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Issue Brief

2017 Conference to Outlaw Nuclear Weapons: Time Ripe for a Stand-Alone Disarmament Instrument?

A. Vinod Kumar

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Summary

The First Committee vote is a culmination of a long-drawn campaign and marks a dramatic shift in the affairs of the non-proliferation regime. For one, a group of non-nuclear weapon states (NNWS) have defied the hurdles placed by the nuclear weapon states (NWS) and mobilized a cross-section of nations to agree on the 2017 UN conference that could negotiate 'a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination'. The initiative is also noteworthy for the fact that it comes a year-and-a-half after the failed 2015 RevCon, thereby indicating the resolve to work beyond the NPT system for a stand-alone instrument. The resolution, nonetheless, poses a few questions. Would such an instrument be successful without the participation of the NWS? And what accounts for India's abstention from the vote despite its celebrated record of disarmament advocacy?

The small group of nations highlighting the cause of ‘humanitarian consequences of nuclear weapons’ have pulled off what was hitherto thought of as impossible. Besides reframing the disarmament discourse in the last few years, the movement has gone a step further by garnering a decent majority of nations to agree on a conference that could negotiate ‘a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination’.¹ The vote at the UN First Committee on 27 October on Resolution L.41 is being termed as historic, as it happens to be the first time that nations have voted in a majority (123 in favour, 38 against and 16 abstaining) to work towards a treaty to delegitimize nuclear weapons.²

It started as a small Norwegian initiative – to make states aware of the ‘humanitarian consequences of nuclear weapons’- with an international conference in Oslo in March 2013, followed by similar meetings in Nayarit, Mexico (February 2014) and Vienna (December 2014) hosted by the respective governments. The Vienna conference, however, set the ball rolling for a global movement with the enunciation of a Pledge on the Humanitarian Impact of Nuclear Weapons.³ The Pledge, supported by 107 countries, had the following message:

The risk of a nuclear weapon explosion (sic) is significantly greater than previously assumed and is increasing with increased proliferation, lowering of threshold, the ongoing modernisation of arsenals, and the role attributed in doctrines of possessor states... the risk of nuclear weapons use with their unacceptable consequences can only be avoided when all nuclear weapons are eliminated... that the consequences of a nuclear weapon explosion and the risks associated concern the security of all humanity... that all states share the responsibility to prevent any use of nuclear weapons... no existing response capacity can adequately respond to the consequent human suffering.

Accordingly, the Pledge called upon state-parties to the NPT (Treaty on the Non-Proliferation of Nuclear Weapons) to fulfil their Article VI obligation by pursuing effective measures “to fill the legal gap for the prohibition and elimination of nuclear weapons.” This campaign, initiated in the run up to the 2015 NPT Review Conference (RevCon), gained support from a vast majority of non-nuclear weapon states (NNWS) at the RevCon. References to the campaign were included in the Main Committee report as well as in the draft Final Document, which though was not issued in the inconclusive quinquennial.

While an emphasis on the ‘humanitarian consequences of nuclear weapons’ has been the running theme of this campaign, its centrepiece has been the efforts to find a legal instrument to delegitimize nuclear weapons, through a ban or prohibition treaty, in order to achieve initial global disarmament, and eventual total

¹ See First Committee Resolution L.41, General and complete disarmament: taking forward multilateral nuclear disarmament negotiations, 71st Session, United Nations General Assembly, A/C.1/71/L.41.

² For a glimpse of the voting pattern, see <http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/votes/L41.pdf>.

³ Pledge presented at the Vienna Conference on the Humanitarian Impact of Nuclear Weapons by Austrian Deputy Foreign Minister Michael Linhart, 8-9 December 2014.

elimination. The momentum was picked up by inter-governmental bodies and non-governmental groups which came up with various models. These included the proposals for a treaty banning nuclear weapons by groups like Reaching Critical Will, International Campaign to Abolish Nuclear Weapons (ICANW) and Article 36, among others,⁴ as well as the principles formulated in the report of the Open-Ended Working Group (OEWG).⁵

The First Committee vote is thus a culmination of this long-drawn campaign which marks a dramatic shift in the affairs of the non-proliferation regime. For one, a group of NNWS have defied the hurdles placed by the nuclear weapon states (NWS) and mobilized a cross-section of nations to agree on the 2017 UN conference. The initiative is also noteworthy for the fact that it comes a year-and-a-half after the failed 2015 RevCon, thereby indicating the resolve to work beyond the NPT system for a stand-alone instrument.⁶ The resolution, nonetheless, poses a few questions. Does this indicate that the scenario of a post-proliferation world as the 'ideal condition' for global disarmament is finally shaping up? Would a stand-alone instrument be successful without the participation of the NWS? And what accounts for India's abstention from the vote despite its celebrated record of disarmament advocacy?

A post-proliferation world?

