Negotiating Global Nuclear Disarmament: Between "Fairness" and Strategic Realities

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Background

Global actors have contemplated nuclear disarmament since nuclear weapons made their first appearance over seventy years ago, and more intensively, since the Nuclear Non-Proliferation Treaty (NPT) came into force in 1970. This treaty, designed to stem the proliferation of nuclear weapons to additional states, includes a provision (Article VI) directed to the nuclear states themselves. It states that the parties to the treaty will undertake to pursue negotiations in good faith on measures relating to the end of the nuclear arms race and to nuclear disarmament. While nuclear arsenals have been reduced over the years, disarmament has not been achieved, and the fulfillment of Article VI, or lack thereof, has been an ongoing bone of contention between the members of the NPT that joined and forswore nuclear weapons, and those that continue to hold them.

An interesting milestone in the effort to advance the goal of disarmament was achieved on October 27, 2016, when the UN First Committee adopted a draft resolution on "taking forward multilateral nuclear disarmament negotiations." In effect, this was an ambitious call to begin talks in March 2017 to negotiate "a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination."[1]

The resolution passed by a very large majority: 123-38, with 16 member nations abstaining. The more prominent among the 38 votes against the resolution were states that hold or are assumed to possess nuclear weapons: four of the five NPT-designated Nuclear Weapons States (NWS) and Israel.

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China broke ranks with the other NWS and abstained, together with India and Pakistan. North Korea – a de facto nuclear state that alone has tested nuclear weapons in the current millennium, while threatening its neighbors with nuclear strikes – voted in favor of the resolution; Japan and South Korea – targets of North Korea's threats – voted against. In early December 2016 the UN General Assembly deferred action on this resolution;[2] nevertheless, the implications of the October decision are worthy of analysis as it is not likely to disappear from the international agenda.

Two previous notable initiatives over the past two decades attempted to advance the goal of universal nuclear weapons elimination, though neither has yet met with success. The first was an attempt to forge a treaty that would cut off the production of fissile materials, the essential component for a nuclear explosion. The idea was raised at the Conference on Disarmament (CD) in Geneva, but never gained traction. The failure of the proposed Fissile Material Cutoff Treaty (FMCT) was due in the main to Pakistani opposition, which prevented a consensus vote (essential for the workings of the CD) and led essentially to a shelving of the initiative. The second initiative – the Comprehensive Test-Ban Treaty (CTBT) – made greater progress and was opened for signature in 1996; however, the treaty has not yet entered into force, since the United States and others that must ratify it in order for this to happen have so far declined to do so, for a variety of reasons.

The current initiative for a global ban on nuclear weapons began with the 2015 UN General Assembly Resolution 70/33 that set up an Open Ended Working Group that was convened three times over the course of 2016. The working group presented its report to the UN General Assembly in September 2016, without offering a single agreed-upon plan for moving forward.[3] Instead, it defined several modes of action, while leaving open many questions regarding the definition of the required end result. The approach that garnered the most (though not unanimous) support was the "progressive approach," that was reminiscent of the thirteen "practical steps for the systematic and progressive efforts to implement Article VI of the [NPT]" that were presented at the NPT Review Conference in 2000.[4] These included ratification of the CTBT, the establishment of an FMCT, and the elimination of nuclear arsenals. No progress has been made on these steps since their inception, which raises initial doubts about the

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prospects for the renewed efforts. Whatever happened behind the scenes at the UN General Assembly is not publicly known, but the outcome seems to indicate that the world is not yet ready for these drastic steps.

Fairness and Strategic Realities

When weighing the degree to which the new initiative is realistic and/or feasible, one must consider its normative underpinnings and strategic implications. These must be clearly laid out in any serious discussion of conditions for moving toward the goal of a world free of nuclear weapons.

The most significant norm that the initiative seeks to promote is the notion of "fairness." Indeed, a main driver of the nuclear ban initiative – beyond the goal of eliminating the prospect of a nuclear weapon actually being used – is the desire to redress the lack of fairness inherent in the NPT framework, which defined two (discriminatory) categories of states – nuclear and non-nuclear. Pursuant to the biased set-up, an ongoing complaint has been that Article VI – which requires the NWS to work in good faith toward the goal of disarmament – was never seriously considered by these states.[5] While the nuclear arsenals of the two superpowers were significantly reduced over the decades, disarmament has remained an elusive goal. Many non-nuclear weapons states (NNWS) cannot accept that they were required to remain non-nuclear while the NWS have retained their weapons. In their view, if the nuclear states cannot be forced to disarm through the provisions of the NPT, then a new treaty must be negotiated in order to ensure fair and across-the-board disarmament, similar to the chemical and biological treaties.

