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The Proposed Nuclear Ban Treaty: The Road to Utopia?

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A short time after nuclear weapons were used in World War II, a movement to eliminate these weapons, the most horrific weapons of mass destruction (WMD), began with what is known as the Baruch Plan. Although many governments and hundreds of non-governmental organizations supported and still support nuclear disarmament, their achievements(including the disarmament of South Africa, reductions of stocks, and a moratorium on testing that was not universally upheld) have been partial.

The most significant progress toward nuclear disarmament was its inclusion as a goal in Article VI of the Nuclear Non-Proliferation Treaty (NPT), but this has not been adhered to since the NPT came into force in 1970. Five “legal” nuclear weapons states (NWS), permitted under the NPT to possess nuclear weapons, are joined by three non-NPT declared nuclear states and one state suspected of being a nuclear state. These nine states consider the possession of nuclear weapons an essential strategic necessity. Thus, the existence of nuclear weapons is a fait accompli, and to do away with these weapons completely would be an incredibly difficult if not impossible task.

In late 2016, the United Nations decided to launch discussions on the establishment of a treaty banning all nuclear weapons, including their manufacture, possession, testing, and use. These discussions began in March 2017, and on May 22, 2017 the Chair of the conference dealing with this issue presented a first draft of the proposed treaty.

The nine nuclear states have boycotted or simply not participated in the present UN conference, but they are not the only ones. Quite a few states, many of them allies of NWS, do not support these debates, and many cite their own strategic need for a nuclear United States as a security assurance. The debates are carried out separately under the auspices of the UN and not within the framework of the Conference on Disarmament (CD) in Geneva, which is supposed to deal with such issues. Accordingly, there is no need for consensus, and every member state has an equal say. The Draft Treaty requires

forty ratifications for the treaty's entry into force, without requiring the ratification of all or even any of the states possessing nuclear weapons. Thus in principle, an agreement can be achieved more easily, and the treaty can come into being and even enter into force. But will it be useful? It is the hope of the supporters that this treaty will eventually become the norm in international law and entice current objectors to join it.

There are two distinct possibilities of writing a nuclear ban treaty: drafting a simple declarative treaty obligating the states parties to the treaty to disarm themselves of nuclear weapons, or producing an elaborate treaty covering all possibilities and requiring a foolproof verification system. The Chair chose to adopt the second option, and consequently, the draft suffers from the same weaknesses of other disarmament treaties, including the NPT.

The proposed draft is of a treaty negotiated among states, not taking into account the existence of non-state entities that could be holding a trump card in the case of universal nuclear disarmament. The case of the Chemical Weapons Convention, where these weapons were used by terrorist groups, demonstrates the point. Moreover, as with all WMD-related treaties, this proposal does not deal explicitly with "rogue states" such as Iraq and Iran in the nuclear case and Syria in the chemical weapons case that did not comply with their treaty obligations. The first two were found by the IAEA to have been developing nuclear weapons, and Syria used chemical weapons in spite of its having declared it had eliminated these weapons in its possession.

In many respects, the draft falls into the same troubling trap of previous treaties. It is a detailed treaty but with a number of loopholes that come to placate the diverse opinions and approaches of the states to the issue. For example, the draft permits the withdrawal from the treaty, as does the NPT, and indeed North Korea withdrew from it and developed and exploded nuclear devices. Such an escape clause does not provide real and lasting assurances of complete nuclear disarmament.

In addition, the draft treaty's definition of the purpose of verification, taken almost verbatim from the NPT, is: "Each State Party undertakes to accept safeguards, with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices." This cannot be the purpose of verification in a nuclear ban treaty. The purpose of safeguards in such a treaty should simply be "to assure the absence of nuclear weapons, their source materials, and the facilities to produce these." Admittedly, this is an extremely ambitious and almost unmanageable task, even if one disregards the fact that it is almost impossible to prove a negative. Almost all states would resent such intrusive inspections, which would also need extensive human and logistical resources. Using the NPT-based description of safeguards in the draft treaty is erroneous and goes back to the solution of the least common denominator, namely the so-called "full scope" safeguards agreement. The world has progressed far beyond it,

incorporating the much more intrusive “Additional Protocol.” However, even this solution is anathema to some, and its application is still not universal within the IAEA safeguards system. To go beyond this in order to accomplish the real task of verification would be almost impossible.

What then is the possible solution to the abundance of nuclear weapons and the existing steadily expanding potential to produce them? The only use nuclear weapons have had since the end of WWII was as a deterrent, and disarmament of nuclear weapons will probably not be effected by treaties and declarations. A realistic expectation, however, can be a further reduction in the size of arsenals and the forfeiture of the potential for immediate and perhaps even careless response to escalating situations, if the relations among the nuclear weapons states and states that aspire to be nuclear states stabilize. Resolution of global, regional, and local crises by peaceful means could have a strong effect on nuclear arsenals. However, leniency in dealing with proven rogue states and entities is certainly not the way to proceed. Thus while striving toward nuclear disarmament is a noble goal, one must be realistic and not really expect the proposed treaty to achieve it.