The key implication of the US-Soviet joint draft turning out as the text of the NPT in 1968 is the absence of any effort to conceptualize the idea of non-proliferation, as either an *end* in itself or a *means* towards the anticipated *end* of total elimination. As a result of this dichotomy, as also the vague wording of Article VI (stipulating negotiations for a disarmament treaty as a common obligation for all states), there remained a lack of consensus on how the goals of disarmament and total elimination should be pursued. Consequently, two conflicting approaches were expounded: (1) non-proliferation was to establish a global framework and structures to inhibit the further spread of nuclear weapons technology and resources alongside a series of calibrated measures, pursued in a parallel and phased manner, together leading to a conclusive disarmament process, and (b) non-proliferation could facilitate the progress towards a tipping point – a post proliferation world - from where proliferation no longer happens and sets the ideal conditions for the disarmament treaty and subsequent measures for total elimination to be initiated.

⁴ Ray Acheson, Thomas Nash and Richard Moves, A Treaty Banning Nuclear Weapons: Developing a Legal Framework for the Prohibition and Elimination of Nuclear Weapons, Reaching Critical Will-Article 36, May 2014. Also see, Banning nuclear weapons without the nuclear armed states, Article 36 Briefing Paper, October 2013; Maya Brehm, Richard Moyes and Thomas Nash, Banning Nuclear Weapons, Article 36, February 2013.

⁵ Report of the Open-ended Working Group taking forward multilateral nuclear disarmament negotiations.

⁶ Also referred in #19 of para154 in the draft Final Document, 21 May 2015.

In the more than four decades of the NPT's existence, both these pathways have not achieved traction beyond a point of stasis with both paths often overlapping, leading to stalemate and recurring crises. Numerous efforts have been pursued since the 1970s to explore the means towards a stand-alone disarmament instrument. These included proposals at the Special Sessions on Disarmament (SSoDs), Six-Nation and Middle Power Initiatives, Rajiv Gandhi Action Plan (RGAP), Nuclear Weapons Convention (NWC), among others. Such quests have been eclipsed by the competitive security environment and the contention that existence of proliferation threats diminishes the 'ideal condition' for disarmament to realistically take place.

The 'humanitarian' initiative should, hence, be viewed in the emerging context where proliferation threats have substantially reduced. Access to nuclear materials and technologies are considerably controlled and restricted, and the possibility of newer states crossing the threshold is intrinsically limited, owing to the universalization of the non-proliferation norm and omnipresence of numerous anti-proliferation structures. Certainly so, there is a domineering feeling that a 'post-proliferation' world is currently in the making, and that the time is now ripe to pursue a legal instrument to proceed towards de-legitimizing nuclear weapons, which could provide the impetus for disarmament and total elimination.

Negotiating the ban treaty: Lessons from NPT

The impetus for a nuclear weapons ban/prohibition treaty is in many ways a reversal of the politics witnessed during the negotiations for the NPT at the Eighteen Nation Disarmament Committee (ENDC) in the 1964-68 period. A vast section of non-weapon states, led by the non-aligned group, had staked up against the nuclear powers demanding a comprehensive treaty that would not just inhibit new nuclear weapon states but also facilitate dismantling of existing arsenals, along with steps for nuclear test ban, ending fissile materials production, and allowing uninterrupted access to peaceful nuclear energy resources. The US and Soviets overlooked these demands and cajoled their allies to agree on a draft, which allowed their maintenance of arsenals and incorporating ambiguous provisions for incremental measures.

Eventually, the treaty resolution was passed with 95 votes in favour, 4 against and the rest 21 abstaining. Even nations which were dissatisfied with the 'imbalanced' text voted in favour arguing that having a flawed treaty is better than having none, considering the absence of any legal instrument then. A similar scenario could unveil when the 2017 conference debates a new treaty. The proponents of this initiative are already geared up for a scenario wherein the treaty is passed at the UNGA without the participation of the NWS. The logic that a ban treaty is imperative to start the disarmament process could echo the sentiment at the ENDC that having even a partial treaty is better than having none.

Nuclear powers to stay away

The NWS had been opposed to any timeline-oriented plan or stand-alone legal instrument for nuclear disarmament. The permanent members of the UN Security Council (P5) had issued a statement in April 2015 (days before the 2015 RevCon) reiterating their support for “an incremental, step-by-step approach (as) the only practical option for making progress towards nuclear disarmament, while upholding global strategic security and stability,” arguing that a suitable security environment should be facilitated in order to make progress in all areas of disarmament.⁷ Similarly, the P5 meeting in September 2016 expressed “their deep concern with efforts to pursue approaches to nuclear disarmament that disregard the global strategic context.”⁸ Stating that such efforts “will threaten the consensus-based approach that served to strengthen the NPT,” the statement asserted that a progressive step-by-step approach is the only practical way toward disarmament, by taking into account all “factors that could affect global strategic stability.”

