Effectiveness of Prohibition of Nuclear Weapons Treaty

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Introduction

The call for banning nuclear weapons is not a new phenomenon. In fact, the mandate for the elimination of nuclear weapons has existed since the invention of the bomb itself. Innumerable measures have been taken by the world community to turn back the clock to a prelapsarian state preceding the proliferation of nuclear weapons; however these efforts have had little success. There has been a tremendous amount of debate regarding the use of nuclear weapons. Realist school proponents believe in the maintenance of credible nuclear deterrence for the sake of maintaining sovereign boundaries and rights. While other theorists have opposed the need for such devastating deterrent mechanisms by citing the ethical and humanitarian costs of a nuclear arms race. A number of disarmament efforts like the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Comprehensive Nuclear Test Ban Treaty (CTBT), Fissile Material Cut-off Treaty (FMCT), Strategic Arms Reduction Treaty (START) etc. have all lost their way due to the constant power plays being orchestrated by major powers and the increasingly volatile geopolitical situation. Another draft treaty on the "Prohibition of Nuclear Weapons" has been introduced in the United Nations on 07 July 2017, where 122 nations voted for banning nuclear weapons permanently. The hope is that, once the required 50 ratifications are achieved, the treaty will come into force within 90 days. But before determining the future of the treaty, it is necessary to first analyse the various factors surrounding it such as the prevalent environment, historical trends, current feasibility and the overall practicality of the draft treaty.

Current Environment

The positive facet of the nuclear environment is that there has been a drastic decline in the numbers of nuclear weapons. From its peak of 70,000 nuclear warheads in the mid-1980s, now the nine nuclear weapon states have a total of 14,935 nuclear weapons (in 2017) and the operationally deployed weapons being 4150.[1] However; the negative aspect is, none of these States is inclined to give up their nuclear assets in the near future, in fact they are involved in modernising and developing new variants which are more precise and lethal. A tremendous amount of money is being spent on the modernisation of these weapons by the USA, Russia and China. The US is expected to spend more than one trillion dollars on its arms development programme in the next 30 years and this will include the new Air Launched Cruise Missile (ALCM) known as the Long Range Standoff Missile (LRSM) and the Intercontinental Ballistic Missile (ICBM) fleet - the Ground Based Strategic Deterrent (GBSD), B-21 the new strategic bomber and Colombia class new ballistic missile fleet.[2] Similarly, the Russian Strategic Rocket Force is prioritising the deployment of multiple independently targetable re-entry vehicles (MIRVs) on its new RS-24 Yars (SS-27 Mod 2) mobile ICBMs, and it is also developing a new silo-based 'heavy' ICBM- RS-28 (Sarmat or SS-30), that can carry up to 10 MIRVed warheads. The Russians are also trying to develop the Borei SSBNs that will each carry 16 Bulava (SS-N-32) submarine-launched ballistic missiles (SLBMs) armed with up to six warheads.[3] Given this modernisation surge, the Chinese have also redoubled their efforts at upgrading their arsenal, in an effort to make it more robust and survivable. This effort at modernisation corresponds with their doctrine of assured retaliation, and they are leaving no stone unturned in trying to achieve parity with the US and Russia on all fronts. The maturation of new technologies has led to the

recent addition of road-mobile ICBMs, improved nuclear-powered ballistic-missile submarines, and MIRVs-capable silo-based ICBMs, as well as the ongoing development of hypersonic-glide vehicles and MIRV-capable mobile ICBMs, thus China is fielding a more capable nuclear deterrent force.[4] In addition to the modernisation efforts being made by these three countries, the current environment of geostrategic volatility can also be attributed to emergent nations, such as Pakistan which is currently lowering the nuclear threshold by their policy of Tactical Nuclear Weapons (TNWs), and North Korea whose belligerence and volatility is a cause of global concern. Given the current environment, it is evident that major Nuclear Weapon States (NWS) as well as newly declared NWS are inclined towards continuing their development of nuclear resources for ensuring the security of their sovereign boundaries. Realistically speaking, therefore, there are apprehensions regarding the plausibility of successfully prohibiting the use of nuclear weapons.

