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TOWARDS NUCLEAR BAN TREATY

UNIVERSAL NFU IS THE CATALYST

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Towards Nuclear Ban Treaty: Universal NFU is the Catalyst

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The UN General Assembly First Committee Resolution A/C.1/71/L.41 (27 October 2016), which calls for negotiation on a “legally binding instrument to prohibit nuclear weapons leading toward their total elimination”, is amused as a “game-changer” in the global nuclear discourse. With 123 countries voted in favor, 38 against, and 16 abstained, the resolution mandated to convene a multilateral UN conference in 2017 to negotiate a Nuclear Ban Treaty to be adopted in 2018. The resolution titled “taking forward multilateral nuclear disarmament negotiations” was co-sponsored by 57 countries calling for the negotiations open to all members to arrive at a decision by majority.

As no nuclear weapon states (NWS) except North Korea, and interestingly not even Japan – the only nuclear weapons victim – did support the resolution, the initiative seems to be a futile attempt for a “parallel nonproliferation treaty” of the nuclear ‘have-nots,’[1] which likely to face the fate of Kellogg-Briand Pact that outlawed war itself.[2] Given the apathy of the nuclear



weapon states, it is pertinent to introspect if the treaty will have any practical legal impact. Above all, can mere imposition of dictums de-legitimize the possession of nuclear weapons, leading towards their eventual elimination?

A Game-Changer?

The intended objective of the initiative is to accelerate the disarmament process of current stockpile of around 15,000 nuclear weapons leading to “reduce the proliferation-driving value attached to these weapons of mass destruction, prevent nuclear detonations, and deter further modernization”. [3] Building upon the 1968 nuclear non-proliferation treaty (NPT) it will pronounce legally binding disarmament obligations for both NPT and Non-NPT states.

If the First Committee vote is confirmed by the UN General Assembly in December this year, the negotiations for such a treaty will commence during the first half of 2017. As a matter of fact, all states are encouraged to participate but none will be given a veto power to block the negotiations or decisions. The final instrument is expected to be adopted by the UN at a high-level meeting in 2018. Unless the nuclear weapon states gang up to derail it, which is most likely, such a treaty will come into existence. But, what would be the fate of the treaty if all nuclear weapon states just ignore it? Will it be a game-changer, and in what way?

First, many would like to see a parallel, if not alternative, regime when there is no momentum in the NPT, CTBT, FMCT, and disarmament through Conference on Disarmament (CD). Therefore, the idea of the Nuclear Ban Treaty, says Michael Krepon, “exemplifies the pull of centrifugal forces in the arms control enterprise.” [4] But the complexity is that all nuclear weapon states are critical about it which will culminate in a new tussle among the nuclear ‘haves’, ‘have-nots’, and ‘crypto’ nuclear powers (Japan, South Korea, some NATO allies), and fracture the international community deeply.

Secondly, this seems to be “an attempt to decouple states’ perceived need to retain nuclear weapons from the broader strategic context” which may prove to be a futile exercise. [5] Nuclear disarmament cannot be achieved in a vacuum. As long as the perceived utility of nuclear weapons remains high, any disarmament effort bound to fail. The myth that nuclear weapons are the ultimate guarantor of national security needs to be falsified, and the concept of nuclear deterrence needs to be revisited to establish firmly the fact that nuclear weapons do not help win a war.

Third, the idea of Nuclear Ban Treaty has emerged out of the frustration concerning halfhearted multilateral piecemeal disarmament approach. The ‘grand bargain’ between the ‘haves’ and ‘have-nots’ under the NPT was that the non-nuclear weapon states (NNWS) commit to forgo their nuclear weapons choice in return for their access to nuclear technology for a peaceful purpose, meanwhile, the NWS in good faith will move towards gradual elimination of their arsenals. Ever since, many disciplinary actions are taken against nations for proliferation misconduct, while NWS have modernized their weapons and delivery systems without any hindrance. For example, the US Congressional Budget Office (CBO) plan 2014 allocated \$355



billion to spend over the next 10 years to upgrade and develop the new generation of nuclear weapons. This is, in reality, a violation of “the affirmative obligation posited by the NPT”. Since the end of Cold War, though the overall reduction in the number of nuclear warheads is achieved, the importance of nuclear weapons in national security strategies nevertheless remains intact; moreover, the warheads have become technologically more sophisticated and lethal.

Four, the Nuclear Ban Treaty, arguably,[6] intends to bridge an existing gap in the international law for which nuclear weapons could not be outlawed the way it dealt with other WMDs (biological and chemical weapons). Even there exists no international legal regime to declare nuclear weapons illegal. The Nuclear Ban Treaty would be the first such legal instrument to pronounce all the ‘nuclear-haves’ as illegal possessors of banned weapons. It would certainly put pressure on NWS to move further towards nuclear disarmament, but what practical legal impact the treaty will have on them is not difficult to fathom.

Five, if the treaty fructifies, it will set a precedent that actionable nuclear disarmament debate can be undertaken outside the CD. This would mark a tactical shift of role and influence of the General Assembly vis-à-vis the CD on nuclear matters. It would also dispel a long-standing gospel that only CD is the right platform to debate and work towards nuclear disarmament. Countries like India, UK, and many others “firmly believe that the best way to achieve a world without nuclear weapons is through gradual multilateral disarmament negotiated using a step-by-step approach and within existing international frameworks.”[7]

Is It Feasible?

Three important motivations, identified by Michael Krepon, in regard to the Nuclear Ban Treaty are: (1) it is a moral imperative as nuclear dangers are increasing; (2) it will pressurize nuclear weapon states to go extra mile in their disarmament drive; and (3) it would strengthen essential norms against legitimacy of nuclear weapons.[8] Though appreciated widely, the proposed treaty is speculative for an obvious reason: whether this initiative is feasible? Undoubtedly, the path to the treaty and pursuit of its vision would be bumpy.

