prevailing international security environment. NATO Allies would welcome a concerted effort by civil society to pressure Russia, China and North Korea – for example – to help ameliorate the international security environment. Instead, there is a frustration in NATO circles that TPNW advocacy groups seem to focus mostly on Western democracies.

At the same time, waiting for an improvement in security conditions might be increasingly perceived as unrealistic. After all, progress in arms control and disarmament has been achieved under difficult conditions in the past, and NATO regularly reaffirms its willingness to continue engaging in the process.⁴³ However, the risk is that NATO's current stance of reaffirming commitments without commensurate action could be perceived as a veiled attempt to preserve the status quo. This could undermine the unity of the international community in facing threats that NATO and the other countries that rely on extended deterrence are concerned about. A lack of unity could in turn embolden adversaries to create further instability. From the perspective of both TPNW supporters and sceptics, the challenge will be how to ensure that this does not occur.

The TPNW's impact on the NPT

In addition to the question of the TPNW's effectiveness in the current security environment, the NAC statements make an argument about the TPNW's impact on the NPT. The relevant wording in the 2017 statement reads:

The ban treaty is at odds with the existing non-proliferation and disarmament architecture. This risks undermining the NPT, which has been at the heart of global non-proliferation and disarmament efforts for almost 50 years, and the IAEA Safeguards regime which supports it. The crisis caused by North Korea underlines the importance of preserving and enhancing the existing framework of the NPT.⁴⁴

The 2020 statement echoes this language, emphasizing that the TPNW 'risks undermining the global non-proliferation and disarmament architecture, with the NPT at its heart for more than 50 years, and the IAEA Safeguards regime that supports it'.⁴⁵

⁴³ NATO (2018), 'Brussels Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Brussels 11-12 July 2018', paras 42 & 44 ('Allies remain open to further arms control negotiations, with the aim of improving the security of the Alliance, taking into account the prevailing international security environment [...] The Alliance reaffirms its resolve to seek a safer world for all and to take further practical steps and effective measures to create the conditions for further nuclear disarmament negotiations and the ultimate goal of a world without nuclear weapons in full accordance with all provisions of the NPT, including Article VI, in an ever more effective and verifiable way that promotes international stability, and is based on the principle of undiminished security for all.')

⁴⁴ Ibid.

⁴⁵ NATO (2020), *North Atlantic Council Statement as the Treaty on the Prohibition of Nuclear Weapons Enters Into Force*.

This argument – that the new treaty ‘risks undermining’ the NPT – merits further examination, as it loomed particularly large over NATO discussions and continues to be a prominent feature of both NATO’s criticism of the TPNW and subsequent responses by TPNW supporters and the scholarly community.

From a legal perspective, the link to the NPT is provided in Article 18 of the TPNW, which deals with the TPNW’s relationship with other agreements. It reads:

The implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing international agreements, to which they are party, where those obligations are consistent with the Treaty.⁴⁶

At first glance, this appears to be a ‘savings clause’ of the sort used in many international agreements. In this case, the ‘existing international agreements’ that are meant to be protected would certainly include the NPT. In fact, this seems to be precisely the intention, according to many people involved with the TPNW negotiations. The first draft of the TPNW contained a clear reference to obligations under the NPT.

The controversy has to do with the wording of the latter clause in Article 18 as it emerged after negotiations (‘where those obligations are consistent with the Treaty’). Among TPNW sceptics, this wording was seized on as evidence of ‘subordinating the NPT to the ban treaty’.⁴⁷ According to this reading, the wording could also lead to conflicts of interpretation:

For example, a party to the ban treaty might allege that peaceful nuclear cooperation (a key pillar of the NPT) cannot continue with a nuclear-weapons-possessing state, as it would violate the ‘assist, encourage or induce’ prohibition in article 1(e). Or if the NPT parties decided to require additional or improved safeguards procedures, a party to the ban treaty might argue that the ban treaty only requires the basic INFCIRC/153 agreement.⁴⁸

The wording, along with other reasons, gave rise to the only abstention on the TPNW vote, by Singapore.⁴⁹ Several experts have written about this ambiguity and tried to provide more clarity,⁵⁰ with the Swiss government’s 2018 report concluding that there is no legal conflict between the TPNW and the NPT.⁵¹ Yet questions remain about how there may be actual, specific conflicts between the TPNW and NPT. Any

⁴⁶ UN General Assembly (2017), A/CONF.229/2017/8.

⁴⁷ Highsmith, N., and Stewart, M. (2018), ‘The Nuclear Ban Treaty: A Legal Analysis’, *Survival*, 60(1): p. 141. See also Hill and Lemétayer (2019), ‘The Treaty on the Prohibition of Nuclear Weapons: A Legal View from NATO’ (citing concerns around Article 18 as being persuasive in NATO circles).

⁴⁸ Highsmith and Stewart (2018), ‘The Nuclear Ban Treaty’. At the same time, the TPNW’s preamble provides that ‘nothing in this Treaty shall be interpreted as affecting the inalienable right of its States Parties to develop research, production and use of nuclear energy for peaceful purposes without discrimination’.

⁴⁹ United Nations (2017), ‘Conference to Negotiate Legally Binding Instrument Banning Nuclear Weapons Adopts Treaty by 122 Votes in Favour, 1 against, 1 Abstention’, DC/3723, 7 July 2017, <https://www.un.org/press/en/2017/dc3723.doc.htm> (accessed 27 Nov. 2020), (‘Singapore’s representative emphasized that [the TPNW] should not affect the rights and obligations of States parties to other agreements, he said, citing the Nuclear Non-Proliferation Treaty while noting that greater efforts should have been made around language to avoid unnecessary legal uncertainty.’)

⁵⁰ See for example Caughley and Afina (2020), *NATO and the Frameworks of Nuclear Non-proliferation and Disarmament*, pp. 20–1 (discussing the application of Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 23 May 1969, Art. 30 and concluding that the TPNW will not ‘prejudice’ obligations under the NPT as long as these obligations are consistent with the Treaty; incompatible provisions would be resolved in favour of the TPNW for states parties to both treaties); Nystuen, G., Egeland, K. and Hugo, T. G. (2018), *The TPNW: Setting the record straight*, Norwegian Academy of International Law, <http://intl.no/wp-content/uploads/2018/10/TPNW-Setting-the-record-straight-Oct-2018-WEB.pdf> (accessed 24 Nov. 2020) (arguing that it is in practice difficult to ascertain where precisely there would be incompatibility between the NPT and the TPNW).

⁵¹ Swiss Federal Department of Foreign Affairs (2018), *Report of the Working Group to analyse the Treaty on the Prohibition of Nuclear Weapons*.

such conflicts may only become apparent in practice, now the TPNW has entered into force. In short, there seems to be an overall lack of trust around this language. One practical recommendation would be to have a dialogue including legal experts from both TPNW and non-TPNW states in order to identify the proper legal tools to analyse the relationship between the two treaties. Other expert commentators who have written about Article 18 could provide useful briefings to inform such a dialogue.

A fundamental concern for NATO seems more political than exclusively legal in nature: namely that the TPNW might come to be seen (at least by some) as a competing framework to the NPT, or even as an alternative to the NPT.

That said, even if the ambiguity in Article 18 could be addressed in a way that made lawyers comfortable, this would likely not be enough to dispel concerns about the TPNW undermining the NPT. This is because NATO's more fundamental concern seems more political than exclusively legal in nature: namely that the TPNW might come to be seen (at least by some) as a competing framework to the NPT, or even as an alternative to the NPT. By enabling the creation of a potential alternative framework, the TPNW could allow a state party to reap the political and public relations benefits of joining the new treaty, while forgoing the robust safeguards standards that have been put in place by the International Atomic Energy Agency (IAEA) through the NPT process.

It is a common point made by TPNW sceptics that the ban treaty lacks credible verification mechanisms. Indeed, this criticism is at the core of NATO's argument that the TPNW would not be effective. However, this view is contested by the supporters of the TPNW, and it is worth asking how this view regarding the provisions might go beyond just rendering the TPNW ineffective to actually undermine the IAEA.

In terms of safeguards, the TPNW requires states parties to have in place a comprehensive safeguards agreement with the IAEA (as in the NPT) but contains no obligation to negotiate and sign an Additional Protocol or the enhanced Small Quantities Protocol with the IAEA. Realizing there is a broad agreement that universalization of the Additional Protocol is a desirable goal, a compromise was necessary to achieving an agreement during the negotiations for the TPNW, in large part because the Additional Protocol is a voluntary arrangement and not legally required under the NPT.

As regards the verification of the elimination of nuclear weapons – an aspect that has not been addressed in any other treaty – Article 4 of the TPNW requires states parties to designate a competent international authority and offers two pathways for the verification of the disarmament process. The mechanisms are clearly underdeveloped. One important first step will be to identify and cooperate with a 'competent international authority' to put in place the necessary measures and safeguards to ensure the verified elimination of the nuclear weapons programme.

Confusion may arise, and may serve to undermine the IAEA, through the possibility of two potential ‘competent international authorities’ – one being the IAEA – being accorded different and possibly competing roles in a nuclear programme dismantling effort.

Given NATO’s stated support for the NPT, it would be against the Alliance’s interests to undermine existing safeguards. As a result, a practical recommendation would be for NATO to conduct more outreach about safeguards and verification issues in general, in an effort to raise awareness about the challenges associated with this aspect of disarmament. Article VI of the NPT commits states to ‘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’.⁵² Thus, any issue related to safeguards and verification should be part of the discussion.

Other potential NATO concerns

Several issues related to the TPNW that are relevant to debates regarding NATO’s position towards the treaty were not mentioned in the two NAC statements. This section discusses three of these issues:

1. the TPNW’s incompatibility with existing NATO commitments;
2. the effects of NATO’s work with partner countries; and
3. potential secondary effects on NATO.

Allies: incompatibility with existing NATO commitments

While NATO Allies have levelled a number of criticisms against the TPNW, one overarching theme has been the notion that the TPNW is not compatible with their political, military and legal commitments related to the Alliance. The Netherlands explicitly cited such an incompatibility in voting against the TPNW in the UN General Assembly.⁵³ A recent commentator concluded: ‘At present, membership in NATO and the nuclear ban treaty seem mutually exclusive.’⁵⁴ At the same time, by contrast, supporters of and academic commentators on the TPNW have argued that it would in fact be possible for a NATO Ally to be simultaneously party to the TPNW.

In light of ongoing domestic debates about the TPNW and/or issues such as the stationing of nuclear weapons on the territory of several NATO Allies,⁵⁵ this question may have continued relevance, even if all NATO Allies are currently on record as opposing the treaty.

⁵² United Nations (1968), *Treaty on the Non-Proliferation of Nuclear Weapons (NPT)*, United Nations Office for Disarmament Affairs, <https://www.un.org/disarmament/wmd/nuclear/npt/text> (accessed 16 Dec. 2020).

⁵³ Kingdom of the Netherlands (2017), *Explanation of vote of the Netherlands on text of Nuclear Ban Treaty*.

⁵⁴ Williams (2020), ‘What the Nuclear Ban Treaty Means for America’s Allies’.

⁵⁵ See for example Kingdom of Belgium (2020), *Accord de gouvernement*, 30 September 2020, pp. 77–8, https://www.belgium.be/sites/default/files/Accord_de_gouvernement_2020.pdf (accessed 24 Nov. 2020) (‘without prejudice to our NATO commitments and obligations, Belgium will continue to actively invest in nuclear disarmament and non-proliferation at the global level. Belgium will play a proactive role at the NPT RevCon in 2021, and with its European NATO allies, Belgium will verify how to reinforce the multilateral framework of non-proliferation, and how the TPNW [...] can give new impetus towards multilateral nuclear disarmament’).

This discussion focuses on the meaning of various prohibitions contained in Article 1.1 of the TPNW, whereby:

Each State Party undertakes never under any circumstances to:

- (a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices;
- (b) Transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly;
- (c) Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;
- (d) Use or threaten to use nuclear weapons or other nuclear explosive devices;
- (e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty;
- (f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this Treaty;
- (g) Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.⁵⁶

It is undisputed that certain aspects of NATO nuclear policy, in particular the nuclear sharing arrangements, would be impossible to reconcile with the prohibition on stationing set out in Article 1.1 (g).⁵⁷ At the same time, NATO policy has always required custody of stationed nuclear weapons to remain with the nuclear weapon state: this position predates the NPT, and the Alliance has consistently maintained that it is consistent with the NPT's prohibition on transfer.⁵⁸ It is an open question as to whether nuclear sharing arrangements could be similarly squared with the language of Articles 1.1(b) and (c) of the TPNW. But what about the more general commitments associated with NATO's nuclear policy?

Article 1.1(d) of the TPNW provides that no State Party shall 'Use or threaten to use nuclear weapons or other explosive nuclear device.'⁵⁹ There has been some recent scholarly analysis of whether adherence to the policy of nuclear deterrence that relies in part on potential recourse to nuclear weapons could be considered a threat of the use of force. On balance, the mere adherence to a policy of deterrence seems too diffuse to meet the threshold for the threat of use of force under international law.⁶⁰ This is in line with the 2020 NAC statement, which recalled that 'Allies are determined to ensure that NATO's nuclear deterrent remains safe, secure, and effective, and reject any attempt to delegitimise nuclear deterrence.'⁶¹

⁵⁶ UN General Assembly (2017), A/CONF.229/2017/8.

⁵⁷ Ibid.

⁵⁸ See Alberque, W. (2017), 'The NPT and the Origins of NATO's Nuclear Sharing Arrangements', *Proliferation Papers*, No. 57, IFRI, February 2017, https://www.ifri.org/sites/default/files/atoms/files/alberque_npt_origins_nato_nuclear_2017.pdf.

⁵⁹ UN General Assembly (2017), A/CONF.229/2017/8.

⁶⁰ See Highsmith, N. L. (2019), *On the Legality of Nuclear Deterrence*, Livermore Papers on Global Security No. 6, Lawrence Livermore National Laboratory Center for Global Security Research, November 2019, https://cgsr.llnl.gov/content/assets/docs/CGSR_LivermorePaper6.pdf.

⁶¹ NATO (2020), *North Atlantic Council Statement as the Treaty on the Prohibition of Nuclear Weapons Enters Into Force*.

However, the question does arise as to whether support for a policy of nuclear deterrence might fall within the scope of Article 1.1(e), which makes it a violation to ‘Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty.’⁶² This issue has been frequently framed by commentators as whether an Ally that joined the TPNW could continue to benefit from NATO’s nuclear deterrent provided under ‘nuclear umbrella’ arrangements. For example, a study from Harvard University concluded that the TPNW ‘requires a state party to renounce its nuclear umbrella status but does not stand in the way of alliances with states that continue to possess nuclear weapons’.⁶³

A group of Norwegian scholars has concluded, in a paper published by the Norwegian Academy of International Law in 2018, that:

There are no legal obstacles to Norway joining the TPNW. The TPNW is compatible with the NPT, the North Atlantic Treaty and other international agreements by which Norway is bound. However, Norwegian accession to the TPNW would prohibit Norway from assisting, encouraging or inducing its allies to develop, possess or use nuclear weapons. To comply with the TPNW, Norway would have to distance itself from any alliance documents endorsing the potential use of such weapons.⁶⁴

In their analysis, the scholars point to Norway’s historic policy of not accepting nuclear-armed vessels into its waters during peacetime.⁶⁵ Norway was, over time, able to use the Alliance’s consultation mechanisms to make its position understood without provoking a decision by other Allies to withdraw Norway from NATO’s nuclear umbrella.

This points to the distinction between politics and law. Although TPNW supporters often formulate their objections to NATO’s position by using legal arguments to illustrate the claim that the TPNW’s prohibitions can actually be reconciled with various activities that NATO Allies find valuable, the fact that a particular course of action might be a legally available option risks disregarding the potential political ramifications of such a move within NATO. The NAC statements of 2017 and 2020 make it clear that there is broad political agreement not to support the TPNW. It is difficult to separate the existence of a potentially legally available option for one Ally to change course from the political cost of doing so. As the Norwegian authors cited above concede, ‘[...] accession to the TPNW would probably be interpreted by some allies as a breach of alliance solidarity and a threat to NATO’s security and political cohesion’.⁶⁶ It is difficult to see, for example, how an Ally that joined the TPNW could continue to participate in the NPG. Even if the Ally itself considered this appropriate, other NATO members may have reservations.

⁶² UN General Assembly (2017), A/CONF.229/2017/8.

⁶³ International Human Rights Clinic at Harvard Law School (2018), *Nuclear Umbrella Arrangements and the Treaty on the Prohibition of Nuclear Weapons*, June 2018, http://hrp.law.harvard.edu/wp-content/uploads/2018/06/Nuclear_Umbrella_Arrangements_Treaty_Prohibition.pdf (accessed 24 Nov. 2020). For a similar analysis, see also Article 36 (2018), ‘Written evidence submitted by Article 36: House of Lords Select Committee on International Relations Inquiry: Nuclear Non-proliferation Treaty and Nuclear Disarmament’, 18 January 2018, <https://article36.org/wp-content/uploads/2019/10/Article-36-submission-Lords-IRC-nuclear-inquiry.pdf> (accessed 24 Nov. 2020) (‘NATO membership does not represent a legal barrier to states joining the TPNW: states ratifying the TPNW could continue military cooperation with nuclear-armed states, but could not remain under a ‘nuclear umbrella.’)

⁶⁴ Nystuen, G., Egeland, K. and Hugo, T. G. (2018), *The TPNW and its implications for Norway*, Norwegian Academy of International Law, September 2018, p. 19, <http://intl.no/wp-content/uploads/2018/10/tpnw-implications-for-norway-25-sept-2018.pdf> (accessed 24 Nov. 2020).

⁶⁵ *Ibid.*, p.22.

⁶⁶ *Ibid.*

Overall, within the context of the Alliance, the reality is that political commitments carry a heavy weighting. The content of political commitments is discussed much more frequently than are the legal obligations associated with NATO membership, which are formulated at a rather high degree of generality. Political commitments are part of signalling a coherent nuclear deterrence posture to the adversary. We could expect efforts to impose a high cost on an Ally that was considering joining the TPNW. Indeed, NATO Allies have the means necessary to impose costs on an Ally considering such a course of action, including on issues unrelated to nuclear weapons but of great importance to NATO generally, or to that Ally in particular. It would ultimately be for the Ally in question to determine whether it could bear that cost.

Partners: cooperation with NATO

While NATO Allies have decided not to join the TPNW, and have been joined in this position by most NATO partners, several partners have to date decided to become party to the TPNW. Regardless of their decision, all partners have had to assess whether joining the TPNW would conflict with their commitments to NATO.⁶⁷

NATO's position is that its partners are free to determine the security arrangements that best meet their needs. NATO partnerships are therefore a flexible tool. Specific work with partners is carried out based on mutually agreed cooperation plans. These are agreed between the partner country and the NAC, meaning that each Ally would have the ability to block consensus on a proposed partnership activity. These plans are regularly updated and submitted to the NAC for further approval.

From NATO's perspective, therefore, if a partner becomes party to the TPNW, this does not mean in principle that it is prevented from continuing its partnership with NATO. The question would be a political one: do Allies have the same appetite for partnership after the partner joins the TPNW? This would have to be assessed on a case-by-case basis and would depend on many factors, including the nature of the partnership activity being contemplated. Since current partnership activities do not have a nuclear policy dimension, one might ask why some partners were concerned about the TPNW's impact on them, while others were not. The answer may lie less with the content of the partnership activity than with a less specific fear that support for the TPNW would 'spill over' into the relationship in a way that could make NATO more wary of cooperation with that partner in the future. This question is difficult to assess in general terms, and would depend to some extent on how the partner decided to balance the weighting given to its own support for the TPNW against its own desire to continue cooperating with NATO.

A more concrete question could arise in connection with a potential future collective defence operation, if a situation had developed to the point where the survival of NATO Allies would be at stake. An example of such an *in extremis* scenario would be a large-scale collective defence response to counter aggression against Allies along NATO's eastern frontier. Could a state party to the TPNW actively participate in such an operation, in which the use or deployment of nuclear weapons might

⁶⁷ See for example Swedish Ministry of Foreign Affairs (2019), *Utredning av konsekvenserna av ett svenskt tillträde till konventionen om förbud mot kärnvapen*; Swiss Federal Department of Foreign Affairs (2018), *Report of the Working Group to analyse the Treaty on the Prohibition of Nuclear Weapons*.

be considered by the NAC? Some commentators consider that the TPNW would not prevent participation by a party: ‘Parties to the TPNW could participate in joint military operations with a nuclear weapon state without contravening the treaty, provided there is no nexus between a particular task and an activity prohibited by the TPNW such as [...] stationing’.⁶⁸ There is no reason to doubt this assessment, at least in theoretical terms. But assessing how it would play out in practice would depend on what exactly would be asked of the partner (or what the partner would want to offer). Once again, stationing of nuclear weapons is a clear-cut case, but how would the analysis play out with other forms of cooperation? Overflight might be a more problematic example, and one that could easily arise, given the geographical context.

NATO Allies with partners should discuss ways to continue their cooperation in the nuclear realm in a manner that would not conflict with those states’ TPNW obligations nor be inconsistent with the treaty’s object and purpose.

The Swiss government’s 2018 report on the TPNW provides considerable food for thought for NATO partners. It concludes that Switzerland’s disarmament policy is in accord with the TPNW’s ultimate objective; however, that the risks in acceding to the treaty at this time outweigh the potential benefits of ratification of the treaty.⁶⁹ This is in part because ‘Switzerland’s security is inextricably linked to that of its neighbours and, due to its location, particularly to that of NATO, [thus] nuclear weapons play a part in its security.’⁷⁰ The Swiss analysis also highlights the unknown economic impact of the TPNW, the lack of increased safeguards requirements, and its relationship to the NPT as reasons not to support the TPNW at this time. The report finds that the TPNW does not limit military cooperation unless it is directly related to ‘developing, modernising, acquiring or using nuclear weapons’.⁷¹

As a practical recommendation, NATO Allies with partners should discuss ways to continue their cooperation in the nuclear realm in a manner that would not conflict with those states’ TPNW obligations nor be inconsistent with the treaty’s object and purpose. The issues raised in the Swiss report and others should be included on the agenda of such dialogues. It might also be worth drawing on experience with similar situations where a treaty contained restrictions on cooperation that were successfully reconciled and balanced with requirements associated with continued multinational military cooperation. Pertinent examples would be the 1997 Convention on the

⁶⁸ Caughley and Afina (2020), *NATO and the Frameworks of Nuclear Non-proliferation and Disarmament*, p. 23. See also International Human Rights Clinic at Harvard Law School (2018), *Nuclear Umbrella Arrangements and the Treaty on the Prohibition of Nuclear Weapons*, p. 5 (same conclusion).

⁶⁹ Swiss Federal Department of Foreign Affairs (2018), *Report of the Working Group to analyse the Treaty on the Prohibition of Nuclear Weapons*, p. 1.

⁷⁰ Swiss Federal Department of Foreign Affairs (2018), *Report of the Working Group to analyse the Treaty on the Prohibition of Nuclear Weapons*, p. 6.

⁷¹ *Ibid.*

Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (the Ottawa Treaty), and the 2008 Convention on Cluster Munitions.

Secondary effects

Another issue that was not addressed in the 2017 and 2020 NAC statements has to do with a range of potential secondary effects that the TPNW might have on NATO Allies and partners, due to commercial links between TPNW and non-TPNW states. Even if NATO Allies did not become parties to the TPNW, could there be an unexpected impact on NATO procurement, even where procurement projects were not related to nuclear weapons?

Industrial cooperation might fall within the scope of prohibited activity under Article 1 of the TPNW, most likely through the prohibition on assistance in Article 1.1(e). Article 5(2) is designed with a broad reach to cover all persons, including corporations and individuals, under the jurisdiction or control of a party to the TPNW. This might include multinational corporations based in other states but with jurisdictional links to TPNW states parties. Since NATO itself does not have nuclear forces, the issue of procurement of items for uses directly related to nuclear weapons (for example, components of a system) would not arise. However, the entire nuclear infrastructure is essentially dual-use in its nature. The bases that support the dual-capable aircraft (DCA) that some Allies contribute to the Alliance are also used for non-nuclear-related purposes. DCA components are manufactured all over the world. The scope of this prohibition might be difficult to define in such areas. The same difficulty might apply to equipment that is less obviously related to nuclear weapons. One example would be information and communications technologies that are not directly related to nuclear weapons but that are part of broader NATO systems (e.g. command, control and communication) that might be linked in some ways to NATO's nuclear weapon-related assets. It might therefore be difficult for NATO to convince an outside commercial partner that offering NATO its technology, even if for unrelated purposes, might not somehow fall foul of the Article 1.1(e) prohibition on assisting, encouraging or inducing.

One practical recommendation would be for NATO to conduct a study of potential impact in the procurement areas, including on possible mitigation measures such as supplier assurances. Such a study would be a good way to involve appropriate partners.

04 The TPNW and customary international law

While, on balance, it is unlikely that the TPNW could contribute to a customary international law ban on nuclear weapons, this is not to say that NATO's concerns in this regard are misplaced.

The 2017 NAC statement asserted that Allies ‘would not accept any argument that this treaty reflects or in any way contributes to the development of customary international law’.⁷² The 2020 NAC statement repeated this language.⁷³ It is unusual for NAC statements to contain detailed language of this sort on international law issues. This is a sign of how heavily the concern that the TPNW might somehow contribute to a customary international law ban on nuclear weapons has weighed on the debates among Allies.⁷⁴ On balance, it is unlikely that the TPNW could have this effect, given the current state of international law. However, this is not to say that NATO's concerns are misplaced.

Underlying the concerns set forth in the two statements was a sense in some quarters that the TPNW was being used as the latest front in a decades-long legal strategy to create an overarching norm of international law against nuclear weapons. There was also a concern that the TPNW itself was not sufficiently

⁷² NATO (2017), *North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons*.

⁷³ NATO (2020), *North Atlantic Council Statement as the Treaty on the Prohibition of Nuclear Weapons Enters Into Force*.

⁷⁴ See for example the contribution of Nicolas Roche of the French Ministry of Foreign and European Affairs at the 2019 Carnegie International Nuclear Policy Conference. Carnegie Endowment for International Peace (2019), ‘What Effects Will the Ban Treaty Have Between Now and 2030?’ Event Panel, 12 March 2019, <https://carnegieendowment.org/2019/03/12/what-effects-will-ban-treaty-have-between-now-and-2030-pub-78876> (accessed 24 Nov. 2020).

nuanced in its portrayal of the state of international law on nuclear weapons. The TPNW's preamble states that 'any [emphasis added] use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of international humanitarian law'.⁷⁵ While the preamble refers to 'any use', the International Court of Justice's 1996 advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons* did not go quite so far. Rather, the Court held, in a divided vote: [...] the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake; [...]⁷⁶

While the entire advisory opinion was a controversial one (and, like all advisory opinions, non-binding), the omission of the *in extremis* caveat from the TPNW's preamble did not go unnoticed. These concerns might help explain why the two NAC statements address the legal consequences (or lack thereof) of the TPNW. As the 2017 statement put it, ' [...] there will be no change in the legal obligations on our countries with respect to nuclear weapons. Thus, we would not accept any argument that this treaty reflects or in any way contributes to the development of customary international law.'⁷⁷

While it is a general principle of international law that treaties do not create obligations for third states,⁷⁸ it is also an accepted principle that a rule set forth in a treaty could, under certain conditions, become binding on a third state as a customary rule, as long as the dual requirements of state practice and *opinio juris* (the recognition of a norm as legally binding) are present in the first place.⁷⁹ However, this is far from an automatic process. Two distinct concepts are relevant here: the concept of so-called 'specially affected states', and that of 'persistent objectors'. These concepts are distinct and must be analysed separately. As the ICJ has explained,⁸⁰ a lack of consent from specially affected states may have the effect of preventing the required general state practice from emerging, preventing the rule from coming into being in the first place. There is a strong argument that states with nuclear weapons and those in a nuclear alliance would be specially affected by a proposed ban on nuclear weapons. Even if a rule is indeed created, states that have objected to a certain degree to its emergence – so-called persistent objectors – will not be bound by it. While some elements can be extrapolated, there are no specific requirements of international law for how – including how

⁷⁵ TPNW, preamble: see UN General Assembly (2017), A/CONF.229/2017/8.