While inherently appealing to liberal minds, the norm of "fairness" has been applied to the NPT by its critics in a narrow manner, and has been limited to the issue of prior possession or non-possession of weapons. There is, however, the question of NNWS compliance with the terms of the treaty. In fact, the most profound dangers emanating from the NPT in today's world concern the current determined proliferators – Iran and North Korea – that have blatantly violated their commitment to remain non-nuclear by working on nuclear weapons capabilities while members of the treaty (North Korea later withdrew, activating Article X), all the while displaying aggressive regional behavior.

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Over the course of 2016 North Korea stepped up the frequency and increased the explosive power of its nuclear tests, as demonstrated in January and September, and worked to create a warhead that can be mounted on its long range missiles. For its part, Iran over the past year has boosted its ballistic missile program – including problematic testing – while showing no indication of backing down from its nuclear ambitions, despite the Joint Comprehensive Plan of Action (JCPOA). The missiles that Iran tested are precision-guided and can carry a nuclear payload. In the post-JCPOA world, Iran's ability to shore up power and influence in the region will make it all the more difficult to stop it from moving in the direction of nuclear weapons development down the line, if and when it decides to do so.

In short, while the new nuclear ban initiative reflects the continued frustration of the non-nuclear states and their demand for fair and equal treatment, states like Iran and North Korea are certainly not upholding the norm of fairness in their own behavior. Moreover, they did not (illegally) advance their nuclear weapons programs because the treaty set-up is biased in favor of the NWS. Rather, they have worked on these capabilities – and in North Korea's case already achieved them – in order to advance their own strategic interests. Whether to ensure survivability (for North Korea), or to ensure survival in the face of aggressive steps they may choose to take in order to pursue their regional hegemonic ambitions (Iran), the motivation of these two states is not a function of the NWS not moving to total disarmament (i.e., in order to redress an unfair situation). It emanates rather from the *strategic value* that they attribute to these capabilities. For Iran, the NATO attack on Libya in 2011, after Libya gave up all weapons of mass destruction (WMD) in late 2003, certainly drove home the message that had Libya held on to its WMD, it might not have been subjected to attack. North Korea likely drew the same conclusion. Finally, both states have demonstrated that they will advance these capabilities even if it means violating their treaty commitments.

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The question of incorporating the notion of fairness in nuclear arms control efforts must also take into consideration that some actors have manipulated the fairness norm in a cynical bid to advance their interests. Iran is a case in point. What are its grounds for demanding fairness in the

nuclear realm after violating the NPT – as confirmed by the IAEA in its definitive report of December 2015 on the Possible Military Dimensions (PMD)? And what is fair about Iran lying about its violations, claiming to have never done anything wrong in the nuclear realm, and on that basis negotiating a deal that grants it more legitimacy for enriching uranium than it had in the past? For Iran to preach fairness in nuclear matters, with its own dismal record – including regarding internal and regional affairs – is a cynical misuse of the norm.

These issues represent some of the rapidly emerging challenges that cannot be ignored. They are about aggressive power plays by states bent on becoming nuclear, rather than abstractions like fairness. Indeed, in their bid for fairness, the NNWS have turned a blind eye to the willful non-compliance on the part of determined proliferators. How will the new initiative deal with states that have no qualms about cheating on commitments and violating treaties?

Additional Challenges and Practical Implications of the Initiative

In the context of prominent bilateral and regional relationships, there are additional problems and constraints to the idea of negotiating a treaty to eliminate nuclear weapons. In today's world, strategic interests are actually driving some states further away from the idea of arms control and from prior bilateral agreements. Russia has of late adopted a more assertive nuclear posture vis-à-vis the United States and NATO, to the point of mentioning the possibility of using nuclear weapons, and conducting drills among the population in preparation for a nuclear attack.[6] Russia has been upset for years about US and NATO plans for missile defense systems in Europe, and feels threatened by NATO's increasingly close presence to its borders.[7] US-Russian arms control efforts have stalled over the past few years, and President Obama's 2013 proposal to reduce the number of deployed strategic nuclear weapons by one third fell on deaf ears. Plans for nuclear modernization continue, while China is increasing the size and sophistication of its nuclear arsenal.[8] In addition, the issue of possible nuclear terrorism cannot be ignored. These worrying trends will not be resolved by the UN initiative.

The vote that was taken on the resolution in the First Committee also revealed how some additional states look at challenges in their regions. Japan's decision to oppose the resolution is likely a reflection of this country's sober assessment of real world dynamics as they play out in its region. While

one might expect Japan to be an obvious supporter of the resolution due to its past history and long-standing opposition to nuclear weapons, the current reality of nuclear North Korea that is issuing nuclear threats in all directions – including toward Japan – might have convinced it for now to prefer the continued protection of the US nuclear umbrella, as did South Korea. While North Korea itself voted in favor of the resolution, there is no indication that it has any plans to actually move in that direction.

