The Global Nuclear Justice:  
From Westphalian Exceptionalism To Universal Constitutionalism  
By  
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The Global Initiative  

The global nuclear justice quest has been culminated by adopting a new regime that intends to dilute the Westphalian Exceptionalism and tries to establish the Universal Constitutionalism based on UN Charter’s goal of violence free world enunciated in its preamble. But its plausibility and pragmatism would be tested in the years ahead. The United Nations has voted to approve the text of a proposed draft for an international treaty on the Banning and Prohibiting Nuclear Weapons on July 07, 2017. The Draft Treaty is called Nuclear Ban Treaty (NBT) that shall formally be opened for signature in September 2017, and shall be binding as an international legal instrument provided it receives 50th country’s instrument of ratification that is duly deposited with the UN Secretary-General within 90 days of its opening as per the provisions of the impugned treaty. Unbelievably, the ensuing ratification of the treaty has consumed 73 years since the attacks on Hiroshima and Nagasaki in Japan to arrive at an international understanding for the nuclear arms free world. Under the auspices of the UN, the international community has made the use or threat of nuclear weapons prohibited unconditionally under Article 1 (e) of the framework of the multilateral treaty. Remarkably, state parties to the treaty have to bear the core and absolute obligation enunciated under Article 1 (a) of the Draft Treaty that is “prohibition of any possession, deployment, testing, transfer, storage and production” of the nuclear weapons and any connection whatsoever therewith or thereto or otherwise. The NBT is an unprecedented step beyond the rubrics of prohibition that must be interpreted by dismantling the geopolitical Doctrine of Nuclearism (DoN), and its proliferation and retention must not be content as an absolute necessity by the few international geopolitical entities.

The positive resurgence of NBT has recalibrated an international impetuosity to untangle the murky clouds of geostrategic justifications of nuclear status quo which have rubbed off the DoN and anti-nuclear perceptions of the many national governments. However, past assertions regarding the nuclear disarmament lack convictions of the nuclear states of US, UK, China, France, and Russia along with India, Israel, North Korea and Pakistan led by the United States. The nuclear states have been making massive investments in developing, modernizing, and stockpiling their nuclear arsenals. The Pakistan and North-Korea keep on irresponsibly and

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aggressively asserting their nuclear capabilities for indulging in war-mongering, creating hostilities and hiding misdeeds in their respective regions. Therefore, it must be admitted that a disastrous drawback has been looming large that might derail the newly established NBT architecture. But international community consisting of more than 122 countries has lent credibility and weight to this process and has alluded to an obligation to eliminate all nuclear weapons for all practical reasons. But, unfortunately, all the nuclear states have refused to register their reservations and opposition to the NBT process and to participate in the Conference for Negotiation. Moreover, most of the allies of the nuclear states who are the part of NATO stayed away from the NBT Process. Had these nine nuclear powers abandoned their nuclear racism and participated in the negotiations, the NBT process would have got a greater amount of legitimacy, credibility, and stability in accomplishing global nuclear justice.

**International Fragmented Responses**

Ironically, many countries in the past such as China, India, and Sweden who vehemently advocated and spearheaded against the DoN and nuclear proliferation were not only opposed the nuclear prohibition but also conspicuous by their absence at the NBT negotiations. Therefore, such an opposition that reminds us of Shakespeare’s Tragedy “Macbeth” wherein Lady Macbeth flagrantly motivates Macbeth by saying “Look like an innocent flower but be the serpent under it” (*It means to look like an innocent flower, but be like the snake that hides underneath the flower*) and this is what these five permanent members of the UN Security with Germany and Japan have done to the UN sponsored venture to delegitimize the existing Nuclearism in the world. Further, the trinity of veto-wielded powers the US, UK, and France got furious with the whole NBT exercise and issued a joint statement lambasting the new treaty and asserted that they would not sign, ratify or ever become party to it and there will be no change in the legal obligations on these countries with respect to the nuclear weapons contrary to the existing nuclear world order. The present five permanent nukes-armed countries contended that global security balance is based on the current nuclear power structure bolstered by the Non-proliferation Treaty, 1998 (NPT) and any divagation therefrom might cause hara-kiri of sorts. Thus, NPT regime has claimed to have successfully maintained the nuclear deterrence and peace for over 70 years in Europe and North Asia.