⁷⁶ ICJ Reports 1996, p. 226.

⁷⁷ NATO (2017), *North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons*. The 2020 statement contains the same language.

⁷⁸ Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 23 May 1969, Art. 34.

⁷⁹ Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 23 May 1969, Art. 38.

⁸⁰ It is beyond the scope of this paper to provide a full explanation of this subject under international law. The author has laid out the arguments in more expanded fashion elsewhere. See Hill and Lemétayer (2019), 'The Treaty on the Prohibition of Nuclear Weapons: A Legal View from NATO', pp. 48–9. See also Caughley and Afina (2020), *NATO and the Frameworks of Nuclear Non-proliferation and Disarmament*, f.n. 103. The three major ICJ cases on the subject of persistent objectors are (1) the *Anglo-Norwegian Fisheries* case, ICJ Reports, 1951, p. 116; (2) the *North Sea Continental Shelf* case (ICJ Reports, 1969, p. 3); and (3) the *El Salvador/Honduras* case (ICJ Reports, 1992, p. 351). The 1996 advisory opinion on the *Legality of the Threat or Use of Nuclear Weapons* is also relevant on the specific issue of nuclear weapon states as specifically affected states.

often and in what format – persistent objectors need to make their position known. A pragmatic and contextual approach would be needed to evaluate a claim that a state is a persistent objector.

In the current circumstances, the NAC statements appear to be an effective strategy, both for preventing the emergence of a rule of customary international law in the first place and for establishing NATO Allies as persistent objectors to such a rule. We might expect NATO Allies to consider measures to maintain the effectiveness of this strategy over time. This could include reaffirming the NAC statements from time to time, potentially on the occasion of key events such as the first meeting of the TPNW states parties under the treaty.

One practical recommendation in this area would be for NATO to convene discussions between legal experts from Allies on a regular basis in order to explore potential steps in light of the evolution (for better or worse) of the international and regional security landscape.

05

NATO's ADN policy

NATO could continue to marry its opposition to the TPNW with a willingness to double down on its own engagement in the global arms control, disarmament and non-proliferation space.

One key feature of both the 2017 and 2020 NAC statements is an emphasis on broader arms control, disarmament and non-proliferation (ADN) policy. The 2020 statement reads as follows:

We reaffirm our commitment to the preservation and strengthening of arms control, disarmament, and non-proliferation. [...]

Arms control, disarmament, and non-proliferation have made, and should continue to make, an essential contribution to achieving NATO's security objectives. NATO Allies, individually and collectively, have a long track record of doing their part, and continue to support a number of initiatives that offer real progress on nuclear disarmament with tangible, effective measures.⁸¹

Like NATO's nuclear policy, the Alliance's ADN policy dates back to NATO's founding. In the early days of the Alliance, NATO Allies engaged in the five-nation disarmament talks in London (later also participating in the 10-nation talks), and made the first allied proposal in this space in 1957. At the NATO Summit in December of that year, the Allies called on the Soviet Union to negotiate, and formed a group of disarmament experts to meet at NATO headquarters. That group has met under different names continuously since 1957, and is now known as the Committee on Proliferation, meeting in politico-military format.

The Committee on Proliferation is the most senior NATO body dedicated to ADN policy, and meets regularly with Allied experts, as well as experts and decision-makers from NATO partner countries, officials from all related international organizations, and experts from think-tanks and academia. NATO also contributes to ADN through its Science and Technology Organization, which gathers thousands of

⁸¹ NATO (2020), *North Atlantic Council Statement as the Treaty on the Prohibition of Nuclear Weapons Enters Into Force*.

scientists from Allied and partner countries to work on scientific approaches to Allied security concerns, and its Science for Peace and Security Programme, which directs funding towards innovative scientific contributions to Allied security.

NATO's current ADN policies are summarized in the declarations adopted at NATO summits and other high-level meetings. The most recent such statement was agreed at the 2019 Brussels Summit:

Arms control, disarmament, and non-proliferation have made and should continue to make an essential contribution to achieving the Alliance's security objectives and for ensuring strategic stability and our collective security. NATO has a long track record of doing its part on disarmament and non-proliferation. After the end of the Cold War, NATO dramatically reduced the number of nuclear weapons stationed in Europe and its reliance on nuclear weapons in NATO strategy. We regret that the conditions for achieving disarmament have not become more favourable since the 2016 Warsaw NATO Summit. Allies remain collectively determined to uphold existing disarmament, arms control, and non-proliferation agreements and commitments. Allies remain open to further arms control negotiations, with the aim of improving the security of the Alliance, taking into account the prevailing international security environment.⁸²

The Declaration goes on to describe NATO's commitment to WMD non-proliferation, the NPT, and other agreements across all the pillars of the global ADN regime.⁸³

Given the clear links between NATO's nuclear policy and its ADN policy, NATO could continue to marry its opposition to the TPNW with a willingness to double down on the Alliance's role in the global ADN space. There are several ways that Allies could use existing NATO structures to do so.

One proven strength of NATO structures is that they can help Allies develop and/or coordinate their negotiating positions. This might be useful as Allies prepare for the upcoming NPT Review Conference in 2021.⁸⁴ For example, NATO could invite the chairpersons-designate of the three main committees and of any subsidiary bodies at the Review Conference⁸⁵ for discussions with Allies at NATO headquarters. Another way for NATO Allies to demonstrate their commitment to disarmament would be to develop outreach activities that give greater insight into the technical challenges related to disarmament, especially those associated with verification. This could consist of publicizing and broadening the base of support for ongoing work being organized by France and Germany on how to improve verification,⁸⁶ as well as engaging with efforts such as the International Partnership for Nuclear Disarmament Verification (IPNDV), a public-private partnership between the

⁸² NATO (2018), 'Brussels Summit Declaration Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in Brussels 11–12 July 2018', para. 42 (accessed 19 Dec. 2020).

⁸³ Ibid.

⁸⁴ For further detail on these proposals and others, see Gottemoeller, R. and Hill, S. (2020), *NATO's Current and Future Support for Arms Control, Disarmament and Nonproliferation*, Istituto Affari Internazionali, <https://www.iai.it/sites/default/files/iaip2045.pdf> (accessed 14 Jan. 2021).

⁸⁵ See United Nations (2020), 'Committees', <https://www.un.org/en/conferences/npt2020/committees> (accessed 19 Dec. 2020).

⁸⁶ This work was mentioned by President Emmanuel Macron in his nuclear policy speech in February 2020. See Macron, E. (2020), 'Speech of the President of the Republic on the Defense and Deterrence Strategy', 7 February 2020, <https://www.elysee.fr/en/emmanuel-macron/2020/02/07/speech-of-the-president-of-the-republic-on-the-defense-and-deterrence-strategy> (accessed 24 Nov. 2020).

US State Department and the Nuclear Threat Initiative.⁸⁷ NATO's Science and Technology Organization has begun examining scientific challenges to nuclear disarmament verification, and the NATO Committee on Proliferation has initiated dialogue with IPNDV, the Stepping Stones Approach, the Quad Initiative, and the Franco-German project. Outside of NATO, Allies should also continue to consult with the Allied P5 representatives to identify ways to support the P5 process,⁸⁸ and to meet with the working group chairs of the multilateral Creating an Environment for Nuclear Disarmament (CEND) initiative.⁸⁹

⁸⁷ For more information on this initiative, see Nuclear Threat Initiative (n.d.), 'International Partnership for Nuclear Disarmament Verification: Engaging a Diverse Group of States to Develop Innovative Monitoring and Verification Solutions', <https://www.nti.org/about/projects/international-partnership-nuclear-disarmament-verification> (accessed 24 Nov. 2020).

⁸⁸ For recommendations for the P5 process, see King's College London and European Leadership Network (2020), *The P5 Process: Opportunities for Success in the NPT Review Conference*, June 2020, <https://www.kcl.ac.uk/csss/assets/the-p5-process-opportunities-for-success-in-the-npt-review-conference.pdf> (accessed 24 Nov. 2020).

⁸⁹ For the latest state-of-play on CEND, see Ford, C. A. (2020), *Reframing Disarmament Discourse*, 3 September 2020, <https://www.state.gov/reframing-disarmament-discourse> (24 Nov. 2020).

06 Conclusions

Especially in the lead-up to the 10th NPT Review Conference, it is more important than ever for NATO to take a proactive role in signalling its support for the goals that it shares with TPNW supporters.

The current state of the debate on the TPNW is highly polarized. Given the nature of Allies' objections to the TPNW, it is unlikely that NATO will change its position as expressed in the 2017 and 2020 NAC statements. There is a strong feeling that TPNW supporters in civil society focus their energies on democratic countries and do not focus on other states that are exacerbating the current threat environment. TPNW supporters make good-faith arguments that often feature sophisticated legal interpretations aimed at addressing NATO's concerns. However, these arguments are likely to remain unpersuasive in so far as they focus on legally available options and ignore political realities. It would be unfortunate if the current spirit of polarization around the TPNW were to have a negative impact on the overall propensity for cooperation – which is clearly needed by the international community. As was suggested by the representative of the Netherlands when the TPNW was adopted, there is a need for more dialogue about how the international community can overcome differences.

Now that NATO has made its position on the TPNW clear, it is important not to overemphasize the issue in its overall messaging on support for disarmament. On NATO's side, more nuance would be helpful as the Alliance seeks to maintain a modern deterrence posture and demonstrate tangible support for nuclear disarmament.⁹⁰ As regards TPNW supporters, more genuine engagement with the concerns expressed by NATO and other states – beyond merely issuing rebuttals – would also serve a long-term agenda in favour of disarmament.

⁹⁰ Heather Williams (2020), 'What the Nuclear Ban Treaty Means for America's Allies', made the same point in the context of the United States' posture toward its allies on TPNW and nuclear disarmament issues: 'Providing a strong extended deterrent to allies while also being sensitive to disarmament pressures is indeed a delicate balance, but it is one that the United States has to pursue with greater nuance.'

In the spirit of refocused effort from all sides, it is more important than ever for NATO to take a proactive role in signalling its support for the ADN goals that it shares with TPNW supporters, especially in the lead-up to the 10th NPT Review Conference in 2021. Given its diverse membership and wide-ranging partnership networks, NATO can help bridge this gap. This paper has made specific suggestions on areas where more engagement beyond simply opposing the TPNW could be helpful. This includes possibilities for engagement with TPNW supporters. NATO's partners can be a useful bridge in this regard.

Ultimately, however, the TPNW is – and should remain – only a relatively small component of NATO's nuclear non-proliferation and disarmament posture. NATO should also continue to engage more broadly in the nuclear ADN realm, including in nuclear risk reduction, transparency measures among others. In March 2020, the NAC adopted a strong statement of support for the NPT on the occasion of the 50th anniversary of the treaty's establishment.⁹¹ The Council's statement also called on NPT states parties to work together to make the Review Conference a success.⁹² This language was a first in NATO history. NATO should consider how to amplify the message behind its statement, which risks having become lost in the tumultuous events driven by the COVID-19 pandemic.

NATO has a long history of working with its partners on ADN issues. Further efforts and outreach can be useful. NATO's positioning in the broader disarmament space in this way would show how the Alliance can play a constructive role and try to bridge gaps in what has become a divisive debate on the TPNW. At the same time, TPNW supporters should also support and see the value in such efforts.

⁹¹ See NATO (2020), *North Atlantic Council Statement on the 50th Anniversary of the Treaty on the Non-Proliferation of Nuclear Weapons*, 5 March 2020, https://www.nato.int/cps/en/natohq/official_texts_174104.htm (accessed 24 Nov. 2020) ('We, as NATO Allies, celebrate this visionary Treaty and its remarkable achievements. The NPT remains the essential bulwark against the spread of nuclear weapons, the cornerstone of the global non-proliferation and disarmament architecture, and the framework for international cooperation in sharing the benefits of the peaceful uses of nuclear energy, science, and technology. Allies remain strongly committed to full implementation of the NPT in all its aspects.')

⁹² Ibid.

**DISCUSSION PAPER:
PRIORITY ACTIONS FOR THE 2021 NUCLEAR NON-PROLIFERATION
TREATY REVIEW CONFERENCE - A VIEW FROM LATIN AMERICA**

By Irma Arguello, Founder and Chair of the NPSGlobal Foundation*
January 2021

The 2021 Nuclear Non-Proliferation Treaty (NPT) Review Conference (RevCon) opens a window of opportunity for States parties to find constructive ways to strengthen the treaty. The deterioration of the global security environment, the rise of conflicts and threats among states, the uncertainty about the future world post-COVID-19 pandemic, and the lack of agreement on addressing nuclear threats and implementation of the NPT make it crucial for States parties to take positive actions to restore the NPT's credibility and reaffirm their commitment to the treaty's goals.

To this end, this paper proposes four priority actions that States parties could deliver at the RevCon: (a) NPT Nuclear Weapon States (NWS) and Non-Nuclear Weapon States (NNWS) issue a statement about the crucial importance of avoiding nuclear weapons use; (b) States parties commit to further action on Nuclear Disarmament Verification (NDV); (c) States parties commit to strengthen physical protection of fissile materials through the ratification and implementation of the amended Convention on the Physical Protection of Nuclear Material (CPPNM); and (d) States parties support the International Atomic Energy Agency (IAEA) as the key source of technical assistance for safe and secure development of peaceful uses of nuclear energy.

These four actions can be viewed as comparatively low-hanging fruit in terms of constructive engagement of both NWS and NNWS and should be achievable. They emerged from a regional consultative discussion with Latin American government officials and non-governmental experts that took place in December 2019 in Rio de Janeiro, Brazil. If adopted and implemented, along with other signs of visible progress, they could help revitalize the NPT by opening pathways to overcome current deadlocks and frustrations in implementation of the NPT.

I. Drivers for Success

Strengthening the NPT is a common goal for all States parties. Proposals for priority actions for the Review process should be realistic and encourage mutual commitments of states, rather than divisive thinking among them. Proposals of this type could help achieve a less confrontational 2021 RevCon. The introduction of the concept of Joint Voluntary Commitments (JVCs), to be put forward by individual states or groups of likeminded states, could help break the paradigm of failure deriving from either an absence of, or poor fulfillment of, the traditional consensus final document. Such voluntary commitments would be focused on specific actions in support of the NPT's goals, in addition to a consensus statement (or in the absence of such a statement). They could be announced, either in advance of the RevCon or during the RevCon, to help build momentum and focus the discussion.

Introducing JVCs into the NPT RevCon environment is an innovative method that was proven to be successful in other relevant forums like the Nuclear Security Summits (under the name of "gift

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baskets”). In this regard there are opposing views concerning their utility for the NPT. Arguments against warn that promoting JVCs could undermine consensus and permit states to be elusive in terms of their commitments as NPT States parties. Supporters of the concept of JVCs argue that they can help create norms and enable progress where consensus may not yet be possible.

In fact, given the current international context, the success of the NPT RevCon seems more likely if States parties can achieve incremental small accomplishments that strengthen the NPT goals throughout the process, rather than relying on agreement on a consensus final document. History has shown that forced consensus turns out to be highly counterproductive.

II. Proposed Priority Actions

Below are brief explanations of the proposed four priority actions:

a. Statement by NPT States parties, including NWS, about the crucial importance of avoiding nuclear weapons use.

Such a statement would express the shared interest of all NPT States parties in preventing the use of nuclear weapons. It should include an affirmation by the five NWS in the style of the Reagan-Gorbachev statement – “a nuclear war cannot be won and must never be fought.” That affirmation, welcomed in the same text by the NNWS, should be agreed beforehand and delivered during the 2021 RevCon and could be presented as a clear sign of goodwill and recognition of the value of the NPT and its role in preventing nuclear use. The statement could also be strengthened by including commitments to specific risk reduction measures such as sustained dialogue among the P5 on potential changes in doctrines, postures, and rhetoric aimed at reducing the risk of nuclear use. Some will argue that to try and fail to reach agreement on such a statement could be worse than doing nothing, but if JVCs are implemented and recognized as a method to enhance the treaty, a group of states with diverse profiles could take ownership of this promising idea.

b. Joint commitment by NWS and NNWS on nuclear disarmament verification (NDV).

The 2010 Action Plan (2) emphasizes that Parties commit to apply the principles of irreversibility, verifiability, and transparency in relation to implementation of their treaty obligations. It also applies to nuclear disarmament obligations under Article VI of the NPT and subsequent verification of elimination of nuclear weapons. Several initiatives¹ include the participation of NNWS governments and civil society in the NDV process (2010 Action Plan (19)). UNGA resolutions 71/60 (2016) and 74/50 (2019) also created Groups of Governmental Experts (GGEs) under the UN Secretary General to advance the knowledge of and practical steps for implementation. The main goal of the GGEs is to develop political and, likely in the future, technical expertise and processes thorough a Group of Scientific and Technical Experts (GSTE) to make verification safe, secure, and proliferation resistant. In parallel the International Partnership for Nuclear Disarmament Verification (IPNDV) over the past half-decade has brought persons from 30 plus countries to strengthen our conceptual and technical understanding of NDV. Issuing a commitment on NDV at the RevCon could be a powerful driving force for confidence-building between NWS and NNWS under the NPT framework. It could also include ways to broaden participation of states in NDV activities as well as to find synergy among initiatives currently underway. A progress report including activities and their outcomes could be scheduled for the first Preparatory Committee after 2021, and successive meetings.

¹ Among them are the UK-Norway initiative, QUAD with the incorporation of US and Sweden, the 25-state International Partnership for Nuclear Disarmament Verification (IPNDV), the NuDiVe exercise between France and Germany, and VERTIC’s initiative aiming at creating centers of excellence in Latin America, South Africa, and Kazakhstan.

- c. *Commitment to strengthen physical protection of fissile materials through the ratification and implementation of the amended CPPNM.*

The 2010 Action Plan (42, 43 and 44) called for “all (NPT) States parties to improve their national capabilities to detect, deter and disrupt illicit trafficking in nuclear materials throughout their territories, in accordance with their relevant international legal obligations.” It also called for “States parties in a position to do so to work to enhance international partnerships and capacity-building in this regard” and for “States parties to establish and enforce effective domestic controls to prevent the proliferation of nuclear weapons in accordance with their relevant international legal obligations.” The proposal specifically encourages states to ratify and implement the Amended CPPNM as a strong measure to prevent horizontal proliferation and acts of nuclear/radiological terrorism. To date, 162 states are parties of the Convention, but only 125 have ratified the 2005 amendment. Those states that are not yet parties to the Amended Convention could commit themselves to ratify and those that have ratified could commit to bring the dialogue to multilateral fora to promote new ratifications. The experience of Nuclear Security Summits (2010, 2012, 2014, and 2016) where states pledged ratification of key international instruments such as the CPPNM and its 2005 amendment, should serve as an inspiration for future commitments and actions. Again, a progress report could be scheduled for the first PrepCom after 2021.

- d. *Support the IAEA as the key source of technical assistance for safe and secure development of peaceful uses of nuclear energy.*

Peaceful uses of nuclear energy are, in practice, the area of greatest and most immediate interest and benefit for most States parties, but traditionally this pillar has received relatively less practical attention. The 2010 Action Plan (52 and 53) calls for contributions to IAEA programs in support of peaceful applications of nuclear energy. The challenge here is to make such commitments operational, with concrete deliverables. Examples of tangible support include States parties’ contributions to the IAEA’s Marie Skłodowska Curie Fellowship – which granted 100 scholarships for women worldwide to carry out post-graduate studies in nuclear science – and support for the Peaceful Uses Initiative (PUI). Launched in 2010, the PUI has been effective in encouraging extrabudgetary contributions by states to support technical cooperation projects and other unfunded projects of the IAEA in the area of peaceful applications of nuclear technology. Parties could agree on common language stimulating joint work with the Agency to operationalize and reinforce the commitments already assumed, as well as to develop new ideas for supporting the IAEA.

III. The Role of Latin American States

Recent consultations and debates among Latin American officials and non-governmental experts have led to several important recommendations about Latin America’s role in the future of the NPT and the upcoming RevCon. In particular, Latin America can play a role in strengthening the NPT by facilitating dialogues; by emphasizing the need to avoid repeating the mistakes of the past and recover a sense of common purpose; and by highlighting the importance of finding and implementing concrete deliverables in support of all three pillars of the NPT. Latin American states can also stress that further potential measures such as strengthening negative security assurances and the potential adoption of legally binding mechanisms of “no-first-use” are helpful and should be supported, even if they are not substitutes for the Article VI disarmament goal. Even if such measures cannot be negotiated, pressing for them would complement and reinforce the norm against use of nuclear weapons.

As NNWS with excellent nonproliferation credentials, Latin American states can and should play an active role in promoting actions to strengthen the NPT. As reflected in its Preamble², one of the goals of the NPT regime is to comprehensively reduce nuclear risks deriving from the existence, use, and proliferation of nuclear weapons – implemented through differentiated commitments by NWS and NNWS. The COVID-19 pandemic and the resulting delay of the RevCon, in addition to low expectations about RevCon deliverables, present an important opportunity for all NPT States parties to use the 2021 RevCon to go beyond assessing how the treaty is being implemented. Rather, states should be working hard to find common ground and to commit to take actions – such as the four suggested in this paper – to rebuild momentum, restart progress, and deliver on the NPT’s goals. This will be critical to strengthen the NPT and preserve its cardinal role as the cornerstone of the global nuclear order.

² Text of the NPT Preamble: “The States concluding this Treaty, hereinafter referred to as the Parties to the Treaty, Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples” <https://www.un.org/disarmament/wmd/nuclear/npt/text>

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Session Three

A New Concert of Powers?



FOREIGN AFFAIRS

The New Concert of Powers

How to Prevent Catastrophe and Promote Stability in a Multipolar World

BY RICHARD N. HAASS AND CHARLES A. KUPCHAN

March 23, 2021

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This essay emerged from the Lloyd George Study Group on World Order.

The international system is at a historical inflection point. As Asia continues its economic ascent, two centuries of Western domination of the world, first under Pax Britannica and then under Pax Americana, are coming to an end. The West is losing not only its material dominance but also its ideological sway. Around the world, democracies are falling prey to illiberalism and populist dissension while a rising China, assisted by a pugnacious Russia, seeks to challenge the West's authority and republican approaches to both domestic and international governance.

U.S. President Joe Biden is committed to refurbishing American democracy, restoring U.S. leadership in the world, and taming a pandemic that has had devastating human and economic consequences. But Biden's victory was a close call; on neither side of the Atlantic will angry populism or illiberal temptations readily abate. Moreover, even if Western democracies overcome polarization, beat back illiberalism, and pull off an economic rebound, they will not forestall the arrival of a world that is both multipolar and ideologically diverse.

History makes clear that such periods of tumultuous change come with great peril. Indeed, great-power contests over hierarchy and ideology regularly lead to major wars. Averting this outcome requires soberly acknowledging that the Western-led liberal order that emerged after World War II cannot anchor global stability in the twenty-first century. The search is on for a viable and effective way forward.

The best vehicle for promoting stability in the twenty-first century is a global concert of major powers. As the history of the nineteenth-century Concert of Europe demonstrated—its members were the United Kingdom, France, Russia, Prussia, and Austria—a steering group of leading countries can curb the geopolitical and ideological competition that usually accompanies multipolarity.

Concerts have two characteristics that make them well suited to the emerging global landscape: political inclusivity and procedural informality. A concert's inclusivity means that it puts at the table the geopolitically influential and powerful states that need to be there, regardless of their regime type. In so doing, it largely separates ideological differences over domestic governance from matters of international cooperation. A concert's informality means that it eschews binding and enforceable procedures and agreements, clearly distinguishing it from the UN Security Council. The

UNSC serves too often as a public forum for grandstanding and is regularly paralyzed by disputes among its veto-wielding permanent members. In contrast, a concert offers a private venue that combines consensus building with cajoling and jockeying—a must since major powers will have both common and competing interests. By providing a vehicle for genuine and sustained strategic dialogue, a global concert can realistically mute and manage inescapable geopolitical and ideological differences.

A global concert would be a consultative, not a decision-making, body. It would address emerging crises yet ensure that urgent issues would not crowd out important ones, and it would deliberate on reforms to existing norms and institutions. This steering group would help fashion new rules of the road and build support for collective initiatives but leave operational matters, such as deploying peacekeeping missions, delivering pandemic relief, and concluding new climate deals, to the UN and other existing bodies. The concert would thus tee up decisions that could then be taken and implemented elsewhere. It would sit atop and backstop, not supplant, the current international architecture by maintaining a dialogue that does not now exist. The UN is too big, too bureaucratic, and too formalistic. Fly-in, fly-out G-7 or G-20 summits can be useful but even at their best are woefully inadequate, in part because so much effort goes toward haggling over detailed, but often anodyne, communiqués. Phone calls between heads of state, foreign ministers, and national security advisers are too episodic and often narrow in scope.

Fashioning major-power consensus on the international norms that guide statecraft, accepting both liberal and illiberal governments as legitimate and authoritative, advancing shared approaches to crises—the Concert of Europe relied on these important innovations to preserve peace in a multipolar world. By drawing on lessons from its nineteenth-century

forebearer, a twenty-first-century global concert can do the same. Concerts do lack the certitude, predictability, and enforceability of alliances and other formalized pacts. But in designing mechanisms to preserve peace amid geopolitical flux, policymakers should strive for the workable and the attainable, not the desirable but impossible.

A GLOBAL CONCERT FOR THE TWENTY-FIRST CENTURY

A global concert would have six members: China, the European Union, India, Japan, Russia, and the United States. Democracies and nondemocracies would have equal standing, and inclusion would be a function of power and influence, not values or regime type. The concert's members would collectively represent roughly 70 percent of both global GDP and global military spending. Including these six heavyweights in the concert's ranks would give it geopolitical clout while preventing it from becoming an unwieldy talk shop.

Members would send permanent representatives of the highest diplomatic rank to the global concert's standing headquarters. Although they would not be formal members of the concert, four regional organizations—the African Union, Arab League, Association of Southeast Asian Nations (ASEAN), and Organization of American States (OAS)—would maintain permanent delegations at the concert's headquarters. These organizations would provide their regions with representation and the ability to help shape the concert's agenda. When discussing issues affecting these regions, concert members would invite delegates from these bodies as well as select member states to join meetings. For example, were concert members to address a dispute in the Middle East, they could request the participation of the Arab League, its relevant members, and other involved parties, such as Iran, Israel, and Turkey.