Finally, even on the practical/technical level there are issues that would need to be resolved before any progress toward the elimination of nuclear weapons could take place. These include:

a. Would the five NWS lose their privileged status and a new NPT be adopted – alongside of, or instead of the new (or amended) treaty – in order to accommodate this change?
b. What does it mean to "eliminate" nuclear weapons? Is the separation of the fissile material from the explosive mechanism of the nuclear weapon sufficient? Or, must the fissile material be reshaped into non-usable form in a nuclear explosive device? Does the plutonium have to be converted into reactor fuel? Should the highly enriched uranium be diluted into enrichment content not usable in nuclear explosives?
c. On a more basic issue, should the separation of plutonium from irradiated fuel be prohibited? Should all uranium enrichment facilities be placed under rigorous inspection regimes?
d. Should all past production of fissile materials be accounted for and diluted/converted?
e. How does one eliminate the threat of nuclear terrorism, if the treaty is state-based and does not apply to non-state organizations?

Assessment

The elimination of nuclear weapons is a worthy cause. The consequences of using a nuclear weapon are devastating, as evinced by their only use to date in Hiroshima and Nagasaki. The vast number of warheads that were amassed by the superpowers, and their potential to wreak havoc on the entire world, is what spurred bilateral arms control negotiations between the US and Soviet Union beginning in the 1960s, as well as negotiations on the creation of Nuclear Weapons Free Zones (NWFZ) in different regions (the most recent were established in Central Asia and Africa in 2009). The result is that for over 70 years nuclear weapons have not been used, and rules of the game – some would argue even a taboo against nuclear use –

have been established among the recognized nuclear states. No doubt the potential for a first strike, or a nuclear exchange, still exists, and Russia's rhetoric toward the US has heated up. But the continued existence of nuclear weapons in the hands of the few states that have possessed them for years and have carved out agreements and rules of the game is less of a challenge to the international community than the spread of nuclear weapons to additional states with a record of breaking the rules.

Indeed, the NPT has been abused by states that have cheated (Iraq, Iran, Libya, and Syria) or officially withdrawn from their obligations (North Korea), as well as by others that have supplied the proliferators with technology and materials. The efficacy of any new treaty, therefore, is dubious, if it does not include the five NWS and does not create effective mechanisms for dealing with non-compliance.

Thus given the current global situation, the time is not ripe for this initiative – which is positive in its aim, but unrealistic regarding the very real constraints that will be faced. Indeed, it is difficult to envision any major across-the-board disarmament actually taking place in the foreseeable future. Nevertheless, and taking their cue from the US-Soviet arms control experience, more limited arms control agreements can be achieved. Such efforts – geared to mitigate the dangers associated with nuclear weapons by addressing the challenges posed by the states that hold them, and especially those aspiring to develop them – should certainly be a very high priority for the international community.

Conclusion

The new disarmament resolution passed in the UN First Committee is not feasible because of continued objections by the nuclear states. More significantly, however, it rests on very shaky ground in normative and strategic terms. The fairness norm that is promoted is warped in that it legitimizes demands for fairness from some blatantly "unfair" states, and does not confront the thorny issue of noncompliance. Moreover, key states are currently moving away even from bilateral arms control; therefore, the expectation that they will now disarm is unrealistic. While nuclear weapons have horrific implications if used, ironically, perhaps, it is the recognized nuclear states that have created arms control agreements and rules of the game that encourage stability, whereas the determined proliferators have highly dangerous motives and do not mind breaking the rules. A better

solution would be to avoid unrealistic initiatives and focus instead on the type of arms control that can actually work.

Notes

1 See document on the Reaching Critical Will website, http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com16/resolutions/L41.pdf.

2 "The Assembly deferred action on draft resolutions on a 'Treaty banning the production of fissile material for nuclear weapons or other nuclear explosive devices' (L.65/Rev.1) and on 'Taking forward multilateral negotiations' (L.41), due to budget implications." See http://www.un.org/press/en/2016/ga11866.doc.htm.

3 See document on the Reaching Critical Will website at http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/OEWG/2016/Documents/OEWG-report-final.pdf.

4 See https://www.armscontrol.org/aca/npt13steps.

5 Article VI of the NPT says: "Each of the Parties to the Treaty undertakes 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 under strict and effective international control*" [emphasis added].

6 See Alex Lockie, "Russia is Preparing for Nuclear War," *Business Insider,* October 25, 2016, http://www.businessinsider.com/russia-prepares-nuclear-war-wwiii-2016-10.

7 See Andrew E. Kramer, "Russia Calls New U.S. Missile Defense System a 'Direct Threat,'" *New York Times,* May 12, 2016, http://www.nytimes.com/2016/05/13/world/europe/russia-nato-us-romania-missile-defense.html?_r=0.

8 Data from SIPRI report quoted in Prasun Sonwalkar, "'China's Nuclear Arsenal is Becoming Bigger, More Modern,'" *Hindustan Times,* London, June 13, 2016. According to the report, India and Pakistan are also increasing their arsenals. See http://www.hindustantimes.com/world/china-s-nuclear-arsenal-is-becoming-bigger-more-modern/story-BLGrFsaXYeK9w53RzSWfjJ.html.