Treaty on Prohibition of Nuclear Weapons

Enthusiasts of the Treaty believe that *"The agreement was a victory for the United Nations and multilateralism,… Despite the resistance from Nuclear Weapons States, it was possible to adopt a treaty that reflects the historical aspiration from the large majority of the international community to ban the existence of such weapons…..This unprecedented step must be ascribed to the persistence of those who for the last 70 years have kept alive the hope of a world without nuclear weapons; to a diverse and plural coalition of governments and civil society actors who have not resigned themselves to the existence of such weapons."*[5] These enthusiasts, therefore, reinforce the fact that any use of nuclear weapons would be contrary to the rules of International Law applicable to armed conflict, and more importantly – would be a direct breach of International Humanitarian Law as well. As a counter mechanism, they suggest the establishment of a legally binding treaty that is verifiable, irreversible, and comprises of transparent mechanisms aimed at achieving a world free of nuclear weapons. While this is a tall order, enthusiasts believe that the Treaty tries to incorporate and deal with some of these concerns at the very least.

The Treaty currently has 20 Articles dealing with various aspects related to the prohibition of nuclear weapons. Article 1 entails that nations are never to, under any circumstances, develop, transfer, receive, use, assist, seek and allow any stationing/deployment of any nuclear weapons/nuclear explosive devices on its territory or any place under its jurisdiction.[6] There is also a 'Declaration' caveat in the Treaty (Article2) where States are supposed to submit to the Secretary General of the United Nations (within 30 days of their entry into force) their status on the nuclear assets, whether they possess, owned or controlled nuclear weapons/nuclear explosives devices and whether they had eliminated their nuclear weapons programme.[7] The States are also required to maintain the safeguards and obligations (Article 3) recommended by the International Atomic Energy Agency (IAEA). The States also need to provide credible assurance regarding the non-diversion of declared nuclear material away from peaceful nuclear activities as well as the absence of undeclared nuclear material (or activities as a whole), thus ultimately working towards the irreversible elimination of their nuclear weapons programmes altogether (Article 4). The Treaty further states that if a State possesses nuclear weapons or explosive devices then it needs to decommission and subsequently get them verified in a legally binding time bound plan. Lastly, the Treaty emphasises the fact that all these agreements should enter into force no later than 18 months after the date of initiating these negotiations.

The other parts are mainly concerned with the financial aspect of the Treaty, and how international cooperation and assistance can be given in terms of technical and material assistance to the affected party and how further amendments can be made to the treaty.

Weaknesses

After describing the primary characteristics of the Treaty it would be wise to prudently examine the lacunae that emerge while analysing it. The biggest weakness of this Treaty is that none of the NWS has endorsed it yet. The US, the United Kingdom and France expressed strong opposition to the Treaty in a joint statement made on 07 July 2017, where they stated that *"This initiative clearly disregards the realities of the international security environment. Accession to the ban treaty is incompatible with the policy of nuclear deterrence, which has been essential to keeping the peace in Europe and North Asia for over 70 years."*[8] They proceeded to elaborate by firmly denying the possibility of ever becoming a part of this Treaty. They conclusively declared that *"We do not intend to sign, ratify or ever become party to it…we would not accept any claim that this Treaty reflects or in any way contributes to the development of customary International Law."*[9] A second major flaw with the Treaty as noted by several academics is that "it lacks effective verification and compliance protocols, in addition to ignoring the reasons why States fail to comply to begin with… also historically, it can be stated that successful ban treaties have strong verification procedures as their foundation".[10] Therefore, the complete absence of redressal as well as review mechanisms casts aspersions on its potential efficacy as well as applicability. Thirdly, the Treaty also contains a caveat that clearly states that States should work to "irreversibly" eliminate nuclear weapons. This is a fundamental logical paradox given the volatility of the current world order. One cannot undo time or the effects of civilisational progress. Once a State has mastered the use and foreseen the potential applications of nuclear technology, how can it go back and irreversibly eliminate it. Furthermore, even with regards to developing redressal/review mechanisms, there are certain fundamental questions that remain unanswered, such as – which competent international authority would verify compliance? What if States do not agree on who the international authority would be? What powers would this international authority have? What happens when a State is caught non-complying?[11] A fourth issue that some analysts like Mathew Harris have flagged, is that this Treaty is aimed at nations having a democratic set-up where there can be a free and fair debate about this issue by the activists in contrast to countries like Russia or China where he says that "the ban treaty will not encourage Russia or China (let alone North Korea) to disarm, or even to participate more actively in bilateral or multilateral arms control initiatives.[12]