A global concert would shun codified rules, instead relying on dialogue to build consensus. Like the Concert of Europe, it would privilege the territorial status quo and a view of sovereignty that precludes, except in the case of international consensus, using military force or other coercive tools to alter existing borders or topple regimes. This relatively conservative baseline would encourage buy-in from all members. At the same time, the concert would provide an ideal venue for discussing globalization's impact on sovereignty and the potential need to deny sovereign immunity to nations that engage in certain egregious activities. Those activities might include committing genocide, harboring or sponsoring terrorists, or severely exacerbating climate change by destroying rainforests.

A global concert would thus put a premium on dialogue and consensus. The steering group would also acknowledge, however, that great powers in a multipolar world will be driven by realist concerns about hierarchy, security, and regime continuity, making discord inescapable. Members would reserve the right to take unilateral action, alone or through coalitions, when they deem their vital interests to be at stake. Direct strategic dialogue would, though, make surprise moves less common and, ideally, unilateral action less frequent. Regular and open consultation between Moscow and Washington, for example, might have produced less friction over NATO enlargement. China and the United States are better off directly communicating with each other over Taiwan than sidestepping the issue and risking a military mishap in the Taiwan Strait or provocations that could escalate tensions.

A global concert could also make unilateral moves less disruptive. Conflicts of interest would hardly disappear, but a new vehicle devoted exclusively to great-power diplomacy would help make those conflicts more manageable. Although members would, in principle, endorse a norm-governed international order, they would also embrace realistic expectations about the

limits of cooperation and compartmentalize their differences. During the nineteenth-century concert, its members frequently confronted stubborn disagreements over, for instance, how to respond to liberal revolts in Greece, Naples, and Spain. But they kept their differences at bay through dialogue and compromise, returning to the battlefield in the Crimean War in 1853 only after the revolutions of 1848 spawned destabilizing currents of nationalism.

A global concert would give its members wide leeway when it comes to domestic governance. They would effectively agree to disagree on questions of democracy and political rights, ensuring that such differences do not hinder international cooperation. The United States and its democratic allies would not cease criticizing illiberalism in China, Russia, or anywhere else, and neither would they abandon their effort to spread democratic values and practices. On the contrary, they would continue to raise their voices and wield their influence to defend universal political and human rights. At the same time, China and Russia would be free to criticize the domestic policies of the concert's democratic members and publicly promote their own vision of governance. But the concert would also work toward a shared understanding of what constitutes unacceptable interference in other countries' domestic affairs and, as a result, are to be avoided.

OUR BEST HOPE

Establishing a global concert would admittedly constitute a setback to the liberalizing project launched by the world's democracies after World War II. The proposed steering group's aspirations set a modest bar compared with the West's long-standing aim of spreading republican governance and globalizing a liberal international order. Nonetheless, this scaling back of

expectations is unavoidable given the twenty-first century's geopolitical realities.

The international system, for one, will exhibit characteristics of both bipolarity and multipolarity. There will be two peer competitors—the United States and China. Unlike during the Cold War, however, ideological and geopolitical competition between them will not encompass the world. On the contrary, the EU, Russia, and India, as well as other large states such as Brazil, Indonesia, Nigeria, Turkey, and South Africa, will likely play the two superpowers off each other and seek to preserve a significant measure of autonomy. Both China and the United States will also likely limit their involvement in unstable zones of less strategic interest, leaving it to others—or no one—to manage potential conflicts. China has long been smart enough to keep its political distance from far-off conflict zones, while the United States, which is currently pulling back from the Middle East and Africa, has learned that the hard way.

The international system of the twenty-first century will therefore resemble that of nineteenth-century Europe, which had two major powers—the United Kingdom and Russia—and three powers of lesser rank—France, Prussia, and Austria. The Concert of Europe's primary objective was to preserve peace among its members through a mutual commitment to upholding the territorial settlement reached at the Congress of Vienna in 1815. The pact rested on good faith and a shared sense of obligation, not contractual agreement. Any actions required to enforce their mutual commitments, according to a British memorandum, "have been deliberately left to arise out of the circumstances of the time and of the case." Concert members recognized their competing interests, especially when it came to Europe's periphery, but sought to manage their differences and prevent them from jeopardizing group solidarity. The United Kingdom, for example,

opposed Austria's proposed intervention to reverse a liberal revolt that took place in Naples in 1820. Nonetheless, British Foreign Secretary Lord Castlereagh eventually assented to Austria's plans provided that "they were ready to give every reasonable assurance that their views were not directed to purposes of aggrandizement subversive of the Territorial System of Europe."

A global concert, like the Concert of Europe, is well suited to promoting stability amid multipolarity. Concerts limit their membership to a manageable size. Their informality allows them to adapt to changing circumstances and prevents them from scaring off powers averse to binding commitments. Under conditions of rising populism and nationalism, widespread during the nineteenth century and again today, powerful countries prefer looser groupings and diplomatic flexibility to fixed formats and obligations. It is no accident that major states have already been turning to concert-like groupings or so-called contact groups to tackle tough challenges; examples include the six-party talks that addressed North Korea's nuclear program, the P5+1 coalition that negotiated the 2015 Iran nuclear deal, and the Normandy grouping that has been seeking a diplomatic resolution to the conflict in eastern Ukraine. The concert can be understood as a standing contact group with a global purview.

Separately, the twenty-first century will be politically and ideologically diverse. Depending on the trajectory of the populist revolts afflicting the West, liberal democracies may well be able to hold their own. But so too will illiberal regimes. Moscow and Beijing are tightening their grip at home, not opening up. Stable democracy is hard to find in the Middle East and Africa. Indeed, democracy is receding, not advancing, worldwide—a trend that could well continue. The international order that comes next must make room for ideological diversity. A concert has the necessary

informality and flexibility to do so; it separates issues of domestic rule from those of international teamwork. During the nineteenth century, it was precisely this hands-off approach to regime type that enabled two liberalizing powers—the United Kingdom and France—to work with Russia, Prussia, and Austria, three countries determined to defend absolute monarchy.

Finally, the inadequacies of the current international architecture underscore the need for a global concert. The rivalry between the United States and China is heating up fast, the world is suffering through a devastating pandemic, climate change is advancing, and the evolution of cyberspace poses new threats. These and other challenges mean that clinging to the status quo and banking on existing international norms and institutions would be dangerously naive. The Concert of Europe was formed in 1815 owing to the years of devastation wrought by the Napoleonic Wars. But the lack of great-power war today should not be cause for complacency. And even though the world has passed through previous eras of multipolarity, the advance of globalization increases the demand for and importance of new approaches to global governance. Globalization unfolded during Pax Britannica, with London overseeing it until World War I. After a dark interwar hiatus, the United States took up the mantle of global leadership from World War II into the twenty-first century.

But Pax Americana is now running on fumes. The United States and its traditional democratic partners have neither the capability nor the will to anchor an interdependent international system and universalize the liberal order that they erected after World War II. The absence of U.S. leadership during the COVID-19 crisis was striking; each country was on its own. President Biden is guiding the United States back to being a team player,

but the nation's pressing domestic priorities and the onset of multipolarity will deny Washington the outsize influence it once enjoyed. Allowing the world to slide toward regional blocs or a two-bloc structure similar to that of the Cold War is a nonstarter. The United States, China, and the rest of the globe cannot fully uncouple when national economies, financial markets, and supply chains are irreversibly tethered together. A great-power steering group is the best option for managing an integrated world no longer overseen by a hegemon. A global concert fits the bill.

NO FALLBACKS

The alternatives to a global concert all have disqualifying weaknesses. Although the UN will remain an essential global forum, its track record illuminates the body's limitations. Veto-producing disagreements often render the Security Council helpless. Its permanent members reflect the world of 1945, not the world today. Expanding the membership of the UNSC might succeed in adapting it to a new distribution of power, but doing so would also make the body even more unwieldy and less effective than it already is. The UN should continue to fulfill its many useful functions, including providing humanitarian relief and peacekeeping, but it cannot and will not anchor global stability in the twenty-first century.

It is no longer realistic to aim for the globalization of the Western order and the emergence of a world populated primarily by democracies committed to upholding a liberal, rules-based international system. The unipolar moment is over, and in hindsight, talk of the "end of history" was triumphalist, even if sophisticated, nonsense. Indeed, the political coherence of the West can by no means be taken for granted. Even if Western democracies reclaim their commitments to republican ideals and to one another, they simply will not have the material strength or political wherewithal to universalize the liberal international order.

A U.S.-Chinese condominium—in effect a G-2 in which Washington and Beijing would together oversee a mutually acceptable international order—offers a similarly flawed alternative. Even if these two peer competitors could find a way to dampen their intensifying rivalry, much of the world will remain outside of their direct purview. Moreover, predicating global stability on cooperation between Washington and Beijing is hardly a safe bet. They will have enough trouble managing their relationship in the Asia-Pacific region. Farther afield, they will need considerable buy-in and support from others. A U.S.-Chinese condominium also smacks of a world of spheres of influence—one in which Washington and Beijing agree to divide their sway along geographic lines, perhaps apportioning rights and responsibilities to second-tier powers in their respective regions. To give China, Russia, or other powers a free hand in their neighborhoods, however, is to encourage expansionist tendencies and to either reduce nearby countries' autonomy or prompt them to push back, resulting in more arms proliferation and regional conflict. Indeed, the precise purpose of thinking through how to provide order in the twenty-first century is to avoid a world more prone to coercion, rivalry, and economic division.

Pax Sinica is also a nonstarter. For the foreseeable future, China will have neither the capability nor the ambition to anchor a global order. At least for now, its primary geopolitical ambitions are confined to the Asia-Pacific. China is markedly expanding its commercial reach, in particular through the Belt and Road Initiative, a move that will significantly enhance its economic and political clout. But Beijing has not yet demonstrated a robust willingness to provide global public goods, instead taking a largely mercantilist approach to engagement in most quarters of the globe. Nor has it sought to export its views on domestic governance to others or to push out a new set of norms to anchor global stability. In addition, the United States, even if it continues down a path of strategic retrenchment, will

remain a power of the first rank for decades to come. An illiberal and mercantilist Pax Sinica would hardly be acceptable to Americans or to many other peoples around the world still aspiring to uphold liberal principles.

When it comes to improving the current international architecture, a global concert wins not because of its perfection but rather by default; it is the most promising alternative. Other options are ineffective, unworkable, or unattainable. Should a great-power steering group fail to materialize, an unruly world managed by no one would lie ahead.

PUTTING IT IN MOTION

A global concert would promote international stability through sustained consultation and negotiation. Concert members' permanent representatives would meet regularly, supported by their staffs and a small but highly qualified secretariat. Members would dispatch their most accomplished diplomats as permanent representatives, who would be equal in rank, if not senior, to UN ambassadors. The concert would encourage the African Union, Arab League, ASEAN, and OAS to send equally authoritative figures. Concert summits would occur on a regular schedule. They would also take place as needed to address crises; one of the Concert of Europe's most effective practices was to gather leaders on short notice to manage emerging disputes. When relevant issues are under discussion, the heads of the African Union, Arab League, ASEAN, and OAS, along with the leaders of states involved in the matter, would attend concert summits. The global concert's chair would rotate annually among its six members. The body's headquarters would not be located in any of its member states. Possible venues include Geneva and Singapore.

In contrast with the UNSC, where showboating often crowds out substantive initiative, the permanent members of the concert would not

wield vetoes, take formal votes, or commit to binding agreements or obligations. Diplomacy would take place behind closed doors and aim to forge consensus. Members who break rank and act unilaterally would do so only after exploring alternative courses of action. If a member were to defect from consensus, other concert members would then coordinate their response.

This proposal presumes that none of the concert's members would be a revisionist power bent on aggression and conquest. The Concert of Europe functioned effectively in no small part because its members were, broadly speaking, satisfied powers seeking to preserve, not overturn, the territorial status quo. In today's world, Russian land grabs in Georgia and Ukraine are worrying developments, revealing the Kremlin's readiness to violate the territorial integrity of its neighbors. So are China's ongoing efforts to lay claim to and build military facilities on disputed islands in the South China Sea and Beijing's violation of its pledges to respect Hong Kong's autonomy. Nonetheless, neither Russia nor China has yet to become an implacably aggressive state committed to wholesale territorial expansion. A global concert also makes that outcome less likely by establishing a forum in which its members can make transparent their core security interests and strategic "redlines." Nonetheless, if an aggressor state that routinely threatened other members' interests were to emerge, it would be expelled from the group, and the remaining members of the concert would rally against it.

To advance great-power solidarity, the concert should focus on two priorities. One would be to encourage respect for existing borders and resist territorial changes through coercion or force. It would be prejudiced against claims of self-determination—but concert members would retain the option of recognizing new countries as they see fit. Although it would give

all nations broad latitude on issues of domestic governance, the concert would deal on a case-by-case basis with failing states or those that systematically violate basic human rights and broadly accepted provisions of international law.

The concert's second priority would be to generate collective responses to global challenges. At times of crisis, the concert would advance diplomacy and galvanize joint initiative, then hand off implementation to the appropriate body—such as the UN for peacekeeping, the International Monetary Fund for emergency credit, or the World Health Organization (WHO) for public health. The concert would also invest in a longer-term effort to adapt existing norms and institutions to global change. Even while defending traditional sovereignty to reduce interstate conflict, it would also discuss how best to adjust international rules and practices to an interconnected world. When national policies have negative international consequences, those policies become the concert's business.

In this regard, the concert could help counter the proliferation of weapons of mass destruction and address nuclear programs in North Korea and Iran. When it comes to diplomacy with Pyongyang and Tehran, enforcing sanctions against both regimes, and responding to potential provocations, the concert would have the right parties in the room. Indeed, as a standing body, the concert would significantly improve on the six-party and P5+1 formats that have historically handled negotiations with North Korea and Iran.

The concert could also serve as a venue for addressing climate change. The top greenhouse gas emitters are China, the United States, the EU, India, Russia, and Japan. Together, they produce roughly 65 percent of global emissions. With the world's leading emitters all around the table, the concert could help set new targets for reducing greenhouse gases and new

standards for green development, before handing off implementation to other forums. Similarly, the COVID-19 pandemic exposed the WHO's inadequacies, and the concert would be the right place to fashion a consensus on reform. Forging rules of the road for managing technological innovation—digital regulation and taxation, cybersecurity, 5G networks, social media, virtual currencies, artificial intelligence—would also be on the concert's agenda. These important matters often fall between the institutional cracks, and the concert could provide a useful vehicle for international oversight.

Drawing on its nineteenth-century forebearer's experiences, a global concert should also recognize that great-power solidarity often entails inaction, neutrality, and restraint rather than intervention. The Concert of Europe relied on buffer zones, demilitarized areas, and neutral zones to dampen rivalries and head off potential conflicts. Concert members objecting to initiatives backed by others simply opted out of participation rather than breaking rank and blocking the undertaking. The United Kingdom, for instance, opposed interventions to put down liberal rebellions in Naples and Spain in the 1820s but decided to sit out rather than prevent military action by other members. France did the same in 1839 and 1840 when other members intervened in Egypt to suppress a challenge to Ottoman rule.

How might a global concert usefully implement such measures today? In Syria, for example, a concert could have either coordinated a joint intervention to stop the civil war that erupted there in 2011 or worked to keep all the major powers out. More recently, it could have provided a venue for the diplomacy needed to introduce a buffer zone or demilitarized zone in Syria's north, averting the fighting and humanitarian suffering that followed the abrupt U.S. withdrawal and the regime's increasingly intense

attacks on Idlib Province. Proxy wars in places such as Yemen, Libya, and Darfur might become less frequent and violent if a global concert were to succeed in fashioning a common stance among the major powers. Had a great-power steering group taken shape at the close of the Cold War, it might have been able to avert, or at least make far less bloody, the civil wars in Yugoslavia and Rwanda. A global concert would guarantee none of these outcomes—but it would make them all more likely.

MORE TROUBLE THAN IT'S WORTH?

This proposal to establish a global concert runs up against a number of objections. One involves the envisaged membership. Why not include Europe's most powerful states rather than the European Union, which is governed in an unwieldy and collective fashion by its commission and council? The answer is that Europe's geopolitical weight comes from its aggregate strength, not that of its individual member states. Germany's GDP is around \$4 trillion, and its defense budget is around \$40 billion, while the EU's collective GDP is roughly \$19 trillion and its aggregate defense spending is close to \$300 billion. Europe's most important leaders, moreover, need not be excluded from concert meetings. The heads of the EU—the presidents of the commission and council—could bring German, French, and other member states' leaders to concert summits. And even though the United Kingdom has quit the EU, it is still working out its future relationship with the union. EU membership in a global concert would give both the United Kingdom and the EU a strong incentive to stay lashed together when it comes to foreign and security policies.

Some might question the inclusion of Russia, whose GDP is not even in the top ten and is behind those of Brazil and Canada. But Russia is a major nuclear power and punches well above its weight on the global stage. Russia's relationships with China, its EU neighbors, and the United States

will have a major impact on twenty-first-century geopolitics. Moscow has also begun reasserting its influence in the Middle East and Africa. The Kremlin deserves a seat at the table.

Major portions of the world—Africa, the Middle East, Southeast Asia, and Latin America—would be represented by their main regional organizations, which would have regular input through their permanent presence at the concert's headquarters. Nonetheless, the diplomats representing these bodies, along with select leaders from their regions, would join meetings of concert members only when issues of direct relevance are under discussion. This format admittedly reinforces hierarchy and inequity in the international system. But the concert aims to facilitate cooperation by restricting membership to the most important and influential actors; it deliberately sacrifices broad representation in favor of efficacy. Other institutions provide wider access that the concert would not. Countries not included in the concert would still be able to wield their influence in the UN and other existing international forums. And the concert would have the flexibility to change its membership over time if there was a consensus to do so.

Another potential objection is that the global concert would effectively produce a world of great-power spheres of influence. After all, the Concert of Europe did grant its members a *droit de regard*—a right of overwatch—in their respective neighborhoods. A concert for the twenty-first century, however, would not encourage or sanction spheres of influence. On the contrary, it would promote regional integration and look to existing regional bodies to encourage restraint. Across regions, the body would foster great-power consultation on and joint management of contentious regional issues. The goal would be to facilitate global coordination while recognizing the authority and responsibility of regional bodies.

Critics might claim that the concert is too state-centric for today's world. The Concert of Europe may have been a good fit for the sovereign and authoritative nation-states of the nineteenth century. But social movements, nongovernmental organizations (NGOs), corporations, cities, and other nonstate actors now have considerable political power and need to have seats at the table; empowering these social agents makes good sense. Nonetheless, states are still the main and most capable actors in the international system. Indeed, globalization and the populist backlash it has triggered, along with the COVID-19 pandemic, are strengthening sovereignty and compelling national governments to claw back power. Moreover, the concert could and should bring NGOs, corporations, and other nonstate actors into its deliberations when appropriate—for example, including the Bill & Melinda Gates Foundation and big pharmaceutical firms when discussing global health or Google when addressing digital governance. A great-power steering group would complement, not replace, nonstate actors' contributions to global governance.

Finally, if the appeal and efficacy of a global concert stem from its flexibility and informality, then critics could justifiably ask why it should be institutionalized. Why not let ad hoc groupings of relevant states, such as the six-party talks and the P5+1, come and go as needed? Doesn't the existence of the G-7 and the G-20 make a global concert superfluous?

Establishing a concert headquarters and secretariat would endow it with greater standing and efficacy than other groupings that gather sporadically. Regular meetings among the concert's six representatives, the daily work of the secretariat, the presence of delegations from all major regions, scheduled as well as emergency summits—these defining features would give the global concert permanence, authority, and legitimacy. The continuous and sustained dialogue, personal relationships, and peer pressure that come with

face-to-face diplomacy facilitate cooperation. Daily interaction is far preferable to episodic engagement.

The permanent secretariat would be particularly important in providing the expertise, sustained dialogue, and long-term perspective needed to address nontraditional issues such as cybersecurity and global health. A standing body also offers a ready vehicle for responding to unforeseen crises. The COVID-19 pandemic might have been better contained had the concert been able to help coordinate a global response from day one. The dissemination of critical information from China occurred too slowly, and it was not until the middle of March 2020—months into the crisis—that G-7 leaders held a video call to discuss the rapidly spreading disease.

The concert thus has the potential to supplant both the G-7 and the G-20. The United States, the EU, and Japan would likely focus their energies on the new body, possibly leaving the G-7 to atrophy. A better case can be made for preserving the G-20, given its broader membership. Countries such as Brazil, Indonesia, Saudi Arabia, South Africa, and Turkey would resent the loss of voice and stature should the G-20 wither away.

Nonetheless, should a global concert fulfill its potential and emerge as the leading venue for policy coordination, both the G-7 and the G-20 may well lose their *raison d'être*.

NO PANACEA, BUT NO ALTERNATIVE

Establishing a global concert would not be a panacea. Bringing the world's heavyweights to the table hardly ensures a consensus among them. Indeed, although the Concert of Europe preserved peace for decades after it was formed, France and the United Kingdom ultimately faced off with Russia in the Crimean War. Russia is again at loggerheads with its European neighbors over the Crimean region, underscoring the elusive nature of great-power solidarity. A concert-like format—the Normandy grouping of

France, Germany, Russia, and Ukraine—has so far failed to resolve the standoff over Crimea and the Donbas.

Nonetheless, a global concert offers the best and most realistic way to advance great-power coordination, maintain international stability, and promote a rules-based order. The United States and its democratic partners have every reason to revive the solidarity of the West. But they should stop pretending that the global triumph of the order they backed since World War II is within reach. They should also soberly confront the reality that abdicating leadership would likely lead to the return of a global system marred by disorder and unfettered competition. A global concert represents a pragmatic middle ground between idealistic but unrealistic aspirations and dangerous alternatives.

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FOREIGN AFFAIRS

The Case Against a New Concert of Powers

An Old Remedy Won't Help Today's Troubled Global Order

BY

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THE PAST SHOULD NOT ALWAYS BE PROLOGUE

Nicu Popescu

Global politics today is a mess, and it can be tempting to turn to history for clues about how to clean it up, as Richard Haass and Charles Kupchan did recently in “The New Concert of Powers” (March 23). But one must be careful to learn the right lessons. Haass and Kupchan argue that the nineteenth-century Concert of Europe provides a model for managing great-power relations, avoiding major wars, and balancing an imbalanced world. These are worthy goals, but the Concert of Europe failed to achieve them—and so would any new organization inspired by it.

In 1815, Austria, France, Prussia, Russia, and the United Kingdom founded the concert to maintain their power and stabilize a continent roiled by wars and revolutionary uprisings. The concert is sometimes depicted as producing a golden age of diplomacy: a time when diplomats and statesmen fostered mutual respect, maintained a balance of power, avoided one another's spheres of influence, and eschewed war in favor of joint sorties to the opera and late-night discussions over whiskey and cigars.

That image is false. The Concert of Europe was based on the idea that a few great powers could run the world. Yet it neither prevented war among its members nor managed to preserve any balance of power for a meaningful length of time. Its achievements were short-lived, and its failures were disastrous.

Haass and Kupchan claim that the concert demonstrated how “a steering group of leading countries can curb the geopolitical and ideological competition that usually accompanies multipolarity” and that the concert’s approaches to statecraft and crises represented “important innovations” that helped “preserve peace in a multipolar world.” But the peaceful phase of the Concert of Europe was rather short: 38 years, stretching from the Congress of Vienna in 1815 to the outbreak of war in Crimea in 1853, during which there were no wars among the concert’s members but plenty of other wars, violent revolutions, and military interventions that involved them.

Thirty-eight years of relative peace does not a golden age make. For comparison, the Cold War, which represented another way of avoiding great-power conflict, managed to prevent a direct war between the Soviet Union and the United States for 43 years. Few, however, would wish for a return to that arrangement. And the post–Cold War period is now in its 32nd year—meaning that if China, Russia, and the United States avoid war in the next six years, the current creaky international system would have as

good a record of preventing wars among great powers as the Concert of Europe had.

What came after the concert's initially peaceful phase further disqualifies it as a model. In 1853, Europe was plunged into nearly a century of wars among the Concert of Europe's members. First, France and the United Kingdom went to war with Russia after Russia attacked Turkey. Then, in 1866, Prussia fought Austria-Hungary, and finally, in 1870 and 1871, France fought Germany and eventually lost, upsetting the continent's precarious equilibrium.

All that fighting resulted from the fact that, ultimately, the Concert of Europe did not accomplish its main mission: ensuring a balance of power. Beginning in the 1850s, Prussia began building up its army and waging wars against its neighbors. The concert did not anticipate this development and failed to deal with it, which pushed the continent into a series of conflicts that lasted almost a century and culminated in the two world wars. In the end, the concert system required war, not quiet diplomacy, to restore balances of power. Even in the concert's first few decades, when peace mostly prevailed, diplomacy worked only because the threat of some of its members going to war against others was ever present, driving diplomacy forward to keep that threat at bay.

Haass and Kupchan argue that a new multilateral organization inspired by the Concert of Europe could handle the challenges of today's turbulent global order. But consider the difficulty such a group would have had in responding to the kinds of crises the world has seen in recent years. If a new concert along the lines proposed by Haass and Kupchan had existed in 2014, when Russia sent troops into Ukraine, it seems unlikely that China would have joined the United States and the EU in sanctioning Russia, let alone in threatening Moscow militarily. In 2015, after Turkey shot down a

Russian aircraft, it is hard to imagine that the United States and the EU would have sided with Russia, putting great-power solidarity above NATO solidarity. If Haass and Kupchan's proposed concert came into being, it would not take long before one of two things would collapse: either the Western alliance system—including NATO and the EU—or the new concert itself.

A concert system would also be especially ill suited to the age of nuclear weapons. The Concert of Europe's diplomacy worked a few times—for instance, by restraining Russian encroachments on the Ottoman Empire—because of the constant threat that some of its members would team up to attack another. But in a present-day version of the concert, in which all the members were nuclear powers, the chances of that happening would be far lower thanks to nuclear deterrence, which would make it far less likely that any member would credibly threaten war against another, since to do so would be to court catastrophe. Without the specter of war, a new concert of powers would feel far less urgency in encouraging diplomacy to find negotiated solutions to disagreements.

Haass and Kupchan are correct to highlight the persistent danger of great-power rivalries leading to war. But it is important to remember that the Concert of Europe was not a golden age of great-power relations. The concert was based on these powers' readiness to wage war against fellow members when diplomacy failed. The concert set the stage for a disastrous century, and a new organization modeled on it would risk a similar outcome.

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DON'T REINVENT THE WHEEL

Alan Alexandroff and Colin Bradford

In their recent article (“The New Concert of Powers,” March 23), Richard Haass and Charles Kupchan directly acknowledge a set of basic facts that some observers of global politics tend to avoid: tensions between leading powers are a dominant force in international relations, China is now a peer of the United States in many ways, and the Western values that shaped the post–World War II era are no longer as dominant in today’s diverse, multipolar world.