It is, indeed, a hollow claim of the maintenance of peace and security for the last, so the low-intensity warfare has dominated many years as this period almost in all the regions of the world including US and Russian Federation who have the biggest nuclear arsenals of the time. However, the Cod-War nuclear rivalry of the US and ex-USSR (now Russia) swelled to other regions and countries of the world that pandered to substantial travails and tribulations for the Global South populations. Therefore, the claim of peace or no-war situation cannot be justified by nuclear deterrence narrative as the present order has been accumulated at the expense of the Afro-Asian societies. Hence, the NBT regime is also juxtaposed with a Westphalian model of state-centrism under which a Global Legality Framework (GLF) has been followed in inking the NBT under the auspices of UN architecture. The NBT adherence by the state parties and national governments has been meticulously formulated so that their obligations and commitments could be executed after duly depositing the instrument of ratifications. But in the case of suspected or alleged non-compliance of the NBT, it does not offer any guidance whatsoever despite the fact Article 4 of the NBT details as to how the nuclear states must divest themselves of all
connections with nuclear arsenals limit claims; therefore, it needs further elaboration and clarification.

**Past Denuclearization Drives**

The history of the fragmented response of the international community (read nuke-states) embedded in the use of atomic weapons in the WW-II that had incepted the methodology of the warfare in the future. At San Francisco in the US on June 26, 1945, United Nations Charter was signed that contained adequate provisions for peace, tranquility, and stability throughout the world. But on July 16, 1945, the US detonated the world’s first nuclear explosive at the Trinity test site adjacent to Alamogordo-New Mexico in circumvention of the UN spirit and ethos. Therefore, UN Disarmament Commission was established on January 11, 1952, having dissolved the UN Energy Commission. But, the UK also tested its first atomic bomb called Hurricane at Monte Bello Islands in Australia on October 03, 1952. However, US President Eisenhower proposed a new vision termed as “Atoms for Peace” (AoP) while addressing the UN General Assembly on December 08, 1953. The AoP Programme was directed to use nuclear energy for peaceful purposes with safeguards against the military use of nuclear materials and allowed all the nations willing to subscribe to AoP with these conditions. He also mooted an idea to create an international atomic energy organization that ultimately initiated an era of nuclear power and its dissemination. However, the USSR proposed the idea of setting-up of Nuclear Weapons Free Zones (NWFZs) in the UN General Assembly in 1956 and Poland introduced the Rapacki Plan as the first NWFZ. Thereafter, on October 16, 1956, the Statute of the International Atomic Energy Agency (IAEA) was opened for signature. The IAEA has been established to enable the peaceful use of nuclear energy and to ensure that IAEA’s assistance should not be used for military objectives.

Many NGOs such as Pugwash Movement also supported the idea of denuclearized world. Thus, the US., UK, and USSR declared an unofficial moratorium on the nuclear tests from November 1058 to September 1961. In the following years, many efforts have been made to have a nuclear weapons free world by the US and the former USSR in the 1960s. Under the UNGA Resolution 1653 (XVI) and UN Charter, threat or use of nuclear weapons was declared unconditionally illegal in 1961 and violation thereof was regarded as a crime against humanity. In 1962, the Cuban Missile Crisis that was juxtaposed with nuclear weapons and it terrified the international community to the hilt. The ICJ (International Court of Justice) with the majority rendered an advisory opinion on the reference made by the UN General Assembly regarding the “Legality of Threat or Use of Nuclear Weapons” Case on July 08, 1996 had limited the scope of the legality of use to the rare situations of the survival of a state. Even before that, the leaders of the two super powers of the Cold war era, Ronald Reagan (US) and Mikhail Gorbachev (USSR), now Russian Federation, met at Reykjavik-Iceland in 1986 to negotiate a historical nuclear disarmament treaty. In the later stages, particularly in 2009 at Prague, President Barack Obama has also shared the sentiments of the President Jimmy Carter who had expressed his determination in 1977 to wipe out completely the menace of nuclear weapons. Fortunately, new NBT regime seems to be in proximity to his vision of the nuclear weapons-free world.