Lastly, critics have also complained that this Treaty will undercut the authority of NPT, undermine prevalent treaties like the CTBT (has still not entered into force), and marginalise initiatives like the FMCT. The main issue that they raise is that – it's not the lack of treaties that is an impediment to the ban on nuclear weapons; but an overall absence of global will (which is hampered by geostrategic realities) that poses hurdles that prevent the implementation of prohibition mechanisms. Furthermore, the complications of locational political allegiances further reduce the number of nations willing to commit to such a drastic manoeuvre. For example, the nuclear umbrella that the Americans provide to various nations is one such complication that needs to be addressed. What would be the impact of signing such a treaty for nations dependent on America's nuclear umbrella? Agreeing to such drastic measures might bring legal difficulties in carrying out the extended-deterrence operations and cause issues in maintaining credible minimum deterrence.

India's Response

Historically speaking, India's response has been embedded in theoretical beliefs of non-violence and the development of global peace. However, given its precarious geostrategic positioning and the volatile belligerence of its neighbours to the North and to the West, over the years, India has been forced to adapt a more realistic geostrategic approach. In line with these sentiments, India's Permanent Representative Amandeep Singh Gill had stated that *"We appreciate the sincere effort behind the initiative and remain willing to work with the sponsors to reduce the role*

and military utility of nuclear weapons, to prohibit their use under any circumstances and to eliminate them globally." Nevertheless, that being said it would be foolhardy to agree blindly to a potentially selective de-nuclearisation policy without taking into consideration the geographical and political realities of the sovereign state. Also, the debate should feature under the Conference on Disarmament which has been especially looking into these affairs. Mr Gill further stated that India feels, "an agreed multilateral framework" is required to deal with nuclear issues and the United Nation's Conference on Disarmament (CD) "is the right place for pursuing nuclear disarmament in all its essential elements… as it has the mandate, the membership and the rules for embarking on the path to nuclear disarmament."[13]

As mentioned earlier, historically, India has been an ardent supporter of nuclear disarmament. India's erstwhile Prime Minister Mr Rajiv Gandhi had introduced an Action Plan for a world free of nuclear weapons in an address to the United Nations General Assembly's Third Special Session on Disarmament as early as 1998. The Action Plan had suggested implementing a binding commitment from all nations including NWS to eliminate nuclear weapons in stages. If the plan had been followed, the world would have been free of nuclear weapons by 2010. Given the precarious middle position it embodies, India had understood that the objective of eliminating nuclear weapons could not be achieved if NWS were not taken into confidence. Hence, India believes that a holistic nuclear disarmament has always been the real answer to this problem. As Indian Ambassador, DB Venkatesh Varma states, *"nuclear disarmament contains three essential pillars – prohibition, which is largely legal in content; elimination, which pertains to the physical destruction of the weapons; and the supporting infrastructure and verification, that provides assurance, confidence and credibility to the implementation process. These are the three major pillars that need to be taken into consideration for a potentially comprehensive future Nuclear Weapons Convention[14]"*

Currently, this treaty is unable to address this strategic imbalance and hence, it would remain a utopian concept where, despite the best intentions of signatory nations, the Treaty is unable to achieve its true objective.

Conclusion

In conclusion, it is not the addition and promulgation of multiple treaties dealing with varying aspects of nuclear prohibition that is required; but there are certain systemic imbalances in the global power structure that currently exist, which need to be tackled, before conversations regarding a potential nuclear ground zero can begin. Nations need to come together and universally commit to the implementation of current treaties and the process of nuclear de-escalation. The time for words is long past, and concrete actions need to be taken – particularly by NWS – to make the world a safer place. As Ambassador DB Venkatesh Varma aptly states, *"the only way to reduce the centrality of nuclear weapons is to reduce their military utility – by practical measures of de-alerting and reducing chances of accidental or unauthorised use or their access by terrorists, by doctrinal measures of narrowing the circumstances of their use, leading to a global treaty that would nail down deterrence as the sole purpose of nuclear weapons, until their elimination and capped by an international legal instrument that would de-legitimise nuclear weapons by prohibiting their use under any circumstances."*[15] Thus, any treaty which wants to eliminate nuclear weapons need to take Nuclear Weapon States on board so that an effective progress on the issue could be achieved.