Haass and Kupchan’s response to these emerging realities is a “great-power steering group”—a global concert of powers. Such an organization, they argue, is “the best option for managing an integrated world no longer overseen by a hegemon.” This group would consist of China, India, Japan, Russia, the United States, and the European Union. The authors argue that this organization would be far nimbler and more flexible than existing international bodies and better able to manage geopolitical and ideological differences among its members.

Haass and Kupchan are, to some extent, describing what international relations theorists and trade experts call plurilateralism—an arrangement somewhere between bilateralism and multilateralism in which a small number of states come together to advance a particular issue. Under the right circumstances, plurilateralism can be more effective than its alternatives. It provides an opportunity for inclusive global leadership and avoids the cacophony of voices and views that often characterizes multilateralism. Plurilateralism works best not in isolation, however, but as a part of a broader organization in which groups of powerful states can build ever-shifting coalitions of consensus that provide collective leadership at different moments and over different issues. Within large multilateral

bodies such as the G-20, this dynamic helps countries avoid rigid blocs that stifle agreement and water down policies.

Haass and Kupchan's concert would have difficulty replicating this system. Simply put, there wouldn't be enough players in the room. Consider, for example, how difficult it would be for India and Japan to resolve the thorny tensions among China, Russia, the United States, and Europe. A better way of addressing the problems that Haass and Kupchan identify would be to work through existing institutions—namely, a revitalized G-20. The G-20 is large enough to offer states room to maneuver in complex negotiations and mediate between leading powers. Properly empowered, the G-20 could avoid gridlock, generate trust and respect, and make progress on difficult issues.

Current geopolitical tensions make it exceedingly unlikely that leading powers could cooperate to create a new global institution of the kind Haass and Kupchan envision, especially one that dramatically favors just six major powers. Of all the available options, the G-20 provides the best opportunity to manage geopolitical tensions and the global economy.

The G-20 is informal and flexible enough to accommodate the ideological diversity that the authors believe is necessary to manage contemporary great-power competition. The right players are at the table. Plurilateral leadership within the larger G-20—including China as a vital member—would bring multiple interests, perspectives, and pressures to bear on the issues at hand. The G-20 is also far more comprehensive than Haass and Kupchan acknowledge, holding ministerial meetings on a wide variety of issues—including 11 meetings that will occur before the next full summit, which is scheduled for November. The G-20 organizes official working

groups on pressing issues, such as energy, health, infrastructure, and the digital economy, and engagement groups composed of representatives from the private sector, labor, civil society, youth organizations, the scientific community, and think tanks.

Contrary to Haass and Kupchan's characterization of the group as a "fly-in, fly-out" organization, the G-20 also involves much more than just leaders' summits. It hosts an ongoing series of gatherings and negotiations that involve hundreds of officials and societal leaders. Critical to these year-round activities are the so-called sherpas, who represent national leaders and meet frequently to shape summit agendas and forge final communiqués and agreements.

Nevertheless, Haass and Kupchan are right to argue that the G-20 could be a much stronger institution. One of its major weaknesses is a lack of connection with everyday citizens in G-20 member states. The group devotes little effort to communications—rarely explaining the meaning of its work, the impact of its policies, or the relationship between what happens at its meetings and what happens in member states. When it does speak to the public, the G-20 tends to see its audience as elites in finance, trade, business, and the policy world rather than the broader public. As a result, its communiqués are rife with technocratic jargon, guaranteeing their inaccessibility to ordinary citizens.

Addressing that problem and others will require institutional change. Leaders' summits should focus on systemic and long-term issues of public concern, leaving detailed policies to ministers. Sherpas should work to push such matters to the front of the agenda. G-20 ministers, moreover, should have the power to develop their own action plans on urgent issues such as global health emergencies or financial stability—communicating with leaders but not waiting on them. The G-20 also has a follow-through

problem; the host leader changes yearly, making it difficult to coordinate a given policy's implementation. A small but permanent secretariat could address that, helping shepherd issues from start to finish and then communicating the outcome to the public.

Most important, to operate as a global concert, the G-20 would have to do more than just change its processes. Instead of limiting itself to economic, social, and environmental issues, the group would also need to function as a forum for heads of state, foreign and defense ministers, and other officials to discuss strategic and political security matters. Although the body occasionally raises such issues, those discussions are the exception rather than the rule. By expanding its role, the G-20 could become a focal point for easing geopolitical tensions.

Plurilateralism can work. Shifting coalitions can ease tensions, generate mutual respect, and pave the way for progress on important issues. These are precisely the attributes that, as Haas and Kupchan point out, global institutions must have in order to prevent China and the United States from entering an era of bipolar competition. With the right approach and reforms, a focus on security issues, and the inclusion of China in a plurilateral leadership group, the G-20 could serve as a model of plurilateralism—one that would make it unnecessary to build a new global concert from scratch.

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HAASS AND KUPCHAN REPLY

Our proposal to establish a global concert has provoked considerable discussion, reflecting widespread interest in fresh thinking on international order in an era of renewed great-power rivalry, ideological diversity, emerging multipolarity, and technological dynamism. We looked to the Concert of Europe for historical guidance because it succeeded in preserving peace among five major powers through dialogue and consensus, despite differences in outlook and aims.

Nicu Popescu is right to point out that the nineteenth-century concert privileged the rights and responsibilities of major powers at the expense of weaker states. But that's the point. Great-power steering groups work precisely because they bring to the table only the states that need to be there. Popescu is also correct that the "peaceful phase" of the concert lasted only 38 years; it failed to prevent the Crimean War or the series of conflicts that arose from German unification. But we are searching for a better approach to managing a multipolar world, not perpetual peace. If a new global concert succeeded in averting major war, moderating great-power friction, and promoting even limited cooperation on regional and global issues until 2060, we would gladly take it.

Popescu also claims that including China and Russia in a global concert would doom its efficacy or spell the collapse of the Western alliance system. Given Beijing's and Moscow's penchant for aggressive behavior, he contends, the United States would eventually have to choose between abandoning the concert or parting ways with democratic U.S. allies. That analysis posits a false choice. A new concert would backstop, not replace, the current international architecture. The U.S.-centered network of alliances would remain central. The United States and its democratic

partners, which constitute four of the proposed concert's six members, would look to the group to head off and contain differences with China and Russia, not accommodate acts of aggression.

In an interdependent world in which China, backed by Russia, is emerging as a peer competitor to the United States, cooperation across ideological lines is a must. To be sure, forging common ground with Beijing and Moscow on issues such as geopolitical stability, cybersecurity, global health, and climate change will be difficult and might well fall short. But not making an effort to do so or merely hoping that the status quo will evolve into something more stable all but guarantees a more dangerous and disorderly world.

Unlike Popescu, Alan Alexandroff and Colin Bradford recognize the need for new approaches to managing great-power relations in a multipolar world. They agree with our call for an informal grouping of major powers to address pressing issues but contend that the G-20 offers a more appropriate venue because it features 20 members instead of six. More is better, they maintain, as a larger membership would “offer states room to maneuver in complex negotiations and mediate between leading powers.”

We fail to see the logic. A grouping of 20 is more unwieldy than a grouping of six. There is almost always a tradeoff between inclusion and effectiveness. It is no accident that small-group formats—the six-party talks to deal with North Korea, the P5+1 nuclear negotiations with Iran, the four-member Normandy grouping for Ukraine—are today's diplomatic vehicles of choice. The G-20 provides an important forum for discussion, but even with Alexandroff and Bradford's sound recommendations for institutional reform, it is hard to imagine that the organization could mature into the steering group the world sorely needs. The G-20 has added value when it comes to policy coordination on economic, social, and environmental

questions, but for good reason it has generally steered clear of security issues. The group's size and diversity make it ill suited to take on the big geopolitical matters of the day. It makes more sense to stand up a global concert of six core members and, as we propose, add other actors as circumstances necessitate.

As we acknowledged in our original essay, our proposal to establish a global concert has drawbacks and limits. Still, clinging to the status quo or tinkering with existing institutions are far less preferable options as great-power rivalry mounts and international cooperation fades. Should a great-power steering group fail to materialize, the most likely result would be either a more unruly world managed by no one or the return of spheres of influence—outcomes that would make the task of organizing collective efforts to address global issues even more challenging than it already is.

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A Concert of Powers Is an Idea Whose Time Has Come—and Gone

Stewart M. Patrick | Monday, April 5, 2021

In the latest issue of *Foreign Affairs*, two luminaries of the U.S. foreign policy establishment make a provocative, seductive but ultimately unpersuasive case

(<https://www.foreignaffairs.com/articles/world/2021-03-23/new-concert-powers>) for

creating a new “global concert of major powers” for the 21st century, modeled on the Concert of Europe. The authors are Richard Haass and Charles Kupchan—my boss and my colleague, respectively—at the Council on Foreign Relations. I’ve learned an immense amount from both of them over the years. But in the interest of vigorous debate, let me suggest that their nostalgia for the 19th century is misplaced. The anachronistic mechanism they propose would not cure what ails global governance and could well create more problems than it resolves.

Their argument is straightforward and might seem compelling at first. The era of Western material dominance and ideological supremacy is over, making it futile to defend the liberal international order. At the same time, the world faces an array of daunting challenges, from climate change to nuclear proliferation to cybersecurity, that demand great-power cooperation regardless of regime type. Given the weaknesses of the United Nations and other established international institutions, the most realistic and prudent response is to go back to the future, resurrecting a modern version of the 19th-century Concert of Europe—which counted the United Kingdom, France, Russia, Prussia and Austria—as the basis for world order. They nominate six powers as its 21st-century members: The United States, China, the European Union, Russia, Japan and India.

The purposes of this new, permanent multilateral structure would be to reach consensus on basic norms of peaceful coexistence, negotiate new rules of state conduct on shared problems, and address regional security crises on an emergency basis. Haass and Kupchan concede that the resulting normative order would be shallower than what adherents of liberal universalism desire, but they insist this is inevitable: In a world of political pluralism, liberal and authoritarian powers must simply agree to disagree on matters like democracy and human rights. A standing secretariat, with accredited representatives, would support this new global concert’s work.



President Donald Trump meets with Chinese leader Xi Jinping, second from right, during a meeting on the sidelines of the G-20 summit in Osaka, Japan, June 29, 2019 (AP photo by Susan Walsh).

This is an alluring prospect for anyone craving a return to simpler times, when Castlereagh, Metternich and Talleyrand could meet in gilded chancelleries to determine the world's fate according to the brutal necessities of realpolitik, ensuring a balance of satisfactions among major powers. Such an old-school vision, however, is unsuited to the current moment, unrealistic in its assumptions and unreflective of the world's evolution since the Congress of Vienna.

The biggest problem with their proposal is its lack of global political legitimacy. Over the past two centuries, the international system has grown to include 193 independent sovereign nations and developed a dense array of multilateral organizations and treaties that regulate everything from the use of force to the allocation of orbital slots in outer space. Haass and Kupchan give short shrift to this vast if imperfect institutional architecture, particularly the unmatched global authority the United Nations enjoys—for better or worse—by virtue of its universal membership and legally binding Charter. A case in point is the global concert's envisioned crisis-response function, which would compete directly with the role of the U.N. Security Council—and without the latter's grounding in international law.

Most U.N. member states already consider the Group of 20, let alone the G-7, unrepresentative and illegitimate. Creating a new, self-appointed global directorate—a “G-6,” if you will—would elicit much louder howls from those left outside, not least from Africa, Latin America and the Middle East. Haass and Kupchan propose to mollify them by granting regional bodies like the African Union, the Organization of American States, the Arab League and the Association of Southeast Asian Nations periodic audiences before the new concert. But the optics would reinforce a global caste system pitting the dominance and privilege of great powers against the submission and supplication of weak ones. The concert would also likely encourage the world's fragmentation into at least tacit spheres of influence, as each great power asserts a right, and is even granted leeway, to police its respective neighborhood. The authors reassure the reader this will not occur, insisting that this new concert “would promote regional integration and look to existing regional bodies to encourage restraint.” But history provides few examples of that.

A great-power directorate has undeniable attraction as a potential deus ex machina in our age of global turbulence. But its elegant simplicity is a mirage.

The scheme's second deficiency is its unwarranted optimism that a standing concert will somehow overcome fundamental differences of interests and values that currently stymie great-power cooperation in existing formal bodies like the U.N. or the World Trade Organization, or even informal ones like the G-20. The assumption seems to be: Build it, and they will agree. This sounds like wishful thinking. Why would a mere change of venue smooth things over? Haass and Kupchan assume a socialization process of sorts, whereby “genuine and sustained dialogue” induces diplomatic flexibility. But it is unclear why this specific framework would be any more successful at bridging entrenched disagreements over, say, desirable norms of contingent

sovereignty, new rules for cyberspace or priorities for WHO reform. They assert that participants of this new global concert, unlike permanent U.N. Security Council members, “would not wield vetoes,” thus facilitating compromise. This may be true in a formal sense, but what is to stop an aggrieved great power from blocking consensus in practice?

The problem here is not the idea of a “G-6,” per se, but rather the aspiration to make this single arrangement the apex institution for international cooperation. There is clear value in having powerful nations meet informally to explore new rules of global governance, which can then be negotiated and ratified in more encompassing bodies. It also makes sense to have contact groups for specific regional challenges, such as the P5+1 talks on Iran’s nuclear program, with the Security Council’s five permanent members, plus Germany. Rather than seeking to create a new concert of great powers, however, a more pragmatic approach would recognize that we live in a “G-x” world (<https://stanleycenter.org/publications/pab/AlexandroffPAB310.pdf>), in which the precise identity and number of players who need to be around the table—the “x,” that is—inevitably varies with the issue at stake, be it emissions reductions or counterterrorism. Just as jockeys need different horses for different courses, as they say, the U.S. and other great powers should have flexibility to tailor minilateral coalitions to specific exigencies.

This brings me to the third limitation of the global concert proposal: It represents a premature surrender of liberal internationalism (<https://www.worldpoliticsreview.com/articles/29106/hold-those-obituaries-for-the-liberal-world-order>). There is no doubt that illiberal forces are on the march and democracies on the defensive. This is precisely the moment (<https://www.worldpoliticsreview.com/articles/28526/can-trump-s-successor-save-the-liberal-international-order>), however, to reinforce Western solidarity and the vision of an open, rules-based international order that has animated U.S. foreign policy since the days of the Atlantic Charter. Haass and Kupchan’s proposition suggests that the U.S., Europe and Japan should subordinate their principles for the sake of great-power comity—even though a shared global agenda has hardly stopped China and Russia from pressing aggressive regional ambitions or interfering in Western political systems.

An alternative approach that is both flexible and principled would have the U.S. treat international order as a game of concentric circles. America would continue to nurture a powerful core of Western democracies with broadly shared interests and values, even as it seeks pragmatic cooperation with ideological and strategic adversaries on matters like nuclear weapons, global warming and pandemic disease. All the while, it would continue to cooperate in more encompassing U.N. frameworks as needed. Instead of unilaterally disarming, the U.S. and other free nations would reconsolidate existing alliances like NATO and political frameworks like the G-7, while seeking to attract pivotal emerging democracies (<https://www.worldpoliticsreview.com/articles/28821/expanding-the-g-7-makes-sense-including-russia-does-not>), not least India, as partners in the defense of an open world.

A great-power directorate has undeniable attraction as a potential *deus ex machina* in our age of global turbulence. But its elegant simplicity is a mirage. A messier form of multilateralism seems better tailored to the world as it exists, and to the aspirations and interests of Western nations. The concert of powers, then, is an idea whose time has come—and gone.

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A New Concert? Diplomacy for a Chaotic World

Pamela Aall, Chester A. Crocker and Fen Osler Hampson

Diplomacy is vital for global stability and order, and has historically played a central role in the policies of states and international institutions. Not long ago there were plentiful examples of diplomatic successes in peacemaking and conflict management.¹ But the practice of peacemaking is not thriving today. Despite strong demand for international cooperation and diplomatic initiatives, evidence from Cameroon, the China–India border regions, the Koreas, Libya, the Sahel, the South China Sea, Syria, Ukraine and Venezuela indicates that the supply is lacking.

Why has diplomatic traction become so difficult to establish? One reason is that national decision-makers and other key participants in global politics operate in a more complicated universe than before. Elements of a legacy liberal order may endure, but a unipolar world has yielded to a multipolar one, and the global agenda has become much larger and more complex. Since we do not know where the international order is headed, it is necessary to prepare for a number of possibilities, to keep options open, and to avoid easy assumptions about ‘hidden hands’ and self-correcting mechanisms. A range of new challenges requires a careful rethink about how diplomacy is organised and practised. There is no single ‘right’ approach to the conduct of diplomacy in these troubled times.

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States are currently employing a variety of familiar diplomatic practices to project power in pursuit of national interests, to achieve stability in unsettled zones and to improve governance in fragile or transitional societies. These practices tend to fall into one of three distinct silos. Power diplomacy is generally deployed in geopolitical rivalries, using deterrence, containment, alliance-building and other competitive instruments backed by coercive power. US–China and US–Russia relations illustrate this pattern. Stabilisation diplomacy as practised by the African Union, France and the United States in the Sahel, for example, aims at de-escalating conflict and preventing its spread through instruments such as peacekeeping, military assistance, intelligence-sharing and containment of jihadist militants. Governance diplomacy involves intrusive efforts to reorder internal governance arrangements within states; it can also take the form of initiatives that inculcate new norms, rules and principles directed at advancing human rights and democracy. Relevant examples include current efforts by European Union members in Belarus, as well as US and allied efforts at nation-building in Iraq and Afghanistan, and United Nations-sponsored engagements in East Timor, Liberia and Kosovo. These three silos sometimes overlap, as in Afghanistan and Iraq, but are not typically integrated into a coherent strategic framework. This is problematic because none of them, by itself, is up to the task of strengthening security in troubled regions, or organising cooperative ventures around shared problems such as climate stress and pandemics.

In keeping with Robert Gates’s call for a rediscovery of the ‘remarkable symphony of American power’,² we are proposing a new variety of ‘concert’ diplomacy to bring together states and institutions with different ideologies, values and domestic systems. In this new form of diplomacy, differing entities will cooperate in specific fields of common interest with the general goal of maintaining global order, drawing upon legal, political and institutional tools – as well as power tools – to do so. Non-state participants may also be included. Just as symphonic concerts feature many instruments and a conductor, concert diplomacy will require a range of tools and leaders capable of guiding their use.

The scope and ambition of such concert diplomacy would depend on the problem at hand. In the cases of preventing nuclear war and geopolitical

conflict, the great powers themselves would have to be the drivers of the concert. But there cannot be a single concert to address every item on the global agenda. The centre of gravity on regional issues will vary by region, while the drivers of concert diplomacy on functional issues could include a range of state, inter-state and non-state actors. The idea is to foster greater use of informal, minilateral constellations of relevant actors – not to replace or compete with today’s formal institutions of global governance, but to operate alongside them.

Competing views about the future of diplomacy

Discussion of the kinds of diplomacy that will be needed to manage the evolution of the international system tends to posit a binary choice between a ruthlessly competitive, Cold War-style diplomacy of containment and deterrence on the one hand, and a return to the 1990s heyday of liberal internationalism – when diplomacy was focused on inculcating new norms and systems of governance – on the other. Infused in both visions of world order is nostalgia for a bygone era.

Realists who argue that the rise of China and the resurgence of Russia in its ‘near abroad’ are signalling a return to great-power politics privilege a form of diplomacy that is at once competitive and defensive, and centred on a renewed emphasis on alliance management and developing clear spheres of influence. The underlying premise of their argument is that the economic and military rise of China, coupled with the relative decline of the United States, is creating systemic instability, with a growing risk of direct military confrontation as China challenges US dominance in the Asia-Pacific.³

According to Graham Allison, the pattern of rivalry that is emerging between China and the United States is a familiar one going back centuries to the days of Athenian rule in the eastern Mediterranean, as documented by Thucydides in his account of the Peloponnesian wars and the rivalry between Athens and Sparta.⁴ Allison believes that the diplomatic statecraft required to manage contemporary great-power entanglements mandates the careful nurturing of US alliances in Europe and the Indo-Pacific as key elements of an effective containment and deterrence strategy. Economic statecraft will also have a role to play in enhancing America’s relative power

by penalising China with steep tariffs and other punitive economic measures when it undermines the rules and norms of international trade.

Realists have different views about the threat that Russia poses to international order. Whereas some believe that Russia has embarked on a quest for status and has defensive intentions in its regional sphere of influence, others argue that its intentions are less benign and that President Vladimir Putin's true quest is to resurrect the Soviet Union's Cold War status and boundaries. Both camps agree that, given Russia's economic weakness, it has had to embrace various forms of hybrid warfare, including cyber attacks, to promote its interests.

Realists are also divided in their views about the main strategic and diplomatic challenges posed by resurgent great-power rivalries. Whereas 'offensive' realists, like Allison, focus on changing power balances and the importance of establishing clear spheres of influence via strong economic and military partnerships to check Chinese and Russian expansion, 'defensive' realists are more concerned about managing the risks of any strategic miscalculation and avoiding unnecessary provocations in an uncertain world where domestic, populist pressures and nationalism are in the ascendancy.⁵ These pressures are especially evident in authoritarian states such as China and Russia, where they threaten the primacy of ruling elites who, in turn, are appealing to atavistic, nationalist sentiments in order to retain power.

Liberal internationalists interpret the evolution of diplomacy in the twenty-first century very differently, believing that the proliferation of regional and global institutions in a deeply complex, hyper-interdependent world heightens the prospects for cooperation among states and a stable international order, even with the weakening of US hegemony.⁶ Under this scenario, diplomacy will continue to focus on the strengthening of governance institutions while simultaneously consolidating the foundations of democracy in various corners of the globe through peacebuilding, economic assistance, democratic development and the promotion of human rights. A vast constellation of states, civil-society groups, non-governmental organisations (NGOs) and international organisations are key agents of institutional transformation in the liberal understanding of governance diplomacy.⁷ Some observers argue that regional organisations are likely to

play an increasingly important role, much as the EU has done to promote economic and political cooperation, democracy and integration among its members.⁸ In the liberal paradigm of international order, the deepening web of 'complex interdependence' spun by the globalisation of trade and investment, which now includes China as a major player in global value chains and investment flows, will further reduce the incentives for armed conflict. Yet such assessments cannot overlook the lasting damage that US President Donald Trump's weakening of the World Trade Organization and his renegade tariff wars as part of his 'America First' campaign are causing to the international system.

Diplomacy in a changing world

Nostalgic ruminations about the health of the liberal-international order in the second half of the last century, and its purported 'decline' in this century, overlook the fact that international institutions, such as the UN Security Council, struggled with (and often were hamstrung by) great-power rivalries during much of the Cold War. A brief moment of nation-building, peacemaking, democracy promotion and regional stabilisation in the 1990s was underpinned by a transitory unipolar moment.⁹ American dominance of the international system with the collapse of the former Soviet Union and China's own relative weakness and isolation following the Tiananmen Square massacre in 1989 meant that there were no real challengers to the leadership of the US and its Western allies. Certain types of diplomatic practice emerged that are not replicable today.

For example, the regionalised peace process in the Balkans in the 1990s, which culminated in successful negotiations at Dayton, Ohio, was orchestrated and led by the United States with European support, and featured a series of calibrated diplomatic interventions backed by the judicious use of NATO's military power against Serbia (which had no material external allies) to 'ripen' the conditions for a negotiated agreement. Reflecting on the outcome of those negotiations, US mediator Richard Holbrooke wrote that Serbia's leaders 'were headstrong, given to grandiose statements and theatre, but they were essentially bullies. Only force, or its credible threat, worked with them.'¹⁰

Similarly, the road to the peace conference in Madrid in October 1991 that facilitated the Oslo peace process and subsequent negotiations between Arabs and Israelis was paved by US power and the victory of the US-led coalition in the First Gulf War. As in the case of Dayton, US diplomacy succeeded in accelerating the peace process not just because the US was determined to reach a deal but because, as then-secretary of state James Baker noted, 'the defeat of Iraq created a new geostrategic dynamic in support of peace', which was combined with what Baker described as US 'willingness to act as a neutral broker and tell difficult truths to both sides'.¹¹

The Good Friday Agreement that was reached in Belfast, Northern Ireland, in April 1998 offers a somewhat different set of lessons about the role of diplomacy in ending violent conflict and promoting the development of new governance arrangements. Throughout the 1970s and 1980s, violence in Northern Ireland thwarted repeated efforts to end hostilities through negotiations. However, in the 1990s the peace process was renewed and 'internationalised', not just through the engagement of other actors to support and lead the peace process, but also through the taming of transnational non-state groups and interests which had sustained the conflict. The efforts of the external mediation teams led by former US senator George Mitchell, former Finnish prime minister Harri Holkeri and Canadian general John de Chastelain were critical to the process. A European Community framework offered powerful incentives for a negotiated deal. Again, the US played a catalytic role in building the process and supporting it.¹²

As these and many other cases illustrate, the US was central to peace and conflict diplomacy during the 1990s. It was able to exercise its influence on a global scale because it had no real opposition. The liberal, rules-based order it sought to promote depended heavily on this unipolar moment. Similarly, Cold War diplomacy, with its spheres of influence, depended on a bipolar world order. Today, structural changes in the international system have been redefining the relationships among powerful states, international organisations, local government and civil society. The emergence of powerful non-state actors, transformative communication technologies and global threats to planetary survival, as well as the heightened salience of domestic politics in the conduct of foreign policy, mean that the kind of diplomacy

practised during the Cold War, and in the unipolar moment that succeeded it, is no longer practical or possible.

Peacemaking led by one dominant power, as at Dayton, for example, is an unrealistic prospect, except in the case of conflicts that have not attracted the interest of other major powers, or that lie within the unchallenged sphere of influence (or sphere of interest) of a single power. Outside these spheres, peacemaking and conflict management are likely to fall to international and regional organisations, and to non-official actors, in keeping with another structural shift that has matured during the last 20-odd years involving the role that regional organisations play in world affairs. Once relegated to second-tier status, regional bodies now confer legitimacy, and often play gatekeeping and norm-enforcing roles, in order to constrain global actors and set the terms of UN intervention. They may sometimes receive low-key support from major or regional powers if they decide to construct a case-specific 'group of friends', or a more broadly focused concert of states that perceive a common interest in cooperating rather than exporting their rivalries.¹³

*Regional bodies
now confer
legitimacy*

Among the major powers themselves, evidence of direct rivalries appears to be increasing, most notably in Eastern Europe, around China's 'first island chain', and between China and India. Polarisation and power diplomacy connected with these geopolitical contests raise the risk of actual conflict, a prospect that should remind American and Chinese leaders that they need to be able to collaborate in some areas and to develop clear rules of the road to avoid armed confrontation – and with it the prospect of a nuclear exchange.¹⁴ In the case of US–Russian relations, Thomas Graham and Dmitri Trenin have argued in this journal that while any kind of partnership is out of the question, a more realistic goal is 'competition conducted with a measure of mutual restraint, leavened by cooperation on some transnational challenges', including regional ordering in the Arctic, the Middle East and Eastern Europe. The fact of 'polycentrism', they conclude, points to the need for multilateral frameworks that include both official and non-official experts.¹⁵

To this picture should be added the breakdown of any semblance of harmony or coherence within the greater Middle East, where confrontation between Iran and its Sunni neighbours is only one source of tension. Regional competition between Turkey and Qatar on the one hand, and Egypt, Saudi Arabia and the United Arab Emirates (UAE) on the other, is also playing out in the eastern Mediterranean, Libya and the Red Sea/Horn of Africa. Regional power struggles such as these are complicating initiatives by global actors, while dramatically increasing regional powers' resort to interventions and proxy-war tactics that are aggravating local internal conflicts. Perhaps nowhere else is the need for a new concert diplomacy more evident, even as Bahrain's and the UAE's recognition of Israel signals a historic shift in the diplomatic stance of some Arab states.