The Acting Under Secretary for Arms Control and International Security, Thomas Countryman justified the US vote against L.41 thus:

“We opposed it because we assessed that the Resolution would not help move disarmament efforts forward. Successful nuclear reductions will require willing and active participation from all nuclear weapon states, proven and robust verification measures, and security conditions conducive to further reductions. The resolution simply does not address those three factors.”⁹

The US government had earlier rejected similar efforts for a NWC by terming it as an ‘amorphous’ initiative while rejecting ‘false hopes of fixed time-lines’, and affirming that multiple concurrent paths are the only realistic route to a nuclear weapons-free-world.¹⁰ Russia, for its part, termed the initiative as “a destructive and hasty one that undermined and eroded existing disarmament mechanisms and the NPT,” and demanded that “thought should be given to the damage it would wreak on the Treaty.” The Russian representative was clear that the NWS do not have the willingness to participate in this initiative. Earlier, some US allies had also

⁷ Statements by the People’s Republic of China, France, The Russian Federation, The United Kingdom of Great Britain and Northern Ireland, and the United States of America to the 2015 Treaty on the Non-Proliferation of Nuclear Weapons Review Conference, 30 April 2015. (A similar statement was issued by the group in May 2012 to the Preparatory Committee, but without this message on disarmament.)

⁸ Joint Statement from the Nuclear-Weapons States at the 2016 Washington, DC P5 Conference, Office of the Spokesperson, Washington, DC, September 15, 2016.

⁹ Thomas M. Countryman, *The Goal Remains the Same*, US DipNote, 31 October 2016.

¹⁰ This message was given on the eve of the December 2014 Vienna conference on the Humanitarian Impact of Nuclear Weapons and set the tone for the US approach to the 2015 RevCon. See Rose Gottemoeller, “The Vision of Prague Endures,” Speech at the Ministry of Foreign Affairs, Prague, 4 December 2014.

argued that a prohibition or elimination treaty could seriously undermine the NPT.¹¹

Without doubt, the basis of great power opposition is their refusal to place faith on an alternate global security model that shuns nuclear deterrence. This explains their reiteration of ‘global stability’, ‘averting large-scale nuclear attacks’ and extended deterrence, besides their aversion to reducing centrality of nuclear weapons and revamping doctrines. Rather, they continue to place faith on incremental measures like test ban and fissile materials production cut-off, which are largely focussed on mitigating capability acquisition by aspirants. But for slow-paced reduction agreements between US and Russia, the nuclear powers seems clueless on the ideal model to propel them towards further reductions, which would lead to disarmament and elimination. The nuclear modernisation of emerging powers, on the other hand, diminishes their trust-deficits further.

Article VI to be accomplished?

The proponents of the nuclear weapon ban treaty endorse the ongoing, though subdued, efforts for a NWC. Both approaches aim at fulfilling the Article VI goal of providing means for disarmament, but by using the delegitimizing route. With both instruments seek to prohibit development, testing, production, stockpiling, transfer and use or threat of use of nuclear weapons, many feel the NWC lacks teeth as it places the onus on the nuclear powers to destroy their arsenals in phases (five identified ones), whereas the ban treaty seeks a tangible process for elimination by banning its possession and legitimacy.¹²

Irrespective of whether the ban treaty will emerge as a comprehensive instrument on nuclear disarmament, it may only partially address the Article VI requirement which actually calls for a treaty on ‘general’ and ‘complete’ disarmament. Further, the ban treaty cannot supplant the NPT, as the latter will continue to provide the framework to inhibit spread of nuclear weapons, which could, in fact, happen in spite of a ban treaty. Hence, there is the possibility of a new legal instrument which could provide for another inconclusive process, depending on how it is drafted.

A fragile Indian position

Since rejecting the NPT in 1968, India was the self-styled leader of the nuclear ‘have-nots’ leading charge against a discriminatory nuclear order. India’s disarmament posture got complicated after the 1998 tests. While continuing to reject the NPT, India began to posture adherence to its principles and maintained

¹¹ See Canadian statement made at the Vienna Conference of 8-9 December 2014.

¹² A draft Model NWC was crafted in 1997 in response to the Advisory Opinion of the International Court of Justice (ICJ) and was updated in 2007 by an international consortium of lawyers, scientists and physicians. Two working papers, by Costa Rica and Malaysia, are also being debated.

that it could join the Treaty only as an NWS. Such postures added to the confusion as the original contention of being a discriminatory treaty was not jettisoned even while activism against the NPT was discarded. Further, India adopted the NWC as its disarmament pathway despite the initiative lacking traction. But for some sentimental reiteration of the RGAP, India's disarmament policy looked incoherent.

The decision to abstain on L.41 further validates this condition. In an explanation of the vote, the Indian representative stated: "we are not convinced that the proposed Conference in 2017 ... can address the longstanding expectation ... for a comprehensive instrument on nuclear disarmament."¹³ He contended that as "India did not participate in the OEWG... during 2016 and hence reserves its position on its Report and the recommendations therein." The Indian statement clearly echoed the gist of sentiments expressed by other nuclear powers. All of them have empathised with the disarmament cause but rejected the 'prohibition' process. More importantly, their position indicated common difficulties on accepting alternatives to their deterrence-centric security conceptions. The Indian position makes us wonder on who decides nuclear policy in the country.

¹³ 'Statement delivered by Ambassador D.B. Venkatesh Varma', Permanent Representative of India to the CD, 28 October 2016.

About the Authors



A. Vinod Kumar is Associate Fellow at the Institute for Defence Studies & Analyses, New Delhi.

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