Endnotes

[1] Trends in World Nuclear Force,2017,SIPRI Fact Sheet, at https://www.sipri.org/sites/default/files/2017-06/fs_1707_wnf.pdf accessed on 04 August 2017.

[2] Kingston Rief, 'US Nuclear Modernisation Programme', Arms Control Association 2017, at https://www.armscontrol.org/factsheets/USNuclearModernization accessed on 04 August 2017.

[3] Trends in World Nuclear Force,2017,SIPRI Fact Sheet, at https://www.sipri.org/sites/default/files/2017-06/fs_1707_wnf.pdf accessed on 04 August 2017.

[4] Eric Heginbotham, Michael S Chase, Jacob L Heim, Bonny Lin, Mark R. Cozad, Lyle J. Morris, Christopher P Twomey, Forrest E. Morgan, Michael Nixon, Cristina L Garafola, Samuel K Berkowitz, "China's Evolving Nuclear Deterrent",2017 Rand Publication at https://www.rand.org/content/dam/rand/pubs/research_reports/RR1600/RR1628/RAND_RR1628.pdf accessed on 07 August 2017.

[5] Towards a World Free of Nuclear Weapons, Foreign Affairs. 17 July 2017, at http://www.itamaraty.gov.br/en/speeches-articles-and-interviews/minister-of-foreign-affairs-articles/16886-rumo-a-um-mundo-sem-armas-nucleares-folha-de-s-paulo-17-7-2018?mkt_tok=eyJpIjoiTnpZMU9EYzJNR1l4WWpBMSIsInQiOiJqUUNqYUYwUTdJQ1VkNlVHZWswNm5KSVNvXC9QRmxLRGJ0NlVhOWJEcURaUGkxUlcrK1o4TFhWUkpLU05MRU1wQVwvOEJwNSs0Nm1NXC9GZXl4Z3JuOVN6N3ZFWm1yZHNaK0dnd1RRdXkzOFpLYnB6OEx5WjQ4VzAyOXZXeTZra1p5YiJ9 Accessed on 6 August 2017.

[6] Draft Treaty on the prohibition of Nuclear Weapons, UN General Assembly Accessed on 10 August 2017.

[7] Ibid.

[8] Alicia Sanders-Zakre, Banning the Bomb—A Blog of the Nuclear Weapons Prohibition Talk, 07 July 2017, Arms Control Now, at https://www.armscontrol.org/blog/2017/banning-the-bomb Accessed on 14 August 2017.

[9] United States Mission to the United Nations Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption of a Treaty Banning Nuclear Weapons**,** 07 July 2017 at https://usun.state.gov/remarks/7892 Accessed on 16 August 2017.

[10] Mathew Costlow, "The Nuclear Ban treaty is way off Target", War On Rocks, 28 July 2017, at https://warontherocks.com/2017/07/the-nuclear-ban-treaty-is-way-off-target/ Accessed on 16 August 2017.

[11] Ibid.

[12] Mathew Harris, 'The real Problem with a nuclear Test Ban Treaty",15 March 2017, Carnegie Endowment for International Peace.at http://carnegieendowment.org/2017/03/15/real-problem-with-nuclear-ban-treaty-pub-68286 Accessed on 16 August 2017.

[13] Devirupa Mitra, "India Joins Boycott Of Nuclear Weapons Ban Treaty Talks By Big Powers " The Wire ,29 March 2017, at https://thewire.in/119566/india-boycotts-nuclear-ban-talks/ Accessed on 18 August 2017.

[14] Statement by Ambassador D.B. Venkatesh Varma at the International Seminar ''A World Free of Nuclear Weapons'' on Fiftieth Anniversary of the Treaty of Tlatelolco, Mexico City (February 13, 2017)February 17, 2017 at http://www.mea.gov.in/Speeches-Statements.htm?dtl/28076/Statement+by+Ambassador+DB+Venkatesh+Varma+at+the+International+Seminar+on+Fiftieth+Anniversary+of+the+Treaty+of+Tlatelolco+Mexico+City+February+13+2017 Accessed on 18 August 2017.

[15] Ibid.

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