Rounding out these structural problems are two interrelated obstacles to peacemaking and conflict management: the splintering of local political authority into competing factions, and the growing inability of external actors to influence events in target countries. Without some degree of alignment between the interests and incentives of global, regional and local actors, diplomatic leverage is difficult to exert.¹⁶ This is particularly problematic in light of the proliferation of non-state armed groups, whose flourishing undercuts the making and maintaining of peace and undermines government itself, without providing alternative negotiating partners for peacemakers.¹⁷ Engaging such groups is a tall order for local and regional governments, to say nothing of more distant powers. It seems probable that only a new form of diplomacy, operating at multiple geographic and societal levels, will suffice to manage such situations.¹⁸

It should also be acknowledged that peacemaking and conflict management have become less of a priority for powerful states. Since 9/11, the US and other Western-oriented security exporters have shifted their focus to counter-terrorism and averting the destabilising consequences of state fragility. Concerns about the consequences of state fragility have led to the prioritisation of the goal of stability and the use of security instruments to deal with militant movements in ungoverned spaces. However, this short-sighted approach rarely produces the kinds of sustained diplomatic initiatives that were necessary to bring peace to Aceh, Colombia and

Nepal, and to wind down the Sudanese civil war. Support for negotiated and mediated political settlements is very much a normative – and not just a security – undertaking.¹⁹

In addition, transnational problems such as weapons proliferation, piracy, human trafficking and terrorism will require cooperative efforts among diverse parties to overcome.²⁰ This is nothing new – serious challenges to peace and security have often demanded new alliances, new institutions and new tools. The Second World War gave rise to the UN and the European Coal and Steel Community. The superpower confrontation of the Cold War produced formal alliances that continue to influence international politics. The end of the Cold War provided a strong boost to non-military tools of conflict management, including negotiation, mediation, facilitation, capacity-building and interactive conflict resolution. Joseph Nye has argued that these sometimes surprising outcomes must be replicated in coping with pandemics, climate change and economic instability, as well as a host of technology-driven risks and possibilities for which no rules of the road or shared mechanisms currently exist.²¹ Even countries that can appear hostile to collaborative diplomacy stand to benefit from such an approach. China's importance to the global economy and its shared interest in combatting climate change mean that it has overlapping interests, and not just strategic rivalries, with other countries. Russia too has shared interests with other countries such as avoiding nuclear war, supporting strategic stability (both at home and in neighbouring regions) and energy cooperation.²²

Towards a new diplomatic concert

Concert diplomacy is based on the premise that states and institutions with differing values and systems may nonetheless cooperate to achieve certain goals, such as maintaining global or regional order, or warding off common threats, such as nuclear war or climate change. The word 'concert' became associated with international politics in the 1800s, when Austria, France, Great Britain, Prussia and Russia joined together in the Concert of Europe, an arrangement that brought peace to Europe for much of the century. That peace did not come about because the members of the concert held similar values or visions of the European future. They did, however, respect each

other's territorial sovereignty and core interests, and share the goals of jointly managing European security, maintaining existing boundaries and calming the continent's political turmoil. It was a conservative response to the liberal ideas that emerged in the aftermath of the French Revolution, and had as its guiding principle the preservation of the status quo. Above all, it was based on what Kyle Lascuertes calls 'loose process norms' – that is, informal institutionalisation – and regular meetings to address the issues of the day.²³ Legend has it that the arrangement got its name because the delegates attended a concert together and thought that the metaphor of musical collaboration suited their own efforts. The earliest meanings of the word 'concert' may also have incorporated a sense of contestation as well as cooperation, indicating an agreement born of debate and rivalry. The Concert of Europe reflected that meaning as well. Achieving it was not necessarily a harmonious process, but depended on a respectful balancing act among its five members and their strong national interests.

Concert diplomacy in the twenty-first century, like its nineteenth-century predecessor, would incorporate regularised procedures and meetings, and a shared commitment to seeking consensus outcomes.²⁴ In terms of the management of great-power relations, the twenty-first-century version would operate similarly to the nineteenth-century concert, but at a global level. All of today's major powers would be included, even those which are not – but arguably should be – permanent members of the UN Security Council. But unlike the nineteenth-century version, the new concert would also feature multiple formats, operating on a global scale for some issues, at a regional level for others and on a functional basis for specific challenges such as pandemics. It would bring together different types of entities, and not just major powers, to solve problems and achieve common ends.

Maintaining the status quo would probably not be one of those ends. Instead, the goal might be to devise and monitor a peace process, much as a group of states and NGOs did to facilitate peace negotiations between the government of the Philippines and the Moro Islamic Liberation Front between 2001 and 2014 (and sporadically since then). It might be to address a common threat, as in the collaboration among states, international associa-

tions and private corporations to fight piracy off the coast of Somalia in the early 2000s. It might be to fight disease in countries beset by conflict, as with the international response to the Ebola virus in the 2010s.²⁵ These examples demonstrate that a variety of actors can share an interest in promoting certain values, identifying and fixing problems, responding to the risk of military escalation or cyber threats, or defending common goods, such as economic development, global health and environmental protection.

Governance diplomacy as it has been practised for the last 30 years is unlikely to be a major feature of concert diplomacy for a number of reasons. One is that major donors are diluting their insistence on governance standards.²⁶ China's interest in promoting the stability of incumbent governments and its growing influence over UN peacekeeping operations mean that the governance dimensions of such operations are likely to be scaled back.²⁷ At the same time, many countries in places like Africa and the Middle East are increasingly resistant to external pressures to embark on major governance reforms because they fear losing or upsetting a delicate domestic political balance. In addition, many are less dependent on Western donors than before, and less inclined to embrace Western values, which are no longer regarded as universal. As Stephen Krasner notes, this does not mean that promoting good governance will stop altogether, but that governance diplomacy will be more narrowly focused on specific problems such as combatting corruption.²⁸

*Governance
diplomacy will be
more narrowly focused*

Twenty-first-century concert diplomacy promises to be a much more fluid and variegated process than the nineteenth-century version. While the Concert of Europe might have dimly anticipated the EU, it was founded to protect its members' national sovereignty rather than to negotiate a power-sharing arrangement with a central authority. The new concert diplomacy, on the other hand, must embrace a diverse set of participants and tolerate a variety of political systems. It would bring together unlike institutions, including international organisations, regional organisations, NGOs, civil society and even, on occasion, the private sector.

Finally, unlike earlier concert diplomacy, the contemporary version would not demand that all its members focus on the same topics. Concerts may be informal and temporary, tied to the resolution of a specific problem. They may be longer term and sealed by contracts, but with low-bar exit clauses. The principal feature all these configurations would share is the practice of diplomacy by states and other actors that see the advantage of collaboration in reducing the risks of conflict, and of working out procedures to manage international challenges.

Already, traces of nascent concert diplomacy are emerging in certain fields, as in the use of the non-proliferation regime as the basis for negotiating the Joint Comprehensive Plan of Action (JCPOA) with Iran; the intelligence cooperation of the Five Eyes alliance; the intergovernmental Financial Action Task Force that counters terrorist financing and money laundering; the multi-dimensional Colombian peace process which engaged many different actors, including Colombian civil society; and the Rapid Response Mechanism within the G7 that collaborates on information-sharing to deal with cyber threats to democratic political processes. Such collaboration can extend to parties that may disagree on almost all other fronts. Graham and Trenin, for instance, have identified a range of low-hanging fruit for US–Russian cooperative endeavours that could become the core of a broadened diplomacy to foster restraint and enhance security in various sensitive regions.²⁹

Conflicts in need of concerts

Many contemporary situations cry out for a concert-diplomacy approach. A case in point is the turmoil in the Red Sea–Horn of Africa region. A humanitarian and security crisis is gradually emerging at this African–Middle Eastern crossroads due to a combination of weak or transitioning states (Djibouti, Eritrea, Ethiopia, Sudan); ongoing conflicts in Somalia, South Sudan and Yemen; the export of Middle Eastern rivalries into the Horn through the acquisition of bases and the use of proxies; and a lack of coherent engagement by major powers that instead compete with each other in pursuit of exclusive bilateral links with regional actors. Egypt, the UAE, Saudi Arabia, Turkey and Qatar have all made attempts to carve out spheres of influence in the Horn, the latter two working to oppose the former three in a pattern

that parallels their competitive behaviour in North Africa and the eastern Mediterranean. Conflict over water rights (Ethiopia–Sudan–Egypt), religion, inter-ethnic relations, inter-generational divides and control of rents in a region characterised by unaccountable governance is creating plenty of tinder for conflagrations.³⁰

While it is evident to virtually everyone – major powers, regional powers, counter-terrorism allies, global shipping interests, humanitarian NGOs – that heightened local turmoil should be avoided, there is also a notable absence of leaders prepared to deploy the region’s diplomats and envoys in a collective effort. The answer is not for major powers to compete for illusory domination of the area, but rather for them to explore means of bridging the core interests of the region’s key actors, including those of the Horn’s Arab and Turkish neighbours. A functioning concert initiative would focus on developmental priorities, support African and Asian mechanisms for negotiating differences, work with Arab-African capitals to help contain threats to maritime security and place constraints on the use of proxies to destabilise neighbours.

Elsewhere, concert diplomacy might help to take a hot crisis off the boil. The sudden escalation in September 2020 of the Nagorno-Karabakh crisis between Armenia and Azerbaijan is a case in point. Since 1992, after the last hot war in the area, the Organisation for Security and Cooperation in Europe (OSCE) has been the lead agency in seeking to manage the conflict, through the mechanism of the Minsk Group co-chaired by France, Russia and the US.³¹ While this effort was generally successful in quelling the violence and achieved some limited breakthroughs, for nearly 30 years the sides remained entrenched in zero-sum positions about the future of the Nagorno-Karabakh enclave and several surrounding districts.

As a result, popular attitudes in Azerbaijan and Armenia were deeply hostile to the opposing side. It was clear that any compromise deal between Yerevan and Baku (the sides met on a number of occasions) would meet the resistance of their populations’ deeply entrenched nationalist views. The extreme antipathy within Nagorno-Karabakh to a settlement involving any compromise – and the strong support from Armenian diaspora communities in France, the US and elsewhere – was another obstacle to peace.

The situation changed in November 2020 as Azerbaijan's superior military strength allowed it to regain lost territory. Russia, as the dominant neighbour of both sides and the diplomatic and military ally of Armenia, then stepped in to broker a ceasefire and political agreement that confirmed Azerbaijan's gains. The interpositioning of Russian peacekeepers served to freeze the conflict and solidify the new situation on the ground. Russia acted outside of the Minsk Group process to achieve this end, but unlike 30 years ago, it was not possible simply to impose a ceasefire on the parties. Azerbaijan's military advantage and Turkey's active participation as Azerbaijan's ally changed the balance of power in the region. The involvement of both Russia and Turkey, which are already on opposite sides in Libya and Syria, created another source of tension between Moscow and Ankara.

As of this writing, it seems that the violence has stopped, at least for the moment. It also seems that the OSCE concert process, which had some success in keeping talks going, has been sidelined by the direct participants, including Russia and Turkey. However, despite the ceasefire agreement, this conflict is far from resolved and would benefit from a redoubled effort on the OSCE's part. To be effective, this revitalised concert needs to strengthen its leadership and political will, and bring in allies (perhaps the co-chairs' Security Council colleagues) to the OSCE/Minsk process. An expanded concert would also bring Turkey – the other key conflict party – into the high-level discussions to hammer out a long-term plan. Importantly, the effort needs to go beyond the formal process to engage the hardened attitudes among citizens, and would benefit from further initiatives to prepare them for peace, a challenge that the EU and the Minsk Group have begun to address.³²

* * *

A new form of concert diplomacy will be critical in responding to the COVID-19 pandemic and other transnational threats.³³ Neither a ruthless, Cold War-style competition nor the liberal internationalism of the 1990s is a credible alternative. Even at the height of the Cold War, the former was too risky and was gradually set aside in favour of negotiated terms of coexistence. Likewise, there was plenty of power-based realism during the heyday

of unipolar liberalism as even its chief proponents sometimes ignored their own rules.³⁴ Powerful states adopted a mix-and-match approach, deploying power diplomacy, stabilisation diplomacy and governance diplomacy depending on the circumstances and their interests.

This kind of à la carte decision-making, which tends to exploit short-term advantages without regard to dangerous precedents and unintended consequences, seems increasingly unsuited to contemporary challenges. If a race to the bottom is to be avoided in turbulent conflict zones such as the greater Middle East and eastern Mediterranean, a new form of regional diplomacy will be needed. A regional security regime is probably beyond reach, but a process of periodic consultation among global and regional leaders on a well-defined agenda is not. Such a concept might build upon the annual IISS-sponsored Manama Dialogue, moving beyond scripted conference presentations to a focused, working-group format.³⁵ Similarly, if the global response to migration crises or disease outbreaks is to improve from today's ramshackle free-for-all, leaders will need to make diplomatic efforts to develop operational regimes and rules that can be implemented. The European Commission's new Pact on Migration and Asylum is an example of an attempt to strike the right balance between a fair sharing of responsibility and European solidarity. However, it will take catalytic leadership to translate professed commitments into genuine actions.

Other examples of purposeful and successful concert-style diplomatic initiatives can be found, but the demand for and supply of such initiatives are badly out of balance, and the imbalance is getting worse. The solution we have proposed points to the need for more informal and flexible diplomatic responses at various levels in order to prevent and manage potential conflict. The UN system could actually be strengthened if major powers worked alongside it to hammer out understandings and build consensus, as was done in the case of the JCPOA negotiations and earlier in the anti-personnel-landmines treaty via the Ottawa Process. This sort of thinking has proven its worth in instances of counter-terrorism collaboration. It needs to be applied more broadly in helping build rules of the road, confidence-building mechanisms and regimes of mutual restraint anywhere that powerful states risk bumping into each other. Today's challenges require joint and

flexible responses; the responding actors and institutions need the ability to operate in diverse places and to use a broad range of tools in support of diplomatic objectives. The critical missing factor is leadership networks, a modern interpretation of the relationships that enabled the nineteenth-century European concert to function. Human agency is required to initiate a diplomatic process, move it forward and keep it focused. This is not the work of a single leader or government. It requires a convergence of incentivised individuals with the necessary mandate and political will to get things done.

Acknowledgements

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Notes

- 1 Examples include the reunification of Germany (1990), the Comprehensive Cambodian Peace Agreements (1991), the Dayton Peace Agreement (1995), the Good Friday Agreement (1998), the Accra Comprehensive Peace Agreement (2003), the Comprehensive Peace Agreement for Sudan (2005), the agreement that ended the Aceh conflict (2005), the Comprehensive Peace Accord for Nepal (2006), the New START Agreement between the US and Russia (2010) and the Final Agreement that ended the conflict in Colombia (2016).
- 2 Robert Gates, 'The Overmilitarization of American Foreign Policy', *Foreign Affairs*, vol. 99, no. 4, July–August 2020.
- 3 See Robert Kagan, 'China's Dangerous Taiwan Temptation', Brookings Institution, 20 August 2020.
- 4 See Graham Allison, 'Thucydides's Trap Has Been Sprung in the Pacific', *Financial Times*, 12 August 2012; Graham Allison, *Destined for War: Can America and China Escape Thucydides's Trap?* (Boston, MA: Houghton Mifflin Harcourt, 2017); and Graham Allison, 'The Myth of the Liberal Order: From Historical Accident to Conventional Wisdom', *Foreign Affairs*, July–August 2018.
- 5 The classic statements of defensive realism are Robert Jervis, *Perception and Misperception in International Politics* (Princeton, NJ: Princeton University Press, 1976); and Robert Jervis, 'Cooperation Under the Security Dilemma', *World Politics*, vol. 30, no. 2, January 1978, pp. 167–214.
- 6 See John G. Ikenberry, 'Liberal Internationalism 3.0: America and the Dilemmas of Liberal World Order', *Perspectives on Politics*, vol. 7, no. 1, March 2009, pp. 71–87; and John G. Ikenberry, 'The End of the Liberal International Order?', *International Affairs*, vol. 94, no. 1,

- January 2018, pp. 7–23.
- 7 See Daniele Archibugi, *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy* (Princeton, NJ: Princeton University Press, 2008); Richard Perle, 'Democracies of the World, Unite', *American Interest*, vol. 2, no. 3, January/February 2007; and John G. Ikenberry and Anne-Marie Slaughter, 'Forging a World Under Liberty and Law: US National Security in the 21st Century', Princeton Project Papers, Woodrow Wilson School of International Affairs, Princeton University, 27 September 2006.
 - 8 See, for example, Peter Wallensteen, *Regional Organizations and Peacemaking: Challengers to the UN?* (London: Routledge, 2014).
 - 9 See Fen Osler Hampson and David Malone (eds), *From Reaction to Conflict Prevention: Opportunities for the UN System* (Boulder, CO: Lynne Rienner Publishers and the International Peace Institute, 2002); Fen Osler Hampson, *Nurturing Peace: Why Peace Settlements Succeed or Fail* (Washington DC: US Institute of Peace Press, 1996); Lise Morjé Howard and Alexandra Stark, 'How Civil Wars End: The International System, Norms, and the Role of External Actors', *International Security*, vol. 42, no. 3, Winter 2017–18, pp. 127–71; and Stephen John Stedman, Donald Rothchild and Elizabeth Cousens (eds), *Ending Civil Wars: The Implementation of Peace Agreements* (Boulder, CO: Lynne Rienner Publishers for the International Peace Institute and Center for International Security and Cooperation, Stanford University, 2003).
 - 10 Richard Holbrooke, 'The Road to Sarajevo', in Chester A. Crocker, Fen Osler Hampson and Pamela Aall (eds), *Herding Cats: Multiparty Mediation in a Complex World* (Washington DC: US Institute of Peace Press, 1999), p. 343.
 - 11 James A. Baker III, 'The Road to Madrid', in *ibid.*, p. 204.
 - 12 See Paul Arthur, 'Multiparty Mediation in Northern Ireland', in *ibid.*, p. 485.
 - 13 See Teresa Whitfield, *Friends Indeed? The United Nations, Groups of Friends, and the Resolution of Conflict* (Washington DC: US Institute of Peace Press, 2007).
 - 14 See Joseph S. Nye, Jr, 'Perspectives for a China Strategy', *Prism*, vol. 8, no. 4, June 2020, pp. 121–31.
 - 15 Thomas Graham and Dmitri Trenin, 'Towards a New Model for US–Russian Relations', *Survival*, vol. 62, no. 4, August–September 2020, p. 126.
 - 16 See Saadia Touval and I. William Zartman, 'International Mediation in the Post-Cold War Era', in Chester A. Crocker, Fen Osler Hampson and Pamela Aall (eds), *Turbulent Peace: The Challenges of Managing International Conflict* (Washington DC: US Institute of Peace Press, 2001).
 - 17 See IISS, *The Armed Conflict Survey 2020* (Abingdon: Routledge for the IISS, 2020), pp. 14–18.
 - 18 See Teresa Whitfield, 'Mediating in a Complex World', Centre for Humanitarian Dialogue, July 2019.
 - 19 See Howard and Stark, 'How Civil Wars End'.
 - 20 See Chester A. Crocker, Fen Osler Hampson and Pamela Aall (eds), *Diplomacy and the Future of World Order* (Washington DC: Georgetown

- University Press, forthcoming in 2021).
- 21 Nye, 'Perspectives for a China Strategy'.
- 22 See, for example, Evan R. Sankey, 'Reconsidering Spheres of Influence', *Survival*, vol. 62, no. 2, April–May 2020, pp. 37–47, in which the author argues for 'spheres of restraint' to secure great-power interests without violating small countries' sovereignty.
- 23 See Kyle Lascurttes, *The Concert of Europe and Great-power Governance Today* (Santa Monica, CA: RAND Corporation, 2017), p. 18.
- 24 See *ibid.* For an in-depth study of how the concert functioned and its impact as an institution, see Jennifer Mitzen, *Power in Concert: The Nineteenth-century Origins of Global Governance* (Chicago, IL: University of Chicago Press, 2013).
- 25 Concert diplomacy may also be supported by research projects that encourage a concert-like collaboration on developing practices for conflict management and peacebuilding. One example of this is the Private–Public Partnership on Peacebuilding (Px4), an initiative by the Carnegie Corporation and the Norwegian Ministry of Foreign Affairs, which requires its grantees to work across borders in joint research projects on peace.
- 26 See Vanda Brown, Harold Trinkunas and Shadi Hamid, *Militants, Criminals, and Warlords: The Challenge of Local Governance in an Age of Disorder* (Washington DC: Brookings Institution Press, 2017).
- 27 See Lise Howard, 'The Future of UN Peacekeeping and the Rise of China', in Crocker, Hampson and Aall (eds), *Diplomacy and the Future of World Order*.
- 28 Stephen D. Krasner, 'Learning to Live with Despots: The Limits of Democracy Promotion', *Foreign Affairs*, vol. 99, no. 2, March/April 2020, pp. 49–55.
- 29 Graham and Trenin, 'Towards a New Model for US–Russian Relations'.
- 30 This set of issues is discussed in detail in 'Final Report and Recommendations of the Senior Study Group on Peace and Security in the Red Sea Arena', forthcoming from US Institute of Peace Press. Chester Crocker was a member of the study group.
- 31 Additional Minsk Group members are Belarus, Finland, Germany, Italy, Sweden and Turkey, as well as Armenia and Azerbaijan.
- 32 See 'Press Statement by the Co-chairs of the OSCE Minsk Group', 16 January 2019, <https://www.osce.org/minsk-group/409220>; and the work of the European Partnership for the Peaceful Settlement of the Conflict over Nagorno-Karabakh, available at <https://epnk.org>. The latter organisation, a European civil-society consortium, is itself another concert arrangement in support of peacemaking in this conflict.
- 33 See François Heisbourg, 'From Wuhan to the World: How the Pandemic Will Reshape Geopolitics', *Survival*, vol. 62, no. 3, June–July 2020, pp. 7–24.
- 34 See Patrick Porter, 'A World Imagined: Nostalgia and Liberal Order', *Cato Institute, Policy Analysis*, no. 843, June 2018.
- 35 For details on the proceedings of the IISS Manama Dialogue, see <https://www.iiss.org/events/manama-dialogue/manama-dialogue-2020>.

COUNCIL OF COUNCILS

An Initiative of the Council on Foreign Relations



Session Five

Trade and Trade Governance



Background Memo

Trade and Trade Governance

Council of Councils Annual Conference

May 24–25, 2021

Jennifer A. Hillman, Council on Foreign Relations

Reviving the Multilateral Trading System and World Trade Organization Reform

It is no secret that the World Trade Organization (WTO)—and the rule-based trading order it intends to safeguard—is under threat. In December 2019, the United States’ refusal to fill vacancies on the WTO’s Appellate Body left it without a quorum, allowing countries to avoid compliance with rulings they do not like or find difficult to implement. Despite multiple calls for swift action, the WTO has not reached an agreement to curb fishery subsidies or write rules for e-commerce and digital trade. Nor has the WTO been able to adopt rules to address growing concerns over China’s unfair trade practices, including intellectual property theft, forced technology transfers, and extensive reliance on subsidies and state-owned enterprises (SOEs). Reforms to the operations of the WTO itself are also left undone. Careful institutional reform, starting with a revitalization of the WTO’s Appellate Body, and an embrace of sustainable development issues can reinvigorate the WTO and help ensure the survival of the current global economic order.

Fundamentally, the WTO consists of three main pillars: First, the WTO serves as a venue for negotiations, enabling members to come together and create new trade rules. Second, the WTO serves as the central clearinghouse for important trade information—tariff schedules, subsidy notifications, etc.—and provides support for its committees’ work. Third, members can use the WTO’s dispute settlement arm to resolve disagreements between members.

None of these elements are functioning as intended. Apart from the 2017 Trade Facilitation Agreement, the WTO has been unable to agree upon new rules or amend old ones. Members routinely decline to provide timely notifications of subsidies and other actions, while the WTO committees have limited power. The United States’ blocking of new appointments to the WTO’s Appellate Body—the backstop of the dispute settlement system—has hamstrung the institution’s ability to resolve disagreements and reflects the United States’ skepticism in the WTO’s ability to safeguard U.S. national interests.

The first step to revitalizing the WTO is to reform its dispute settlement system. Without a system that can hold members to their commitments, countries will be less willing to negotiate new agreements and could become emboldened to disregard existing commitments. If the WTO cannot resolve differences between

members, states could take matters into their own hands or look to other venues to resolve disputes. While additional reforms are required, a functioning Appellate Body could have a beneficial downstream effect, reenergizing the WTO's negotiation and executive functions.

Any reform will have to address the United States' long-standing complaints that the Appellate Body has overstepped its bounds and failed to adhere to certain timing and procedural obligations. New Zealand's Ambassador to the WTO David Walker offered proposals to address many of these concerns, but the core of the United States' frustration—the Appellate Body's restrictions on the use of trade remedies intended to protect against unfairly priced or subsidized imports—remains unaddressed. This issue could be resolved through the use of a specialized appellate body that solely addresses trade remedy appeals or by foregoing appeals in trade remedy cases altogether, assuming that domestic tribunals already examine the facts and the law of each determination.

Beyond dispute settlement, WTO reform will require restoration of its negotiating function. New rules are desperately needed to address e-commerce and digital trade, combat climate change, and confront the various distortions caused by subsidies, SOEs, and trade with nonmarket economies. To do this, WTO members would need to abandon the one-size-fits-all notion that all 164 members are bound to the same rules. Some of the WTO's new or updated rules could be considered inappropriate for all members, so members will need to find ways to integrate plurilateral agreements into the WTO's rule book. Changes to encourage transparency among members, including insisting on timely notifications of trade measures such as subsidies, are also needed.

Addressing the roots of this crisis will also require reconsidering the purpose of the WTO. The General Agreement on Tariffs and Trade (GATT), predecessor to the WTO, focused on trade liberalization from its inception. Presently, with most basic tariffs at low levels, the world faces more pressing challenges: equitably resolving the COVID-19 crisis, encouraging global development, ensuring fair treatment of workers, and facilitating the transition to a green economy. The WTO should pivot so that its agenda, new rules, and sense of common purpose are directed at supporting sustainable growth and development.

Regional Agreements and Fragmentation of the Trading System

One striking feature of the current trading system has been the rapid rise in bilateral and regional trade agreements. In 1990, when states were negotiating the WTO rules, 50 such agreements were in force. Today, that number is 341, with many agreements such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and Regional Comprehensive Economic Partnership (RCEP) encompassing large swaths of global trade flows.