Practically the treaty will have to devise strong enforcement mechanisms and disciplinary provisions against those who would not oblige. It is difficult to imagine at this juncture any disciplinary action against the P-5 countries, and if they will heed to it at all. Evident is the recent reactions of the P-5 countries: On behalf of France, the UK, and the USA, Alice Guitton, the French permanent representative to the CD, said that although the commitment of the three countries to a world without nuclear weapons remained “unshakeable”, a treaty prohibiting nuclear weapons would not move toward that goal; instead it would “distract attention” from more practical and verifiable disarmament steps.[9] On the other hand, Russian Foreign Ministry official argued that the hasty adoption of a legally binding prohibition would be “destructive”, “catastrophic”, “treacherous”, and “thrust the world into chaos and instability”.[10] The US mission to NATO had urged alliance members “to vote against negotiations on nuclear weapons ban, not to merely abstain” primarily because the ban treaty will fundamentally be at odds with NATO’s basic policies on deterrence.[11]



Unquestionably, de-legitimization of nuclear weapons is desirable but not as symbolism or through the outright imposition of principles which will not sustain incidentally. The imperative is to bring about an unambiguous universal realization that nuclear weapons are useless, therefore be discarded. As long as nuclear weapons remain lucrative for national security considerations, no form of jurisprudence can offset their perceived importance.

Lastly, de-legitimization of nuclear weapons leading to their eventual elimination cannot be achieved overnight. A time-bound phased disarmament process has to be put in place to embrace by all. Recall former Indian Prime Minister Rajiv Gandhi Action Plan of 1988 for “Ushering in a Nuclear-Weapon-Free and Non-Violent World Order” placed before the General Assembly, that was unfortunately sidelined by the world community as ‘unrealistic’. It is doubtful if the deterrence-driven world order in vogue is ready now to honor and entertain another such attempt?

What would be its Contours?

One wonders, what would be the contours of the Nuclear Ban Treaty, if it finally emerges despite all odds? According to Rebecca Johnson, its provisions would be based on “the “thirteen steps” adopted by NPT states in the 2000 NPT Review Conference and other relevant steps advocated by arms controllers and Global Zero to be monitored and verified through an appropriate form of nuclear weapons convention when that becomes feasible.”[12] This format for the treaty would be handy, but not devoid of the risk of carrying forward the persisting NPT-related grievances to the new regime leading to “pit the ban treaty against the NPT, to detriment of both.”[13] The dissenters of NPT would not like to see the discriminatory legacy prolonging.

Besides, the Test Ban Treaty initiative may draw provisions from the Rajiv Gandhi Action Plan whose following basic features are fully salient. “First, there should be a binding commitment by all nations to eliminating nuclear weapons in stages ... [may be the year 2025 at the latest]. Secondly, all nuclear-weapon states must participate in the process of nuclear disarmament. All other countries must also be part of the process. Thirdly, to demonstrate good faith and build the required confidence, there must be tangible progress at each stage towards the common goal. Fourthly, changes are required in doctrines, policies and institutions to sustain a world free of nuclear weapons. Negotiations should be undertaken to establish a comprehensive global security system under the aegis of the United Nations.”[14]

Above all, the ban treaty should be all inclusive, not to be negotiated in a vacuum, and not devoid of reality. In the current security environment, nuclear weapons are still seen as the centerpiece of survival by many nations. The attempt to decouple the perceived need to retain nuclear weapons from broader strategic context may result in further polarization of an already entrenched debate.[15]

What could be the Catalyst?



Many commissions have been constituted for arms control, non-proliferation, etc. but not a single commission ever been tasked to inquire into the fundamental question – can a nuclear war be fought to win a meaningful military victory? Only the realization that a nuclear war cannot be fought to win a meaningful military victory will lead the world towards de-legitimization and eventual elimination of nuclear weapons. [16]

The world must draw lessons from the process and rationale behind the no-first-use (NFU) agreement of Chemical Weapons in 1925 (Geneva Protocol). Even after the promulgation of the Geneva Protocol, chemical weapons were used; but ultimately the conclusion was that they could only kill people; they did not help win a war. The Germans used it and the Allies retaliated. Saddam Hussein used it against Iran and the Iranians retaliated. When it came to WW II, though gas masks were distributed widely in case chemical weapons were used, neither side used them. Largely, by that time, both sides were convinced that if one side used chemical weapons, there would be retaliation, and will not help win the war. That was the basic reason why nations agreed to NFU of chemical weapons and finally in 1993 the Chemical Weapons Convention was adopted. It took 68 years to move from the NFU-stage to elimination-stage.

While aspiring for nuclear disarmament, have we pursued the proposition that nuclear weapons may not help win a war? Will fighting a nuclear war bring a meaningful military victory? According to K. Subrahmaniam, once a nuclear war starts it will get out of control easily. Once the first weapon is fired, the other side will retaliate. Each side will be under tremendous compulsion either to use their weapons or lose them; therefore, both sides will fire all that they have at once leading to total devastation in both sides. Who wins over whom?

As a starting point, serious thought should be given to propagate the fact that a nuclear war cannot be fought meaningfully in a military sense. Meanwhile, the world should advocate for a universal NFU of nuclear weapons as the catalyst for their de-legitimization and elimination of chemical weapons. Therefore, the Nuclear Ban Treaty initiative must set up a commission first to establish the futility of nuclear weapons and the rationale of opting for a universal NFU treaty.

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[12] Rebecca Johnson, n. 3

[13] Krepon, n. 2.

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