The WTO's failure to develop new rules on issues such as digital trade has contributed to rise of regionalism. Additionally, many of the forces that once pushed the world toward globalization—lower transport costs, labor costs, technology—are now encouraging regional trade. Robots, 3D printing, and semiautomated assembly lines have changed where and how many products are made. Labor costs, which once drove companies abroad, are rising in China and other markets, making overseas production less of a bargain. Consumers are demanding custom-made goods delivered overnight to their doorsteps, undercutting the appeal of mass production in far-flung locales.

If trade and trade rules are going regional, the future role of the WTO and the multilateral rules-based trading system will depend in large part on whether the WTO succeeds in modernizing its governance practices and reforming its dispute settlement system. If it does, then the following issues should remain squarely in the WTO's corner:

- *Subsidies and State-Owned-Enterprises*: The basic rules and disciplines on subsidies will need to be global, particularly in areas such as agriculture, in which the goal is both overall caps on the amount of spending and rules for disciplining subsidies themselves. As the world works to address the global crises of climate change and COVID-19, developing clear rules on appropriate subsidization is of paramount importance.
- *Services*: The basic rules on trade in services will need to be global; countries cannot easily or efficiently implement one set of regulations for services with regional trading partners and develop another set for other partners.
- *Digital Trade*: The rules and standards around digital trade will need to be set at a global level. While the trend in trade in goods and even certain services could be going regional, digital trade is not bounded geographically. Moreover, regional standards could lead to a lack of interoperability between different blocs.
- *Trade Facilitation*: At its core, the goal of trade facilitation is simplifying customs clearance and other border procedures. Differentiating between trade coming from regional partners versus non-regional trade would undermine such efforts and increase the cost of all trade.
- *Transparency*: The WTO currently provides, and should continue to provide, comprehensive databases where global traders can understand tariff schedules, services commitments, and other rules of the road for trade.
- *Intellectual Property Protection*: While trade in goods and services could become more regional, ideas will continue to move globally, meaning the basic rules governing intellectual property will need to be global.
- *Relationship with Global Standards*: Standards-setting organizations, such as the International Telecommunications Union or the World Organization for Animal Health, currently establish global standards on technology, food, and other goods. The WTO expressly incorporates aspects of these standards into its own rules. The development and enforcement of these standards at a global level is unlikely to change.

National Security Exceptions

Another troubling development laid at the feet of the WTO has been the blurring of the line between economic and national security. From its inception, the WTO (and before it, the GATT) recognized that all countries needed the freedom to take measures to protect their national security, but that such a right should be circumscribed to ensure that national security claims did not undermine basic trade rules. As a result, an exception (Article XXI of the GATT) was crafted to permit countries to block trade or violate their trade commitments to protect their essential security interests. However, the exception is only applicable to trade in nuclear materials, arms or ammunition, or measures taken during war or international emergencies.

The exact meaning of Article XXI and how to evaluate actions relevant to national security interests had been the subject of mainly academic debate until 2017. That year, Ukraine brought the first challenge to Article XXI before the WTO, alleging that the myriad of trade and transit restrictions Russia placed on the movement of its goods were illegitimate. Russia, joined by the United States, contended that because only countries can determine what is in their national security interest, a WTO panel could not judge Russia's restrictions. The panel disagreed, ruling it could review actions taken under the national security exception and

determine if an action has a plausible connection to one of the specifically identified bases for national security-based trade restrictions. While the ruling makes clear that a WTO panel can scrutinize actions taken in the name of national security, it suggests that the well-understood and widely accepted distinction between economic measures and security measures is no longer clear.



Background Memo

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Vera Thorstensen, Getulio Vargas Foundation

The multilateral trading system was designed to have the World Trade Organization (WTO) at its core, complemented by more than 250 preferential trade agreements. The basic multilateral rules on goods, services, and intellectual property were negotiated and consolidated over seventy years. However, many of the issues people are concerned with today, such as sustainability, investment, competition, e-commerce, gender equality, and currency, are codified in preferential agreements (PTAs) separate from the WTO, resulting in the fragmentation of global trade. The gap between the WTO and PTAs is increasing. PTAs, which are mainly based on the U.S. or European Union (EU) models, are already replacing the WTO as rule makers, and the WTO is becoming old and outdated. It remains unclear whether the WTO should be reformed and renovated or rebuilt from scratch.

Those long connected with the WTO will struggle with this decision, but concerns inevitably emerge after watching the decline of the WTO since 2008's unsuccessful attempt to close the Doha Development Round, a WTO trade negotiation agenda. An impressive number of proposals for structural reforms, priority renegotiations, and new issues are now on the table.

What follows is a mixed policy proposal given current global challenges. The strategy, modeled after the WTO's origin story in which old rules were adapted to create a new institution, would retain previous components and innovate for new challenges.

First, consider the basics, such as why parties to the General Agreement on Tariffs and Trade (GATT) created the WTO. The WTO emerged from an agreement on tariffs and trade and transformed into an international organization to negotiate rules and liberalize trade. The Uruguay Round negotiations, conducted among one hundred countries, culminated in the Marrakesh Agreement, the international treaty that produced a WTO with a strong dispute body to settle (not solve) trade disputes. At that time, strong rules and predictability were primary among members. All involved parties accepted a liberal capitalist economic order under the leadership of the United States and the EU. They followed the mantra that liberalizing trade would lead to development.

These underlying hypotheses are no longer widely accepted. Today, the future of global trade faces myriad challenges and uncertainties, including the following:

1. Countries are challenging whether the liberal order is the right mechanism to achieve development and want to try other economic policies. Global trade has increased significantly and is interlinking almost all countries, but recalcitrant countries remain reluctant to participate. The problem is that modern trade has no borders, and trade could struggle to survive without universally applicable rules.
2. The WTO was established as an international treaty negotiated by consensus that balanced gains and costs among almost one hundred countries, a great achievement. Such a model of single undertaking could be difficult with almost two hundred countries today.
3. Some agreements need reform to meet modern economic realities, such as subsidies and state-owned enterprises. Green subsidies could be brought back to the table to be reviewed—not banished from the rule-book and left undiscussed since the Seattle WTO Ministerial Conference. Environmental rules and retraining are new imperatives, but potential for the reform of old agreements exists. However, if state-owned enterprises cannot be abolished, it would be difficult to establish limits and restrictions to their activities.
4. Mandates from the original 1990s issues need to be negotiated, and today's negotiation issues are waiting for trade rules. The original new issues are well known: environment, investment, competition, and transparency on government procurement. Today's new issues are e-commerce, digital services, sustainability, pollution, circular economy, labor standards, private sector standards (made by nongovernmental organizations but supported by governments), and the effects of exchange rates on tariffs, among others. These sensitive issues are at the core of modern trade.
5. Plurilateral agreements—such as the Information Technology Agreement and Trade Facilitation Agreement—are already included in the WTO. The WTO knows how to create them, and yet no more plurilaterals have been negotiated. The difficulty of reaching consensus and including plurilaterals under the WTO umbrella should be considered.

To address these issues, one should reflect on their causes.

International treaties used to form the backbone of the WTO. But those treaties, with all the pomp and circumstance and inherent rigidities of the law of treaties, are not necessary for the WTO. Certainly, they are the dream of all lawyers, but they are also the nightmare of negotiators. On numerous occasions, negotiators blocked discussions because they were afraid to accept any proposal the WTO Appellate Body's interpretation could challenge. Soft laws instead of hard laws could be a new path for the WTO.

A two-step approach could be used to negotiate today's pressing new issues and the original issues. First, guidelines—or soft laws—can be negotiated, which practitioners of good governance value. Guidelines will be easier to negotiate because they will be rules of guidance supervised by the interested members. Second, when the issue is tested and matured, it can be transposed into new agreements—hard laws. Yet this path would require a big change in the existing trade mindset.

To introduce this guideline model to the WTO, some structural reforms will be needed.

To be enforceable, guidelines must have teeth to go after rule breakers, though not overly sharp—like those found in the old WTO Dispute Settlement Body. The real teeth will be the indicators of compliance applied to

trade measures, following the activities of the interested parties. Many of these indicators are already available in other international organizations and are reviewed periodically by expert committees. This supervision would occur in the WTO committees, based on the WTO secretariat's peer review reports.

This proposal would create a new role for an enlarged and stronger secretariat, including not only lawyers but economists, engineers, and experts in areas of related trade fields. The enlarged secretariat's analysis would help create the aforementioned guidelines. They would be based on a bottom-up approach: collecting data; discussing among groups of interested members; and going through working groups, WTO committees, and the WTO councils. An international organization with a weak secretariat is doomed to become a club of two hundred parties stuck in endless discussions. A good secretariat should be a real guardian of rules, whether guidelines or treaties.

This guideline-based process assumes another substantial change to the old set of untouchable clauses: the WTO as a member-driven organization. Yet this is a failed assumption introduced after the WTO was created. The reality is that the WTO was established as an organization, created as a forum for ongoing negotiations of topics, not endless rounds.

The present proposal considers the WTO as a two-building structure: a traditional building to discuss traditional WTO issues such as goods, agriculture, fishing, services, and intellectual property and a new building—created to discuss the new issues—such as environmental sustainability, e-commerce, digital services, currency, and gender equality, among others.

This transformed WTO, incorporating many advanced subjects already in practice by preferential agreements, would be more apt to face the challenges of today's world and to answer the voices persistently asking for change.

In reality, remaining in old ways will lead the WTO nowhere. The organization needs to stay alive and function to shed light on good trade practices and add order to a fragmented world trade system. In a nutshell: give power back to negotiators

A Reset of the World Trade Organization's Appellate Body

The Trump administration has destroyed the World Trade Organization's Appellate Body, much to the dismay of those needing the certainty of a rules-based trading system. Three reforms could get it back on track.

January 14, 2020



*The sign of the World Trade Organization on their headquarters, in Geneva, on September 21, 2018.
Fabrice Coffrini/AFP via Getty Images*

The World Trade Organization (WTO) and the rules-based trading system face an existential threat from the Donald J. Trump administration's blockade on appointments to the WTO's top court—the Appellate Body. As of December 2019, the Appellate Body had too few members to decide cases, leaving pending appeals in limbo and threatening to turn every future trade dispute into a mini-trade war. The Appellate Body's demise has brought renewed focus on the important role it has played in resolving trade disputes while opening the door to reforms long-sought by the United States. A solution

that improves the efficiency of the Appellate Body and addresses U.S. concerns involves adopting a specific set of operating principles, establishing a new oversight committee to ensure adherence to those principles, and placing term limits on the legal staff to bring in fresh thinking and a better distribution of power between adjudicators and staff.

The United States Led the Effort to Create a Binding Dispute Settlement System

When the WTO was created in 1995, a top goal for the United States was a binding dispute settlement system to replace the previous General Agreement on Tariffs and Trade (GATT) process, which could be easily circumvented, thereby allowing countries to dodge their trade commitments. What was created in its stead was a two-stage process to determine whether a country has violated the rules or otherwise undermined the bargain between countries. At the first stage, an ad hoc panel assesses the facts and applicable WTO rules to determine whether a violation has occurred. The parties can then request that the panel's determination be reviewed by the Appellate Body, which has the power to either uphold or overturn the decision. The Appellate Body is composed of seven people, with a minimum of three required to rule on an appeal. Each member serves a four-year term and can be reappointed once. The members serve on a part-time basis and are aided in their work by an increasingly powerful staff of full-time lawyers in its Secretariat.

The United States was the strongest proponent of creating an appellate body. Since the WTO rules provide for a nearly automatic adoption of panel reports, the United States sought a process to overturn any erroneous panel decisions before they became binding obligations. While appeals were expected to be rare and limited to narrow questions of

law, access to the Appellate Body was considered essential both to ensure that countries could challenge decisions by ad hoc panels that they believed were wrongly made and to bring a measure of consistency across disputes over similar legal texts.

Now, however, the United States believes the Appellate Body is the one making errant decisions, thereby justifying its blockade on appointments.

U.S. Claims of an Appellate Body Gone Astray

The WTO dispute settlement system succeeded initially. An increasing number of WTO members used it. Compliance with its decisions, while not perfect, was considered good. For its part, the United States filed more complaints than any other country, prevailing in 91 percent of these cases. However, the expectations that appeals would be rare and narrow proved to be wrong. Nearly 70 percent of panel reports have been appealed and the average appeal can raise a dozen or more claims, many of them going far beyond narrow legal questions.

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U.S. complaints about the WTO, which began more than a decade ago, extend beyond dashed expectations to six additional concerns. First, the United States objects to the practice of Appellate Body members staying on after their term has expired to finish an appeal that began while they were still in office. The United States contends that WTO member countries, not Appellate Body members, should decide whether a term of office can be extended. Second, the United States objects to the Appellate Body's frequent failure to complete appeals in the required ninety days, arguing that a rules-based system needs the adjudicators themselves to follow the rules. Third, the United States contends that the Appellate Body exceeds its authority in reviewing and sometimes overruling factual findings by panels, despite a mandate that appeals be limited to issues of law. Fourth, the United States objects to the Appellate Body's issuance of advisory opinions—statements or interpretations not necessary to resolve a dispute—that could be seen as making law in the abstract. Fifth, the United States objects to Appellate Body rulings that elevate the significance of past decisions to near-binding precedent that should be followed by future panels absent cogent reasons to depart from them. Giving precedent a strong role contravenes the WTO provision placing responsibility for definitive interpretations of WTO texts on the WTO members. Sixth, the United States asserts that the Appellate Body has overstepped its bounds by reaching decisions that go beyond the text of the agreements themselves, potentially taking away rights or adding to U.S. obligations.

These complaints have considerable merit. Appeals frequently do violate the ninety-day rule. Appellate Body members have remained past their terms of office. Appeals frequently reexamine facts rather than resolve precise legal questions. Too much is often made of past decisions. Reports often go beyond the critical issues in a given appeal. More debatable is the U.S. claim that the Appellate Body has overreached, filling in gaps in the rules created by the “constructive ambiguity” employed by WTO negotiators to reach agreements. No agreed upon negotiating history of WTO texts exists, therefore each country brings its own understanding of what a given provision

means. In some cases, the Appellate Body has added requirements or read precise meaning into broadly worded provisions. In others, the U.S. complaint is more that the Appellate Body accepted a different interpretation than the one it sought.

Responses to U.S. Criticism

Many of the other 163 members of the WTO harbor varying degrees of skepticism about the United States' concerns. Some members view claims of overreach as sour grapes over U.S. losses in specific cases. Many perceive allowing departing Appellate Body members to finish their work as common sense, saving the considerable time and expense of rehearing an appeal before a new set of Appellate Body members. While conceding that not completing appeals in ninety days violates WTO rules, most members sympathize with a truncated Appellate Body facing record numbers of complex appeals. Where the United States sees the Appellate Body as having made law, the European Union, for one, often sees a proper interpretation of the texts.

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Ruining the WTO ... would not be in the
United States' interest.
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Some countries share the United States' substantive concerns but object to its tactics, which deprive all other WTO members of their right to a functioning Appellate Body. WTO countries are frustrated that the United States has been vocal in its complaints but silent in suggesting fixes. The United States claims it bears no burden to propose changes because it seeks none. Rather, the United States wants a collective recognition from all members that the Appellate Body has strayed from the rules and a process to restore the system to what was envisioned when the WTO was created in 1995.

Breaking the current impasse requires a clear indication from the United States that it will unblock the appointments process if its concerns are met. To date, no such sign has been given, raising suspicions that the Appellate Body's demise is part of a U.S. effort to destroy the WTO itself. Ruining the WTO, and with it the multilateral, rules-based trading system, would not be in the United States' interest. American companies depend on the predictable market conditions, strong intellectual property protections, transparent rules, and lower barriers to goods, agriculture, and services exports established by the WTO.

Three-Part Solution

To get the Appellate Body back on track, three reforms are needed.

Adopt the Walker principles. New Zealand's Ambassador and Permanent Representative to the WTO David Walker was appointed in February to "seek workable and agreeable solutions to improve the functioning of the Appellate Body." On November 28, 2019, he set forth specific principles designed to address the six U.S. concerns. The principles require the Appellate Body to make its decisions in ninety days and for Appellate Body members to leave promptly at the end of a second term of office, to treat facts as facts (not subject to appeal), to respect the more deferential standard of review for antidumping investigations, to address only issues raised by parties and only to the extent necessary to resolving the dispute at hand so that its opinions are not advisory, to take previous Appellate Body or panel reports into account only to the extent they are relevant and not as precedent, and to ensure that its rulings do not add to the obligations or take away any rights of the parties as contained in the WTO rules. Collectively, the Walker principles are designed to make the Appellate Body more efficient by shortening its time frames and its reports while doing what the United States has demanded—return to the rules as written in 1995. If adopted with unreserved acknowledgement by the European Union and other skeptics, it would

demonstrate widespread member agreement that the Appellate Body has a limited mandate to resolve only legal questions raised on appeal in strict accordance with WTO rules.

Establish an oversight committee and audit to ensure compliance. To build trust that the Appellate Body will adhere to the Walker principles, the WTO should convene an oversight committee at least once a year and when requested. The oversight committee could be made up of the chairs of the lead WTO committees—its General Council, Council for Trade in Goods, Council for Trade in Services, Council for Trade-Related Aspects of Intellectual Property Rights, and the Dispute Settlement Body, with the chair of the Dispute Settlement Body appointing four additional independent trade-law experts to the committee to ensure a proper representation of expertise. The committee's sole task should be to assess whether the Appellate Body has adhered to the Walker principles, either over the course of a given year or, when asked, in an individual case.

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The WTO should convene an oversight
committee.
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Limit the service of members of the Appellate Body Secretariat to no longer than eight years—the maximum length of time of an Appellate Body member. The root cause of many U.S. concerns rests not just with the Appellate Body members themselves, but with its Secretariat—particularly the lawyers who work for the Appellate Body as a whole. Over time, the Secretariat has gained experience and expertise that often is greater than that of the Appellate Body members, who serve on a part-time basis for a maximum of eight years. Secretariat lawyers, on the other hand, devote all of their time over many years

to working on appeals and are steeped in (and potentially wedded to) past decisions. Adopting a mobility principle would allow staff rotations throughout other WTO offices, bring new perspectives to appeals, reduce the tendency to treat past decisions as precedent, and help restore an appropriate balance of power between the Appellate Body members and the Secretariat staff. It would also send a strong signal of an end to business as usual.

A Fair Solution

These three reforms would make the Appellate Body more efficient while addressing U.S. concerns. For the United States, it is critical that the Appellate Body respect the current language of the WTO's Dispute Settlement Understanding. The Walker principles require just that. But the United States needs assurance that the mindset of the Appellate Body has been changed and that, this time around, the rules will be respected. The creation of an oversight process ensures that the Appellate Body will be judged on its consistency with the Walker principles, while injecting an additional measure of political oversight over the functioning of the Appellate Body. Staff rotation brings fresh thinking along with a renewed focus on completing appeals in accordance with the needs of WTO members.

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U.S. concerns about the Appellate Body did not begin with President Trump and they will not end when he leaves office.
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These changes ought to satisfy the United States while not undermining the rest of the world's desire for a fair and effective system. If more is needed, tweaks to the Walker principles should be sought. By its response to these reforms, the Trump administration will signal to the world whether it wants to fix the WTO's dispute settlement system or not. Time is of the essence. By the time the WTO ministers meet in June 2020, a package of reforms needs to be in place or the turn away from a binding rules-based system may be irrevocable.

Critics will say that this shake-up is not necessary, that the world should simply wait until President Trump leaves office. However, U.S. concerns about the Appellate Body did not begin with President Trump and they will not end when he leaves office. In the interim years, many mini-trade wars could break out over each unsettled dispute, or countries could move on to less-desirable alternatives that do not include the United States. There would be little incentive for a new president to bring the United States back into a system still perceived to be flawed.

By paralyzing the Appellate Body, the United States has garnered the attention of the world. If this was done as a genuine effort to restore the Appellate Body to the more limited role envisioned in 1995, now is the time for the United States to clearly outline the precise steps that it wants taken to allow a revised Appellate Body to function. Failure to do so risks branding the United States' concerns as illegitimate and an attempt to destroy not just the Appellate Body, but the WTO itself, and with it the worldwide trading system.

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An Agenda for the G20 to Reset Global Trade Cooperation

by Anabel González



Amid a devastating pandemic, economic turmoil and political upheaval, international economic collaboration has unravelled. The world needs 2021 to be a turning point. Under the presidency of Italy, G20 countries have the opportunity to come together and craft a collective trade and investment response to fight the pandemic, support the global economic recovery and rebuild a better future. They also need to reboot the World Trade Organization (WTO) to underpin renewed multilateral cooperation.

The time for concerted action

COVID-19 has continued its spread in 2021, with new variants increasing the level and speed of contagion. As of mid-February, there are over 113 million cases worldwide, with the

number of deaths reaching 2.5 million and rising.¹ Plans to vaccinate as many people as rapidly as possible are being deployed, though vaccine nationalism risks prolonging the pandemic, with dire consequences for many in poorer countries and for the world at large.²

The economic and social impacts of the virus and its containment measures are daunting. The global economy is estimated to have contracted 4.3 per cent in 2020, with per capita incomes falling in more than 90 per cent of developing countries. Poverty rates

¹ Worldometer, *COVID-19 Coronavirus Pandemic*, <https://www.worldometers.info/coronavirus>.

² Thomas J. Bollyky and Chad P. Bown, "Vaccine Nationalism Will Prolong the Pandemic", in *Foreign Affairs*, 29 December 2020, <https://www.foreignaffairs.com/node/1126962>.

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have regressed to 2017 levels.³ Global trade contract by 5.3 per cent in 2020,⁴ while foreign direct investment could plunge by up to 40 per cent.⁵ Recovery is expected in 2021 but this will be subdued and subject to uncertainty and downside risks. The fight against the pandemic and the geographical scope, depth and speed of recovery will critically hinge on the sustained and effective containment of the virus and the quality of government policies.

Domestic measures are critical. But they are not enough. The short-term response to the virus and the resumption of economic growth will require multilateral cooperation to scale back obstacles to trade and investment, increase business certainty and leverage new opportunities. Building back better also needs concerted actions. None of this will happen automatically. Accounting for 80 per cent of global output and 75 per cent of exports, the G20 is in a unique position to deepen collaboration across countries. With the new Biden administration in the United States, the timing is conducive to a reset in global trade cooperation.⁶ An ambitious, yet pragmatic, agenda could pave the way.

³ World Bank, *Global Economic Prospects, January 2021*, <http://hdl.handle.net/10986/34710>.

⁴ CPB World Trade Monitor, *CPB Memo*, 25 February 2020, <https://www.cpb.nl/sites/default/files/omnidownload/CPB-World-Trade-Monitor-December-2020.pdf>.

⁵ UN Conference on Trade and Development (UNCTAD), *Investment Trends Monitor*, No. 36 (October 2020), <https://unctad.org/webflyer/global-investment-trends-monitor-no-36>.

⁶ Richard Baldwin et al., "Getting America Back in the Game: A Multilateral Perspective", in *TACIT Papers*, No. 1 (December 2020), <https://repository.graduateinstitute.ch/record/298858>.

A health and trade initiative to help contain the virus

Trade has proven not to be a problem in the pandemic but rather a central element of crisis mitigation and sustainable recovery.⁷ To be sure, alongside restrictive measures adopted earlier in the crisis, many nations have taken unilateral steps to facilitate commerce, especially in medical supplies and medicines.⁸ For the same reason, a mix of increased transparency on the availability of supplies, enhanced trade facilitation and other policies would help countries improve resilience far more than a reshoring of value chains.⁹ The role of trade in assuring access to vaccines is key, as is expediting trade in goods and services needed for vaccine production.

A comparison of G20 declarations and WTO rules with the measures taken by G20 countries in 2020 suggests that they have not "walked the talk".¹⁰ Enhanced transparency through regular and timely notifications of applied

⁷ Simon J. Evenett, "Chinese Whispers: COVID-19, Global Supply Chains in Essential Goods, and Public Policy", in *Journal of International Business Policy*, Vol. 3, No. 4 (December 2020), p. 408-429, <https://doi.org/10.1057/s42214-020-00075-5>.

⁸ European University Institute (EUI), *Global Trade Alert (GTA) and World Bank, 21st Century Tracking of Pandemic-Era Trade Policies in Food and Medical Products*, 4 May 2020, <https://www.globaltradealert.org/reports/54>.

⁹ Alvaro Espitia et al., "Trade and Covid-19: Lessons from the First Wave", in *VoxEU*, 18 January 2021, <https://voxeu.org/node/67176>.

¹⁰ Bernard Hoekman, "COVID-19 Trade Policy Measures, G20 Declarations and WTO Reform", in Simon J. Evenett and Richard Baldwin (eds), *Revitalising Multilateralism. Pragmatic Ideas for the New WTO Director-General*, London, CEPR Press, 2020, p. 63, <https://voxeu.org/node/66461>.

measures and strengthened WTO monitoring would ease fears related to the trading environment. An enhanced role for regular WTO committee work would support collective assessment of the policy landscape.¹¹ To bring greater certainty to markets, the G20 could establish a mechanism to monitor the global availability of critical medical supplies, including vaccines, following the example of the Agricultural Market Information System for key agricultural markets.¹²

As evidence confirms the importance of trade and investment in protecting the health and lives of people across the world, G20 members could commit to promptly engage in negotiations to achieve an agreement on trade and health under the WTO umbrella. The initiative could draw from the Ottawa Group proposal¹³ and others to facilitate access to the critical medical goods, including through the removal or temporary suspension of duties, taxes and other charges on imports of essential supplies; limited and disciplined resort to and use of export restrictions, notably on food and vaccines and their timely rollback; expedited customs and border clearance procedures to facilitate the

movement of critical medical products; enhanced regulatory approval and cooperation on standards; greater liberalisation of logistics, distribution and transport services; and improved access to critical medical services, including the movement of essential personnel.

A framework to support trade in digital services

As the pandemic accelerates the transformations enabled by the digitization and servicification of the global economy, it is rapidly transforming the nature of trade. From video-conferencing to tele-medicine to online grocery shopping and more, the shift towards digital services is rapidly altering the geography of trade and investment and opening up vast new prospects for cross-border exchange, in particular for small and medium-sized firms. Increased investments in digital infrastructure, enhanced connectivity and stepped-up digital literacy are needed to leverage such opportunities, but so are concerted efforts to deepen services trade integration, arrest rising digital protectionism and improve effective cooperation to avoid costly and undue regulatory fragmentation.¹⁴

Over 80 WTO members are today engaged in negotiations on an e-commerce pact. Such negotiations are complex, with diverging views among large players on critical issues such as the regulation of cross-border data

¹¹ Robert Wolfe, "Exposing Governments Swimming Naked in the COVID-19 Crisis with Trade Policy Transparency (and Why WTO Reform Matters More Than Ever)", in Richard Baldwin and Simon J. Evenett (eds), *COVID-19 and Trade Policy: Why Turning Inward Won't Work?*, London, CEPR Press, 2020, p. 165-177, <https://voxeu.org/node/65536>.

¹² See official website: <http://www.amis-outlook.org>.

¹³ See WTO website: *COVID-19 and World Trade*, https://www.wto.org/english/tratop_e/covid19_e/covid19_e.htm.

¹⁴ International Monetary Fund (IMF), *World Bank and WTO, Reinvigorating Trade and Inclusive Growth*, September 2018, <https://documents.worldbank.org/en/publication/documents-reports/documentdetail/874541538071614937>.

flows, data localisation, data privacy, the application of customs duties and taxes on electronic transactions and internet censorship.¹⁵ G20 countries could bring renewed political energy to these discussions as even a modest outcome focusing on some foundational principles of digital governance would help global economic recovery. In addition, extending the practice of not imposing customs duties on electronic transmissions at least until a strong recovery is underway could be considered.

An e-commerce agreement is needed to ensure that the WTO is fit for 21st century purpose and able to adjust to prevailing economic realities. The joint initiatives on investment facilitation¹⁶ and domestic regulation in services,¹⁷ also under negotiation, would complement a basic framework to underpin digital services.

A stricter discipline of subsidies to support fair trade

Before COVID-19, concerns over whether multilateral rules were adequate to discipline the use of industrial subsidies and restrain their impact on market distortions, overcapacity and

unfair competition led to significant tensions in the trading system. The potential trade impact of the massive industry support programmes put in place by governments to address the economic dimensions of the pandemic adds another complex dimension to this discussion,¹⁸ as does the increase in domestic support to farmers in a handful of WTO members.¹⁹ If left unaddressed, these issues would become a permanent source of tension in the global trade landscape.

These are not easy issues to tackle, nor is a resolution to be expected anytime soon, but a conversation must start among the largest players – which are also the largest subsidizers – to explore the negative spillovers of their policies. The G20 could call for the establishment of a subsidies reform subcommittee in the WTO with analytical support from both the WTO and OECD secretariats to compile information and analyse existing subsidy programmes in systemically relevant economies. The objective would be to build a shared understanding of what is going on, what type of new subsidy rules are needed to address negative spillovers and how to strengthen the WTO's monitoring and surveillance function.²⁰

¹⁵ Gary C. Hufbauer and Zhiyao (Lucy) Lu, "Global E-Commerce Talks Stumble on Data Issues, Privacy, and More", in *PIIE Policy Briefs*, No. 19-14 (October 2019), <https://www.piie.com/node/14027>.

¹⁶ WTO, *Structured Discussions on Investment Facilitation for Development Move into Negotiating Mode*, 25 September 2020, https://www.wto.org/english/news_e/news20_e/infac_25sep20_e.htm.

¹⁷ WTO website: *WTO Negotiations on Domestic Regulation Disciplines*, https://www.wto.org/english/tratop_e/serv_e/dom_reg_negs_e.htm.

¹⁸ Peter Draper et al., "Industrial Subsidies as a Major Policy Response since the Global Financial Crises: Consequences and Remedies", in *T20 Policy Briefs*, September 2020, <https://www.g20-insights.org/?p=15265>.

¹⁹ Joseph W. Glauber et al., "What National Farm Policy Trends Could Mean for Efforts to Update WTO Rules on Domestic Support", in *IISD Reports*, April 2020, <https://www.iisd.org/publications/what-national-farm-policy-trends-could-mean-efforts-update-wto-rules-domestic-support>.

²⁰ Peter Draper et al., "Industrial Subsidies as a Major Policy Response since the Global

Greening the trading system

As major economies move forward with ambitious goals and plans to green their economies and build back better, they need to focus on the nexus between trade, sustainable development and the protection and preservation of the environment, not least to strengthen resilience in the face of global challenges. Early progress could come by finalising the long overdue WTO negotiations to limit harmful fish subsidies and resuming the negotiation of an Environmental Goods Agreement that would support trade in green products. This agreement could usefully extend to services central to environmental stewardship. But more is needed.

In November 2020, a group of 49 WTO members across different regions and levels of development launched structured discussions on trade and environmental sustainability with a view to collaborate, prioritise and advance discussions in this area.²¹ The G20 should lend vocal support to such discussions by identifying possible actions and a set of early deliverables on environmental sustainability in the multilateral trading system. Topics for consideration could include reduction of existing fossil fuel subsidies, increased transparency of environmentally-related subsidies, non-actionability of certain subsidies beneficial for the environment, rules for climate-related labelling and sustainable plastics trade,

Financial Crises", cit.

²¹ Australia et al., *Communication on Trade and Environmental Sustainability*, 17 November 2020, <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/CTE/W249.pdf>.

among others.

WTO reform

The designation of Ngozi Okonjo-Iweala to the position of Director General brings renewed momentum to the WTO. Building on the principles of global trade governance yielded under the Saudi Presidency,²² G20 countries could also prioritise a constructive discussion of reform proposals aimed at reinstating the Appellate Body, improved monitoring and allowing for the negotiation of plurilateral agreements within the WTO structure.²³

The post-pandemic world economy will require more, not less, trade cooperation. Reforming the WTO has become more pressing than ever to help update rules in line with the dramatic changes brought about by COVID-19, but also by the technological innovations, economic disruptions and geopolitical confrontations at play before the pandemic. G20 countries now have a chance to seize on the crisis to sow the seeds for renewed global trade cooperation.

Recommended actions

- Identify measures to strengthen access to essential medical and

²² G20, *Riyadh Initiative on the Future of the WTO. TIWG Chair's Summary*, Annex I to the *G20 Trade and Investment Ministerial Meeting Communiqué*, 22 September 2020, <http://www.g20.utoronto.ca/2020/2020-g20-trade-0922.html#a1>.

²³ Anabel González, "Memo to the World Trade Organization on How to Fight COVID-19 and Make Needed Reforms", in *Trade and Investment Policy Watch*, 16 November 2020, <https://www.piie.com/node/14726>.

pharmaceutical products and protect against vaccine nationalism, based on evidence and increased transparency and monitoring.

- Call on WTO members to promptly engage in negotiations of an initiative on health and trade to fight this and future pandemics.
- Support the conclusion of the WTO negotiations on the joint initiatives on e-commerce, investment facilitation and domestic services regulation by the WTO next ministerial conference.
- Call for the establishment of a WTO subsidies reform subcommittee to begin a discussion on revised rules to deal with negative spillovers from subsidies.
- Advocate for the conclusion of WTO negotiations on harmful fisheries subsidies and resume negotiations of an Environmental Goods Agreement, expanding the latter to cover environmental services trade.
- Identify possible actions and deliverables on environmental sustainability in the multilateral trading system to support the WTO's recently launched structured discussions in this area.
- Prioritise constructive discussions of reform proposals for a functional multilateral trading system, including its dispute settlement system.

27 February 2021

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APR 28 2021

An Indian perspective on reviving the World Trade Organisation

MOHAN KUMAR

For countries like India, the multilateral trading system embodied by the WTO provides security and predictability.



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CONSENSUS

DOHA ROUND

G20

MULTILATERAL TRADING SYSTEM

WTO

This article is part of the Global Policy-ORF publication — *A 2030 Vision for India's Economic Diplomacy.*

India has had a chequered relationship with the World Trade Organisation (WTO). To understand its full nature, one needs to go to the very beginning — the launch of the Uruguay Round of trade negotiations at Punta del Este, Uruguay, in 1986. Vast in scope and far-reaching in its implications, the talks took nearly eight years to conclude. On its conclusion, the WTO entered into force in 1995 with a binding dispute settlement mechanism and with agreements going well beyond goods, to include services and intellectual property rights (IPRs). While there were some gains for developing countries such as India in the field of textiles and clothing, the outcome was unfair to these countries and far more favourable to the US, EU and other developed countries. This much was abundantly clear from the negotiating implications of the Uruguay Round^[1]. In India's case, this led to "negotiation resentment,"^[2] which persisted far beyond the Uruguay Round.

Yet, India enthusiastically joined the WTO in 1995. India had taken on onerous obligations, evident from the fact that it had to change its domestic law completely to bring itself in line with the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement. The developed countries, however, wanted to push home their advantage, and at the Ministerial Conference in Seattle in 1999, there was talk of launching a new Millennium Round. By this time though, the WTO fell afoul of all shades of non-governmental organisations (NGOs), be they development ones (like OXFAM), environmental focused (like Friends of the Earth), labour related (like Teamsters) or 'third world' NGOs (like Third World Network). All of them congregated at Seattle and played a role in sinking the Ministerial Conference. Of course, there were other substantive reasons why the Seattle dialogue failed^[3].

Development round

The spectacular failure at Seattle caused a lot of hand-wringing and introspection among all WTO members. The developed countries, led by the US and EU, nevertheless persisted with attempts to launch a fresh round of negotiations. Given the degree of opposition from the developing and least-developed countries to a new round, there was recognition that the only way it would be accepted by all is if it were sold as a 'development round.' And so the idea of the Doha Development Agenda was born. The Doha Ministerial Declaration^[4] makes clear that the majority of WTO members are developing countries and that their needs and interests will be placed at the heart of the work programme adopted in the declaration. Developing and least-developed countries genuinely believed this was an unconditional

commitment. The geopolitical driving force for the successful launch of the Doha Round was the 9/11 terror attacks in the US, which cast a pall of gloom over the Ministerial Conference at Doha in November 2001. The argument offered by many was this — if the ministerial conference failed to launch a new round of trade negotiations, then the terrorists will have won.

Given the degree of opposition from the developing and least-developed countries to a new round, there was recognition that the only way it would be accepted by all is if it were sold as a ‘development round.’

There were also other substantive reasons. First, there was the declaration on the TRIPS agreement and public health^[5], in which the ministers affirmed that the TRIPS Agreement can and should be interpreted and implemented in a manner supportive of WTO members’ right to protect health. Second, there was a ministerial decision on implementation-related issues and concerns, which some developing countries led by India had been pushing for a few years. Third, in the crucial area of agriculture, the ministers committed themselves to comprehensive negotiations aimed at substantial improvements in market access, reduction of all forms of export subsidies and substantial reductions in trade-distorting domestic support. In addition, the ministers agreed that special and differential treatment (S&DT) for developing countries will be an integral part of all elements of negotiations and will be embodied in the schedules of concessions and commitments and in the rules and disciplines, to be negotiated to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development^[6]. Fourth, the ministers reaffirmed that provisions for S&DT are an integral part of the WTO agreements and determined that these provisions be reviewed with a view to strengthening them and making them more precise, effective and operational^[7]. Lastly, thanks primarily to India’s efforts, negotiations were not launched in areas such as investment, competition policy, government procurement and trade facilitation (also known as Singapore Issues), being put off for a future date. The developed countries indeed made efforts to consider developing countries’ sensitivities, which played a major role in consensus being reached at Doha for the launch of a new development round.

Why Doha round has failed so far

The Doha Round of trade negotiations was launched in 2001. But nearly two decades on, there is now little hope that it will succeed. If the WTO is to be revived and rejuvenated, it is important to understand why the Doha Round has failed so far.

The first warning signs appeared at the WTO ministerial conference held in Cancun in 2003, with an important realignment taking place in the WTO just prior to the meet — the formation of the G20, a coalition of developing countries pressing for ambitious agriculture

reforms in developed countries and sufficient flexibility for developing countries^[8]. This G20 group was a far cry from the group of 24 countries that had opposed the inclusion of IPRs in services in the run-up to the Punta del Este meeting of the General Agreement on Tariffs and Trade (GATT) in 1986. The G20 had Brazil, India, South Africa, Thailand, Nigeria and China — accounting for 60 percent of the global population, 70 percent of all farmers and 26 percent of the world's agricultural exports^[9] — giving the grouping enormous heft in negotiations. When the US and EU sought to push for a deal with enormously weak outcomes in agriculture but launched negotiations on the Singapore Issues, the G20 put its foot down and the conference simply failed. While it is facile to blame the G20 for blocking a positive outcome, such an assessment would be wrong because the Doha mandate clearly called for positive outcomes in agriculture, which the developed countries failed to deliver.

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Agriculture has always been the bugbear in WTO negotiations, even as WTO members tried to conclude the Doha round in July 2008. In his blow-by-blow account of the marathon efforts undertaken by then WTO Director General Pascal Lamy^[10], trade journalist Paul Blustein busts the commonly held theory that it was a lack of agreement on one technical matter, the Special Safeguard Mechanism (SSM), that torpedoed the deal. Blustein argues that the meeting fell far short of consensus. And even on the issue of SSM in agriculture, Blustein says that powerful US farm and industrial groups and leading members of the US Congress were profoundly dissatisfied with the deal on offer. Crucially, he argues, the Americans were the ones to have walked away from the deal^[11]. Lamy first tried to achieve consensus with a group of seven leading WTO members — the US, EU, Brazil, India, China, Japan and Australia — before bringing in the wider WTO membership. Although not a bad move, it did create problems for countries in Africa who said they were totally unrepresented in this group^[12].

The WTO ministerial conference in Bali (2013) was perhaps the last opportunity to save the Doha Round. It was becoming increasingly difficult to justify that not a single multilateral agreement had been agreed on 18 years after the WTO's establishment. In other words, the legislative, rule-making wing of the WTO was completely dysfunctional. In Bali, the fact that members were able to agree to a multilateral agreement on trade facilitation was greeted with enthusiasm and relief. The Trade Facilitation Agreement^[13] is remarkable. Not only does it fulfil the fundamental objective of cutting down red tape and diminishing the costs of trading, it also reflects in full the S&DT applicable for developing and least-developed countries. There are landmark provisions in the agreement allowing for flexibility in the scheduling and sequencing of implementation and, more importantly, linking commitments

to acquired capacity, resulting from technical assistance. Could this be a model to follow for the multilateral agreement on fisheries being currently negotiated?

But agriculture continued to be a sticking point in Bali as well. India had drawn attention to its unique problem with regard to public stockholding, which in the Uruguay Round was fixed at subsidies (difference between administered price and market price) being no more than 10 percent of the value of production of the commodity. Worse, the fixed external reference price was based on 1986-88 rates and there was no provision for inflation. India, supported by the G33 coalition of countries^[14], wanted public stockholding to be moved to the 'green box' (subsidies that are permissible). The developed countries led by the US opposed this. In the end, the compromise was that there would be a peace clause — India and others who avail of public stockholding will not be dragged to dispute settlement until a permanent solution is found.

If the impasse over the Doha Round was not debilitating enough for the WTO, the appellate body started facing flak from the most powerful player in the WTO — the US.

In all negotiations from 2008 to 2013, the developed countries were in violation of the spirit of the Doha mandate on agriculture. The S&DT was given the short shrift by the US and EU, even though they could be legitimately accused of massive agriculture subsidies in the past. The Doha Development Round became just another mercantilist round of concessions being exchanged between the developed and developing countries. In addition, the power shift from the global north to the south, and the difficulty of reaching a consensus among 164 countries, were the primary reasons for the failure of the Doha Round. By the 2015 ministerial conference in Nairobi, it was clear that there was simply no consensus in the WTO for pursuing the Doha Round.

If the impasse over the Doha Round was not debilitating enough for the WTO, the appellate body started facing flak from the most powerful player in the WTO — the US. The US felt that the appellate body had indulged in judicial overreach and had ruled adversely on issues dear to the US, for instance, the question of 'zeroing' in the calculation of anti-dumping duties. The US should have engaged in negotiations with other WTO members. Instead, in a remarkable display of unilateralism, the US systematically blocked consensus on the appointment of fresh appellate body judges, rendering it dysfunctional.

Revival plan for WTO

The Trump administration took a wrecking ball to most multilateral institutions, including the WTO. The advent of the Biden administration is an opportunity for the WTO to negotiate

itself out of trouble. For countries like India, the multilateral trading system embodied by the WTO provides security and predictability. The WTO can be revived in the following ways.

Appellate body reform

The appellate body is the lynchpin of the dispute settlement mechanism, which is the 'jewel' in the WTO's crown. There is no alternative but to return to the status quo ante on this issue. Several proposals for reform and improved functioning of the appellate body are already on the table. While the Trump administration did not engage with other members over these proposals, the Biden administration should initiate swift negotiations with a view to reinstating the appellate body in full. That said, there was some merit in the US's criticism of the appellate body and these must be addressed expeditiously. The draft decision document on the appellate body's functioning, put together by the General Council Chair Ambassador David Walker after detailed consultations with members across the board, is a good starting point^[15]. The document lists the US's main grievances against the body and makes sensible suggestions for redressing these. To the complaint that appellate body members who have finished their term should not sit in judgment of cases, the proposal states that the selection process to replace appellate body members begin six months before the expiry of the term. On the criticism that the body takes too long to issue reports, the draft decision states that 90 days should be the norm (in exceptional cases, and with the consent of the parties, the time frame can be extended). On other important aspects of the functioning of the appellate body, the draft decision takes a sensible approach — matters of appeal must be confined to issues of law, and not a de novo review of facts, addressing only issues raised by parties and no precedent established by dispute settlement proceedings. The most substantive criticism levelled against the appellate body by the US was one of 'judicial overreach.' On this, the body will be reminded that it cannot add or diminish the rights and obligations of WTO members under the covered agreements. Lastly, the draft decision makes it clear that there will be a mechanism for regular dialogue between the appellate body and the WTO members where the latter can express views on the functioning of the body. This catalogue of issues and suggested way forward should be an excellent basis for the new United States Trade Representative to engage with the WTO and fully reinstate the appellate body.

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Special and differential treatment

Special and differential treatment is part of WTO's 'legal acquis.' Its origin can be traced back to Part IV of GATT and then the 'Enabling Clause' introduced in 1979. This entitlement to the S&DT is a hard fought one for developing countries and therefore they view with anger and angst the attempts by developed countries to dismantle it. The main contention by the US is

that developing country status cannot be based on 'self-election.' There is a grain of truth to this, but to say that if a country belongs to the G20 grouping it loses its developing country status is absurd. Similarly, to say, as the US does, that a mere 0.5 percent share of global merchandise trade prevents you from being a developing country is also untenable^[16].

A two-tier approach can be taken to resolve the issue of the S&DT definition. The first tier comprises regions that house millions of people who live in extreme poverty. Since 2010, there has been a collaborative effort between the United Nations Development Programme and the Oxford Poverty & Human Development Initiative to record people in multidimensional poverty^[17]. Two regions stand out — South Asia and sub-Saharan Africa. By this logic, all countries belonging to these two regions should be entitled to S&DT without any question. This will be the first tier of countries to qualify for S&DT. The least-developed countries will also belong to this first tier. The idea that India is somehow a member of G20 and therefore not entitled to S&DT is ludicrous: the Oxford Multidimensional Poverty Index demonstrates that close to 30 percent of India's population (if not more) live in extreme poverty^[18]. This fact alone entitles it to S&DT.

The main contention by the US is that developing country status cannot be based on 'self-election.'

The second tier will comprise a bunch of countries for which various criteria (including those suggested by the US) can be applied. Among these, China and many other countries need to be evaluated on a case-by-case basis. It is also possible that for some sectors China may be entitled to S&DT and for many others it may not.

Towards a Sustainable Development Goal-oriented trade negotiation?

If indeed the developed countries stubbornly refuse to pursue the Doha Round of trade negotiations, what are the alternatives for the WTO? There are already some conversations on plurilateral initiatives^[19]. There are two types of plurilateral agreements: 'exclusive' and an 'open variant.' The 'exclusive' plurilateral agreements risk sidelining the developing countries and may legally fragment the WTO. On the other hand, an 'open variant' plurilateral agreement can be launched by members to be housed in the WTO, provided it strictly conforms to the following conditions:

- Open to all WTO members
- No penalty for those WTO members who join later
- Negotiating outcome implemented on a most favoured nation basis to all WTO members, including those who did not participate in the negotiations

- Dispute settlement mechanism of the WTO to be available

The Joint Statement Initiative^[20] — launched at the WTO ministerial conference in Buenos Aires in December 2017 in areas such as electronic commerce, investment facilitation and micro, small and medium enterprises — are essentially plurilateral in nature. The problem is, it is far from clear whether it is an ‘open variant’ or ‘exclusive.’ From the proposals for WTO reform made by various proponents, it seems that the EU favours ‘open’ plurilateral agreements while the US and Australia favour the ‘closed or exclusive’ type of plurilateral agreements. The latter have no place in the WTO.

The key issue for reform that has been highlighted by various members is the continued use of ‘consensus’ in the WTO. The Marrakesh Agreement establishing the WTO is clear that the “WTO shall continue the practice of decision-making by consensus followed under GATT 1947”^[21]. Consensus may be painstakingly difficult to achieve, but as the Peter Sutherland Commission on the Future of the WTO put it: “voting structure in the WTO can be manifestly unfair”^[22]. Given this, a serious attempt needs to be made to achieve consensus for the launch of another round of trade negotiations. Since the Doha Round has effectively been torpedoed by some developed countries, the launch of a new ‘SDG round of trade negotiations’^[23]. Such a round would achieve multiple objectives for the WTO. First, it is hard to disagree with the Sustainable Development Goals (SDGs), agreed to by all countries. Second, it will provide the much-needed endorsement for free trade and will be successful in co-opting the developing countries and least-developed countries, who appear disillusioned with the abandonment of the Doha Development Agenda. Third, with anti-globalisation forces on the rise, it is important to demonstrate a direct link between trade and development that will help WTO members in achieving the SDGs that are so vital for global peace and prosperity.

The key issue for reform that has been highlighted by various members is the continued use of ‘consensus’ in the WTO.

Consider agriculture, arguably the most difficult negotiating subject at the WTO. If it is included as part of the proposed ‘SDG Round,’ then SDG 2 provides sufficient guidance for these negotiations — end hunger, achieve food security and promote sustainable agriculture. Any negotiated outcome in agriculture must contribute to these objectives. The US and EU have long subsidised their agriculture. What developing countries and least-developed countries are asking for is the right to feed themselves and secure some market access for their exports. The credibility of the WTO depends on these demands being met.

India has stayed out of the plurilateral initiatives on investment facilitation, e-commerce and services (Trade in Services Agreement). TISA is a negotiation between a handful of countries

and India is perhaps justified in staying out. However, the other two negotiations relating to investment facilitation and e-commerce deserve reconsideration by India. As many as 98 WTO members have joined the investment plurilateral initiative and there is no plausible reason for India to stay out. On the other hand, e-commerce is a difficult area for India, particularly because of the free flow of data and data localisation. But India must join the negotiations to influence it from within. This is even more important given India's recent decision to walk out of the Regional Comprehensive Economic Perspective.

It is crucial for future trade talks to be anchored in the SDGs. This alone will help the WTO achieve the objectives laid down in the Marrakesh Agreement establishing the organisation — raising standards of living, ensuring full employment, the optimal use of resources in accordance with the objective of sustainable development and finally, to ensure that this happens for all countries at different levels of economic development. A new 'SDG Round' of trade negotiations that promises to do this has the potential to not only attract the full consensus of all WTO members but could also help resuscitate a moribund WTO.

Endnotes

[1] Mohan Kumar, *Negotiation dynamics of the WTO: An Insider's Account* (Singapore: Palgrave Macmillan, 2018), pp. 61-64.

[2] Kumar, *Negotiation Dynamics of the WTO*, pp. 65

[3] Walden Bello, "Debacle in Seattle. A Blow-by Blow Account," *Transnational Institute*, 6 December 1999.

[4] World Trade Organisation (WTO), *Doha Ministerial Declaration*, WTO, 20 November 2001.

[5] WTO, *Doha Declaration on the TRIPS Agreement and Public Health*, WTO, 14 November 2001.

[6] WTO, *Doha Ministerial Declaration*, para. 13

[7] WTO, *Doha Ministerial Declaration*, para. 44

[8] G 20, "Groups in the Negotiations," WTO, 21 November 2008.

[9] WTO, "Members and Observers," WTO.

- [10] Paul Blustein, "The Nine-Day Misadventure of the Most Favored Nations: How the WTO's Doha Round Negotiations Went Awry in July 2008," *Brookings Institution, Global Economy and Development*, 2008.
- [11] Blustein, "The Nine-Day Misadventure of the Most Favored Nations"
- [12] Ismail Faizel, "An assessment of the WTO Doha Round July-December 2008 collapse," *World Trade Review* 8, no. 4 (October 2009): 579-606.
- [13] WTO, *Bali Ministerial Conference*, WTO, 2013.
- [14] G33, "Groups in the Negotiations," WTO.
- [15] WTO, *Draft Decision: Functioning of the Appellate Body*, WTO, 2019.
- [16] WTO, *Draft General Council Decision: Procedures to Strengthen the Negotiating Function of the WTO*, WTO, 2019.
- [17] OPHI and UNDP, *Charting pathways out of multidimensional poverty: Achieving the SDGs* OPHI, 2020.
- [18] Oxford Poverty and Human Development Initiative, *Global MPI Country Briefing 2020: India*, OPHI, July 2020.
- [19] Rudolf Adlung and Mamdouh Hamid, "Plurilateral trade agreements: An escape route for the WTO?" *Journal of World Trade* 52, no. 1 (2018).
- [20] "New initiatives on electronic commerce, investment facilitation and MSMEs," WTO, 13 December 2017.
- [21] WTO, *Marrakesh Agreement establishing the WTO*, WTO, 2017, article IX.
- [22] Peter Sutherland, Jagdish Bhagwati, Kwesi Botchwey, Niall Fitzgerald, Koichi Hamada, J. Jackson, Celso Lafer and Thierry de Montbrial, *The Future of the WTO: Addressing institutional challenges in the new millennium. Report by the Consultative Board to the Director-General Supachai Panitchpakdi*, Geneva, WTO, 2004.
- [23] Mohan Kumar, "WTO needs to get its mojo back. A new SDG round of negotiations would help," *Hindustan Times*, 22 October 2020.

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WTO

Who Should Make the First Move Toward WTO Reform?

Author: Hector Torres

March 31, 2021

Delegates talk before the opening of the General Council at the WTO headquarters in Geneva, Switzerland on December 9, 2019. (Reuters/Denis Balibouse)

With an outdated set of rules and dysfunctional working practices, the World Trade Organization (WTO) finds itself in a “whatever it takes” moment. Geopolitical tensions and the COVID-19 crisis have exacerbated its problems.

WTO rules were designed to regulate trade between private firms that only pursue profits. But China’s firms have been prospering using a corporate governance model in which policy objectives are mingled with purely commercial interests, compounding suspicions about the consistency of China’s economic policies with the spirit (if not the letter) of WTO rules.

However, due to the COVID-19 crisis, Group of Seven governments — whose previous role in the economy was mostly that of ensuring the enforcement of contracts and the functioning of markets — now actively support the private sector with massive fiscal and monetary support.

According to the International Monetary Fund, in 2020, rich countries’ fiscal support to the economy was, on average, about 24 percent of their GDP. On top of this, central banks’ massive monetary assistance has kept interest rates at record-low levels. In 2020, the Federal Reserve Bank’s balance sheet soared from 20 percent to 35 percent of the United States’ GDP, whereas the European Central Bank’s balance moved from 40 percent to 60 percent of the euro zone’s GDP.

As a result, all governments (not just China’s) are actively involved in supporting private businesses. The WTO has a fortuitous opportunity to initiate discussions to update rules on state intervention in the economy.

However, China must be persuaded that negotiations are not aimed at reforming China, but rather at providing tools to shed light on the role that governments play in corporate decisions.

Reforming the WTO’s special and differential treatment provisions is also necessary. Two-thirds of the WTO’s 164 members, including China, claim that they need longer periods to introduce less ambitious tariff reductions, as they are still developing countries. Otherwise, they argue, they will not be able to compete on an equal footing with their developed partners.

As there are no benchmarks for “development,” nor any agreed indicator to determine when firms in developing countries are ready to compete as equals, special and differential treatment is granted to any country claiming to be “developing,” and with no time limit.

Engaging in an abstract controversy on who is developed and who is (still) developing would make reform impossible. It would be wiser to launch a quiet policy dialogue, aimed at identifying what kind of special and differential treatment could effectively complement domestic efforts to develop competitive industries. The World Bank and regional development banks could provide technical inputs to the policy dialogue.

No less important is to agree on how the WTO could reconcile consensus with collegial responsibility. At the WTO, all decisions are adopted by consensus. Building consensus is slow and cumbersome, but calling for votes could make decisions ineffective. On the one hand, countries with large markets would not feel obliged if they were outnumbered by a voting process in which every country, regardless of its market size, could cast an equal number of votes. On the other hand, allocating votes according to members’ market size would deprive decisions of “legitimacy.” There appears to be no way around consensus.

However, consensus has been abused. At the WTO, consensus is interpreted as an unbridled right to prevent like-minded countries from carrying out open-ended “plurilateral” negotiations.

To avoid abuses — trade diplomats often block consensus just to gain leverage in negotiations — consensus should be interpreted as a right that entails the obligation to strive for collegial interests.

WTO members could use policy dialogues to discuss how to ensure that their right to disagree and disapprove is exercised sparingly and with responsibility.

Finally, a word on the WTO’s “crown jewel”: It was a common mistake to directly link problems with the WTO’s dispute settlement mechanism to former US President Donald Trump. It would be equally wrong to believe that if President Joe Biden unblocked the selection of new Appellate Body members, confidence in the WTO’s current set of trade rules would be reinstated.

The WTO’s dispute settlement crisis is a problem within a much larger problem. Conditioning WTO reform to the previous acceptance by the United States of the selection of new Appellate Body members would imply a political cost that the Biden administration may only be able to afford if it is offset by the acceptance of some US tailor-made reforms. Such a deal would be a non-starter.

To get WTO reform moving, the first step should be launching policy dialogues aimed at finding middle ground on three of the most sensitive policy questions:

- How can the WTO reconcile a country's right to choose its own corporate governance model while upholding WTO members' right to discern governmental influence in corporate decisions?
- What kind of special and differential treatment could effectively complement domestic efforts to develop competitive industries?
- How can the WTO balance consensual decision making with collegial responsibility?

Such policy dialogues would give the new US administration a chance to embrace multilateralism with minimum domestic political cost. It would also provide an opportunity for China to show that it is ready to adopt responsibilities commensurate with its leading role in the world economy.

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The World Trade Organization: An Optimistic Pre-Mortem in Hopes of Resurrection

DMITRY GROZUBINSKI
AUGUST 2020

THE WORLD TRADE ORGANIZATION: AN OPTIMISTIC PRE-MORTEM IN HOPES OF RESURRECTION

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EXECUTIVE SUMMARY

For decades, multilateral trade rules operated to keep government protectionist impulses in check. They provided a foundation of openness for international commerce, as well as a framework for liberalisation and integration. With the trade rules as a guarantor, capital and value chains spread across the globe.

The creation of the World Trade Organization (WTO) in 1995 saw these law: binding and non-optional dispute settlement. For the first time, an international panel of legal experts would have the final say on the legality of trade measures, whether those implementing them liked it or not. On 10 December 2019, a procedural blockade by the world's largest economy, the United States, culminated in that 24-year experiment being put on hold, perhaps permanently.

The loss of the WTO's Appellate Body does not mean the global trading system is in anarchy, but it does move it a significant step closer to unilateralism and transactionalism in trade policy. Moreover, the Appellate Body crisis is just one of the areas where the WTO is bleeding, and the WTO is just one symptom of a global trading system besieged.

Policymakers looking to restore predictability and order must grapple with a WTO that has struggled to negotiate new rules and enforce and monitor existing ones; which civil society distrusts; and on which business has largely given up as a source of solutions. The global consensus, based on the underlying wisdom of sacrificing some sovereign policy space to allow predictable, rules-based trade, has never been weaker. There are no easy answers, but one thing is certain: technocratic fixes from Geneva and ministerial press releases bereft of specifics will not be enough.

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POLICY RECOMMENDATIONS

The first step to improving the perilous condition of the rules-based trading system is acknowledging its actual purpose, and the limitations of some of the tools policymakers have spent years reflexively reaching for.

The WTO is about locking in a policy consensus, not creating one — every major agreement from the GATT to the AoA, and more recently the Trade Facilitation Agreement (TFA), was about taking a concept on which the major parties were broadly in alignment, hammering out the details, and then locking it in to prevent excessive backsliding or divergence. Expecting negotiations between comparatively low-level officials in Geneva or the occasional short Ministerial meeting to resolve differences as vast as those currently dividing major players, is a reversal of the causality chain. The WTO can enshrine a grand bargain between superpowers, but it cannot forge one.

No one believes the WTO is a flawless institution that could not benefit from reform and refinement.

Policymakers must accept that the issuing of ministerial statements, communiqués, press releases, and tweets calling for the system to be ‘reformed’ to work better in some unspecified way is insufficient. No one believes the WTO is a flawless institution that could not benefit from reform and refinement. But the problem lies, and has lain for years, in forging consensus on any one specific set of reforms that might actually satisfy major players.

Those same policymakers must also accept that no technical solution, no matter how innovative, will emerge to sidestep the political challenges. Technical discussions in Geneva and the outstanding work of scholars and experts can only complement, not replace, political progress.

On the Appellate Body alone there are sound, thoughtful proposals from eminent scholars that could readily form the technical foundation for a compromise solution.⁵³ This is equally true of agricultural domestic support, special and differential treatment, services, and goods market access. The practical ideas are there, but there is disagreement on the fundamentals and a lack of political will. The technical proposals are vital in identifying and proving the existence of paths forward should the political situation change, but they alone cannot shift it.

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1. Accept This is Not All Going Away

It is tempting to consider the current crisis a function exclusively of particular personalities in the White House, an inflection point in the Chinese transition away from low-end manufacturing, or a temporary global populist surge.

This is wishful at best.

A different US president may improve the tone of engagement and bring to the table less open hostility towards internationalism as a concept. They might be more consultative or balanced in their rhetoric. Yet, would fundamental US interests change?

Similarly, while future circumstances might see Chinese policy shift away from state market interference, it seems optimistic to expect such a move in the short to medium term. While China continues to intervene heavily in the market, frictions are inevitable.

If certain trade rules are incapable of co-existing with a world divided into US, EU, and Chinese spheres, they must be reconsidered before they drag down the entire system with them.

2. Plurilateralise and Coalesce

The WTO's precursor, the GATT, was negotiated in 1947 by just 23 countries. It was by any modern definition a plurilateral agreement, for example the Soviet Union was absent. Switzerland, where the negotiations took place, would not join for another 20 years.



The GATT enters into force on 1 January 1948. The 23 original members - 11 developed and 12 developing - hold one of their first sessions at the Palais des Nations, Geneva. Photo courtesy WTO.

Whether knowingly or not, the GATT parties began with a coalition of the willing, and trusted in momentum and magnetism to grow the project. That spirit has to be recaptured.

If properly designed, disciplines on investment and e-commerce should be inherently commercially attractive. The modern order is built on the theory that binding rules that reduce and make predictable any government intervention in the market should make countries more, not less, attractive as destinations for investment, entrepreneurship, and talent.

If governments still hold to that theory, then open plurilaterals and a continued commitment to existing rules remain the right move. If, on the other hand, governments are moving to a place where models like Chinese state capitalism, with its national champions, party-directed investment, and blurred lines between public and private, are more attractive in the long term, then a lot more than just the WTO needs to be reconsidered.

... ministers who already had political incentives to prefer the individual glory of an FTA signing ceremony over the comparative anonymity of a WTO Ministerial, pivoted to bilateral and plurilateral processes.

3. Rebuild the Domestic Foundation

Whatever comes next, governments have to invest the time, energy, resources, and political capital into rebuilding awareness and engagement with international trade policy. Even ‘sexier’ Free Trade Agreements (FTAs) struggle for useful and representative business input or a proper dialogue with civil society groups, and the WTO has not been sexy for quite some time.

The stakeholders that governments need to hear from and keep onside have limited bandwidth and focus energy where they perceive immediate threats or opportunities. The paralysis of WTO negotiations has led them to look elsewhere.

In response to business apathy and what is often civil society antipathy, ministers who already had political incentives to prefer the individual glory of an FTA signing ceremony over the comparative anonymity of a WTO Ministerial, pivoted to bilateral and plurilateral processes.

Trade ministries can afford to take a broader and longer view than the ministers they serve, but ultimately exist to deliver on ministerial priorities. As these priorities shifted away from the WTO, departmental resources were reallocated, with an ever-growing reliance on the conscientiousness and creative energy of individual officers and managers.

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For the WTO, this process has been triply debilitating. First, from a negotiation standpoint, business engagement is vital to identifying offensive interests beyond the obvious and traditional. Without such offensive interests to push and trade for, defensive interests only become more entrenched. Second, only an engaged and informed business community can highlight the technical regulatory issues the WTO's regular committees are designed to probe and address. Third, the disengagement and suspicion of civil society has left anaemic the efforts to achieve outcomes in progressive areas where WTO rules have fallen behind.

Efforts to rectify this challenge do not have to be grandiose, but they do have to be fully resourced, long term and practical. The New Zealand government's trade barrier website is a good example of a business-focused approach. The majority of businesses may not realise that the challenges they face are trade barriers addressable through the international system. Only through sustained, genuine outreach and engagement can governments even begin to demonstrate the benefits of the rules-based trading system.



The European Union's significantly increased transparency around trade following the TTIP protests in 2016 and the general trend towards increased consultation are both positive developments, but a huge amount more outreach and genuine engagement is needed before civil society groups develop any sense of ownership and investment in the trade policymaking process, or the WTO.

4. Ask the Difficult Questions

Resolutions to address the current landscape, while eventually needing to be expressed technically, are clearly political. The US Permanent Representative to the WTO, Ambassador Dennis Shea, said as much at the 12 December WTO General Council meeting.⁵⁴ If all WTO Members decide they like the Appellate Body in principle and decide to update

its guidebook, there is no shortage of detailed ideas on paths forward. Yet to begin walking this technical journey, political leaders must first agree a destination. That requires answering some tough questions.

What does the rules-based system look like if the United States never comes back? Will countries remain in a system that the world's largest economy does not consider binding? Is the response to Chinese state capitalism to wait until China swears off it unilaterally, confrontation, forbearance, or even an embrace of some of its elements to even the playing field? Is globalisation fragmenting into regionalisation, and what are the instruments required for emerging regional mega-blocs to continue trading in a predictable and mutually acceptable fashion?

To date, political leaders have largely sidestepped these questions in favour of repeating their views on the existing system, trying to manage its dysfunction in the short term, and encouraging technical solutions in the absence of political guidance. Unfortunately, that will not be enough.

CONCLUSION

This Appellate Body crisis may abate, and the impending budget crisis may be averted, but the WTO's challenges run deep. Unless the consensus on gradual liberalisation and rules-based trade can be rebuilt, the WTO will continue to fall short of the political will required to move beyond current impasses and inefficiencies. Ministerial calls for unspecified reforms, or reforms with no chance of securing consensus from the very players they target, will continue to sound hollow.

The United States has to be central to any future plan. No amount of technical work, statements of concern, or speeches in the General Council can fix a trading system to which the world's largest economy is uncommitted. US allies and trading partners with an interest in maintaining a rules-based multilateral trading system will need to use collective and creative diplomacy to pressure the United States to return to a productive member of the WTO, if not a leader as it has been in the past.

Whatever the future of the WTO, governments who believe in rules-based trade must look inwards and begin rebuilding the interest and engagement of business and civil society. Business must be convinced to devote the time and resources to shape and inform trade policy, and civil society actors must be brought, however sceptically, into the tent. That is not going to be easy, but the decades of economic growth and prosperity enabled by predictable, rules-based trade, show that it is worth it.

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NOTES

- ¹ Emma Farge, “WTO Fisheries Talks Suspended Due to COVID Preoccupations, Reuters, 20 May 2020, <https://www.reuters.com/article/us-trade-wto-fish/wto-fisheries-talks-suspended-due-to-covid-preoccupations-document-idUSKBN22W1M6>.
- ² World Trade Organization, *Appellate Body Members*, 11 December 2019, https://www.wto.org/english/tratop_e/dispu_e/ab_members_descrp_e.htm.
- ³ The Organization’s budget is approved by consensus by its Budget Committee, in which any WTO Member can participate. Thus, the US has the option of not only failing to make its regular contribution to the budget (US\$23 million, or just over 11 per cent of the total budget), but can also withhold approval on WTO budget plans for the coming biennium.
- ⁴ “Chairs Peter DeFazio and Frank Pallone, Jr. Introduce Legislation to Withdraw the United States from the World Trade Organization”, United States Congressman Peter DeFazio — Press Release, 12 May 2020, <https://defazio.house.gov/media-center/press-releases/chairs-peter-defazio-and-frank-pallone-jr-introduce-legislation-to>.
- ⁵ “Senator Hawley Introduces Joint Resolution to Withdraw from WTO”, Josh Hawley – U.S. Senator for Missouri, 7 May 2020, <https://www.hawley.senate.gov/senator-hawley-introduces-joint-resolution-withdraw-wto>.
- ⁶ Simon Evenett, “The Trade Policy Dimension: Tackling Coronavirus”, *Global Trade Alert*, 11 March 2020, <https://www.globaltradealert.org/reports/50>.
- ⁷ Tineke Frikkee, “Covid-19 Crisis Has Laid Bare Weaknesses in Supply Chains”, *The Financial Times*, 12 May 2020, <https://www.ft.com/content/9bb6939d-6a31-4a33-bb62-ecbf74da8491>.
- ⁸ “WTO Says China Can Slap \$3.6 Billion in Tariffs on U.S. Imports”, The Associated Press, 2 November 2019, <https://fortune.com/2019/11/01/china-wto-us-antidumping-case-china-wins-3-6-billion-trade-tariffs/>.
- ⁹ Jeffrey Schott and Euijin Jung, “In US–China Trade Disputes, the WTO Usually Sides with the United States”, Peterson Institutue for

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International Economics, 12 March 2019,
<https://www.piie.com/blogs/trade-and-investment-policy-watch/us-china-trade-disputes-wto-usually-sides-united-states>.

- 10 European Parliamentary Research Service (EPRS) “China's WTO Accession: 15 Years On: Taking, Shaking or Shaping WTO Rules?”, EPRS Briefing December 2016,
[http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593570/EPRS_BRI\(2016\)593570_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/593570/EPRS_BRI(2016)593570_EN.pdf).
- 11 World Bank and Development Research Center of the State Council, the People's Republic of China, *China 2030: Building a Modern, Harmonious, and Creative Society*, (Washington DC: The World Bank, 2103),
<https://www.worldbank.org/content/dam/Worldbank/document/China-2030-complete.pdf>.
- 12 Chad Bown and Jennifer Hillman, “WTO'ing a Resolution to the China Subsidy Problem”, Peterson Institute for International Economics, Working Paper Series 17-17, October 2019,
<https://www.piie.com/publications/working-papers/wtoing-resolution-china-subsidy-problem>.
- 13 Ibid.
- 14 Organisation for Economic Co-operation and Development (OECD), *Measuring Distortions in International Markets: The Aluminium Value Chain*, OECD Trade Policy Papers, 7 January 2019, https://www.oecd-ilibrary.org/trade/measuring-distortions-in-international-markets-the-aluminium-value-chain_c82911ab-en.
- 15 Dinny McMahon, *China's Great Wall of Debt: Shadow Banks, Ghost Cities, Massive Loans, and the End of the Chinese Miracle* (Boston: Houghton Mifflin Harcourt, 2018).
- 16 Bown and Hillman, “WTO'ing a Resolution”,
<https://www.piie.com/publications/working-papers/wtoing-resolution-china-subsidy-problem>.
- 17 Office of the United States Trade Representative (USTR), *Joint Statement of the Trilateral Meeting of the Trade Ministers of the United States, European Union, and Japan*, Paris, 23 May 2019,
<https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/may/joint-statement-trilateral-meeting>.
- 18 Organisation for Economic Co-operation and Development (OECD), *Trade in Value Added (TiVA): Principal Indicators*,

- OECD.Stat., 2018,
https://stats.oecd.org/Index.aspx?DataSetCode=TIVA_2018_C1.
- ¹⁹ United Nations Conference on Trade and Development (UNCTAD), *World Investment Report 2013: Global Value Chains: Investment and Trade for Development* (Geneva: United Nations Publishing, 2013),
https://unctad.org/en/PublicationsLibrary/wir2013_en.pdf.
- ²⁰ Jim Brunsten, “EU Presses Ahead with Retaliation to US Steel Tariffs”, *Financial Times*, 7 June, 2018,
<https://www.ft.com/content/5ad5ec86-6986-11e8-b6eb-4acfcfb08c11>; Office of the United States Trade Representative (USTR), *Statement By U.S. Trade Representative Robert Lighthizer on Section 301 Action*, 1 August 2018, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/august/statement-us-trade-representative>.
- ²¹ There is some debate whether the exact wording suggests a broad and entirely self-determined ‘national security’ category or refers to the specific national security goals identified in the agreement’s sub-paragraphs. The US argues it is the former.
- ²² European Commission, “EU Adopts Rebalancing Measures in Reaction to US Steel and Aluminium Tariffs”, European Commission — Press Release, 20 June 2018,
https://ec.europa.eu/commission/presscorner/detail/en/IP_18_4220.
- ²³ In November 2018, the United States, European Union, Japan, Argentina, and Costa Rica introduced a proposal to add extra teeth to the notification requirements of the various WTO agreements: World Trade Organization, *Procedures to Enhance Transparency and Strengthen Notification Requirements Under WTO Agreements*, JOB/GC/204, 1 November 2018,
https://trade.ec.europa.eu/doclib/docs/2019/january/tradoc_157633.pdf. Had it been adopted, failure to produce timely notifications would have faced a mixture of institutional and financial penalties. The proposal, requiring unanimous consensus from the very Members whose behaviour it sought to change, never stood a chance.
- ²⁴ World Trade Organization, *Report (2019) of the Committee on Subsidies and Countervailing Measures*, G/L/1341, G/SCM/155,
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/G/L/1341.pdf&Open=True>.

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- ²⁵ Global Trade Alert is an independent monitoring initiative that provides information on state interventions likely to affect foreign commerce. It was founded in June 2009 in response to the global financial crisis; <https://www.globaltradealert.org/>.
- ²⁶ Office of the United States Trade Representative (USTR), *United States Issues WTO Counter Notification Concerning India's Market Price Support for Various Pulses*, Washington DC, 15 February 2019, <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2019/february/united-states-issues-wto-counter>.
- ²⁷ Kateryna Holzer, *Addressing Tensions and Avoiding Disputes: Specific Trade Concerns in the TBT Committee*, World Trade Organization, Staff Working Paper, Economic Research and Statistics Division, ERSD-2018-11, 31 October 2018, https://www.wto.org/english/res_e/reser_e/ersd201811_e.pdf.
- ²⁸ The full list of notifications to and Specific Trade Concerns raised in the Technical Barriers to Trade Committee can be viewed here: <http://tbtdocs.wto.org/>.
- ²⁹ Author's analysis comparing average 2018 Most Favoured Nation (MFN) applied tariff rates for the 159 countries for which the WTO has comprehensive tariff data, https://www.wto.org/english/res_e/statis_e/daily_update_e/tariff_profiles/TariffProfilesSummary_E.zip.
- ³⁰ Organisation for Economic Co-operation and Development (OECD), *Agricultural Support*, OECD Data, 2016, <https://data.oecd.org/agrpolicy/agricultural-support.htm>; Food and Agriculture Organization of the United Nations (FAO), *Value of Agricultural Production*, FAOStat, 2016, <http://www.fao.org/faostat/en/#data/QV>.
- ³¹ The EU's annual pool is around US\$91 billion, Japan receives around US\$40 billion, and the US just over US\$19 billion.
- ³² Jonathan Hepburn, Christophe Bellmann, and Ricardo Melendez-Ortiz, *Achieving Progress in Multilateral Trade Negotiations on Agriculture*, Policy Brief (Geneva: International Centre for Trade and Sustainable Development, 2018), <https://ictsd.iisd.org/themes/agriculture/research/achieving-progress-in-multilateral-trade-negotiations-on-agriculture>.
- ³³ Kristen Hopewell, "The WTO Just Ruled Against China's Agricultural Subsidies. Will This Translate to a Big U.S. Win?", *Washington Post*, 4 March 2019,

<https://www.washingtonpost.com/politics/2019/03/04/wto-just-ruled-against-chinas-agricultural-subsidies-will-this-translate-big-us-win/>.

- ³⁴ In 2008, the last credible attempt at an organisation-wide tariff and subsidy reform package took place, which culminated in draft texts by the chairs of the relevant negotiating committees, colloquially known as the ‘Rev.4 modalities’. Negotiations ultimately collapsed, and no meaningful attempt at a similar ‘grand bargain’ has materialised since. See: World Trade Organization, *Revised Draft Modalities for Agriculture*, TN/AG/W/4/Rev.4, 6 December 2008, https://www.wto.org/english/tratop_e/agric_e/agchairtxt_dec08_a_e.pdf.
- ³⁵ World Trade Organization, *Information Technology Agreement*, 12 December 2019, https://www.wto.org/english/tratop_e/inftec_e/inftec_e.htm.
- ³⁶ Counting the EU as 28 Members.
- ³⁷ Iana Dreyer, “Environmental Goods Agreement — Why Talks Faltered”, *Borderlex*, 6 December 2016, <https://www.borderlex.eu/2016/12/06/environmental-goods-agreement-talks-faltered/>.
- ³⁸ EU counted as one Member.
- ³⁹ For the full text of the joint statement, see: World Trade Organization, *Joint Statement on Services Domestic Regulation*, WT/L/1059, 23 May 2019, <https://www.dfat.gov.au/sites/default/files/joint-statement-on-services-domestic-regulation.pdf>.
- ⁴⁰ At the time the talks were put on hold, there were still major issues outstanding in areas such as data flows and localisation, as well as on how to handle dispute settlement. Merely restarting the agreement with goodwill would be no guarantee of a swift or easy conclusion.
- ⁴¹ Heinz Strubenhoff, “The WTO’s Decision to End Agricultural Export Subsidies is Good News for Farmers and Consumers”, *Brookings*, 8 February 2016, <https://www.brookings.edu/blog/future-development/2016/02/08/the-wtos-decision-to-end-agricultural-export-subsidies-is-good-news-for-farmers-and-consumers/>.

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- ⁴² Among the thorniest issues in international trade is the concept of data localisation. This refers to the rules governments implement regarding where their citizens' data can be stored, and how it can move across borders. It includes whether, for example, Facebook has to maintain physical data centres in a country in order to host the accounts of that country's citizens, or whether an accounting firm can outsource the more routine parts of a citizen's tax return preparation to a cheaper affiliate abroad.
- ⁴³ Hosuk Lee-Makiyama and Badri Narayanan, *The Economic Losses from Ending the WTO Moratorium on Electronic Transmissions*, European Centre for International Political Economy (ECIPE) Policy Brief No 3/2019, August 2019, <https://ecipe.org/publications/moratorium/>.
- ⁴⁴ Target 14.6 of the UN Sustainable Development Goals states: "By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation", https://stats.unctad.org/Dgff2016/planet/goal14/target_14_6.html.
- ⁴⁵ "David Attenborough Explains What We Need to Do to Stop Over-Fishing", World Economic Forum, *YouTube*, 8 October 2019, <https://www.youtube.com/watch?v=og8N-EslUPQ>.
- ⁴⁶ Bernard Hoekman, Constantine Michalopoulos, and L. Alan Winter, "Special and Differential Treatment of Developing Countries in the WTO: Moving Forward After Cancún", *The World Economy* Vol 27, No 4 (April 2004), 481–506; Nicolas Imboden, "Special and Differential Treatment: A New Approach May Be Required", *Bridges Africa* Vol 6, Iss 8 (November 2017), 21–24, <https://www.tralac.org/images/docs/12386/bridges-africa-november-2017-ictsd.pdf>; Alexander Keck and Patrick Low, *Special and Differential Treatment in the WTO: Why, When, and How?* World Trade Organization Staff Working Paper No ERSD-2004-03, (January 2004), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=901629.
- ⁴⁷ Tom Miles, "U.S. Drafts WTO Reform to Halt Handouts for Big and Rich States", Reuters, 16 February 2019,

- <https://www.reuters.com/article/us-usa-trade-wto/us-drafts-wto-reform-to-halt-handouts-for-big-and-rich-states-idUSKCN1Q426T>.
- 48 Jakob Hanke, “WTO Allows U.S. to Hit EU With Tariffs Over Airbus Subsidies”, *Politico*, 14 September 2019, <https://www.politico.com/story/2019/09/14/wto-tariffs-airbus-subsidies-1496170>.
- 49 The US win–loss record at the Appellate Body is good, except in the area of its trade remedies regime.
- 50 European Commission, *EU and Norway Agree on Interim Appeal System in Wake of World Trade Organization Appellate Body Blockage*, European Commission, Brussels, 19 October 2019, <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2074>.
- 51 United Nations Conference on Trade and Development (UNCTAD), *The Use of the EU’s Free Trade Agreements*, National Board of Trade Sweden, (Geneva: United Nations Conference on Trade and Development, 2018), https://unctad.org/en/PublicationsLibrary/EU_2017d1_en.pdf.
- 52 Depth in trade agreements is generally measured by a combination of the number of product types covered, and the range of policy areas addressed. See Aaditya Mattoo, Alen Mulabdic, and Michele Ruta, *Trade Creation and Trade Diversion in Deep Agreements*, World Bank Policy Research Working Paper (Washington DC: The World Bank, 2017), <http://documents1.worldbank.org/curated/en/208101506520778449/pdf/WPS8206.pdf>.
- 53 Robert McDougall, *Crisis in the WTO: Restoring the WTO Dispute Settlement Function*, CIGI Papers No 194 (Waterloo: Centre for International Governance Innovation, October 2018), <https://www.cigionline.org/sites/default/files/documents/Paper%20no.194.pdf>; Jennifer Hillman, *Three Approaches to Fixing the World Trade Organization’s Appellate Body: The Good, The Bad and the Ugly*, (Washington DC: Institute of International Economic Law Georgetown University Law Center, 2018), <https://www.law.georgetown.edu/wp-content/uploads/2018/12/Hillman-Good-Bad-Ugly-Fix-to-WTO-AB.pdf>.
- 54 For Ambassador Shea’s full remarks see: *Ambassador Shea: Matters Related to the Functioning of the Appellate Body*, U.S. Mission to International Organizations in Geneva, WTO General Council Meeting, 9 December 2019,

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[https://geneva.usmission.gov/2019/12/09/ambassador-shea-statement-at-the-wto-general-council-meeting/.](https://geneva.usmission.gov/2019/12/09/ambassador-shea-statement-at-the-wto-general-council-meeting/)