Therefore, these opportunities and initiatives enhanced the chances for a denuclearized world but, unfortunately, no substantial progress could be achieved for a peaceful future and

humanity generally got disenchanted and disillusioned with the cynicism of the nuclear weapons states. Though, they do pose some anti-nuclear weapons advocacy sporadically just to placate the sentiments of the non-nuclear countries. But, ultimately, denuclearization drive got tottered under the exclusive global security narratives that have been politically crafted, diplomatically calibrated, and monetarily pursued by the nukes holder states.

**The NBT Strengths & Weaknesses**

The NBT has been created as an ambitious plan for achieving universality ultimately in the years ahead, but it seems a remote possibility as it contemplates minimum substantive obligations for implementation irrespective of the fact whether the non-nuclear states agree to the deployment of nuclear weaponry or have any connection therewith. However, there is a strong case made out for prohibitions in the NBT are universally binding under customary international law (CIL) deviant to the opposition, reservation, exception or rejection by the states or countries resorting to the persistent objector rule. But, unfortunately, NBT still protects and promotes the idea of Statism considered to be the bedrock of the present world order which emanates from Article 18 giving state parties the right to withdraw from the NBT mandate by formally attaching a statement regarding the “extraordinary circumstances” that have endangered the paramount interests of its country and, therefore, made a case for withdrawal. Further, the NBT regime is silent about the geopolitics of denuclearization, demilitarization, and conventional disarmament. Even it also ignores the fact of nuclear capabilities of threshold nuclear states under the current technological advancement that gives a nuclear weapon option to them.

Any reneging from the NBT shall take three months from the date of notice and statement deposition but, regrettably, the NBT lacks procedure on defining and contesting the grounds of “extraordinary circumstances” if made with *mala fide* intentions beyond the pale of law and morality. Even non-nuclear states would not accord any credence to the global human well-being while exercising their sovereign rights. Let’s hope that comity of nations would not use the rights available under Article 18 of the NBT shortly. Nevertheless, such kind of provision does make global human security subservient to the national security interest narrative that further undermines the CIL, International Law and the Principles of Natural Law regarding weapons of mass destruction (WMD), etc. Consequently, state parties to the NBT can rescind their NBT obligations in the ways which are not there in international human rights instrument such as 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide, 1973 UN Convention on the Suppression and Punishment of the Crime of Apartheid, and 1984 UN Convention on Torture (CAT) etc. However, the preponderance of the nuclear states in world power structure does not conform to the international law, the international rule of law, peace, democracy and human rights for all.

**Where from here?**

Despite all the weaknesses and challenges, the anti-nuclear protagonists and advocates of nuclear disarmament have accomplished as of now something considered unthinkable in the form of the NBT. But the skeptics are hell bent to quash the NBT as wannabe narrative that would prove a giant fiasco. Thus, the dichotomy between nukes-states and non-nukes states has become invincibly visible devoid of any common minimum understanding for the shared future
of the humanity. Primarily, the DoN has been impulsive that has fashioned the geostrategic calibrations of the nukes-states leading to the considerable self-restraint in crisis situations. The policy of nuclear unilateralism has delegitimized the implementation of NPT regime since its being discriminatory in nuclear nonproliferation standards, e.g. Israel’s nuclear ambitions are being ignored, whereas nuclear non-proliferations standards were enforced in Iraq in 2003 beyond the NPT stipulations and violation of the UN Charter. At the same time, Iran and North Korea are under the constant threats of military actions sans any defense unless and until such actions are authorized unanimously by the five permanent members of the UN Security Council (UNSC) resolution along with four other states in the UNSC under the Article 27 (3), the UN Charter, but such a possibility remains a distant dream.

Therefore, permanent members of the UNSC along with the countries opposed to NBT might resort to coercive unilateralism to delegitimize and discredit the NBT regime despite its being in conformity with GLF. They had already displayed such tactics and tantrums in the past in the case of war against Iraq that was branded as counter-proliferation narrative. Moreover, the nuclear-states do not respect their obligations and do not have the political will to negotiate the complete nuclear disarmament project. The NPT regime has been in force since 1970, but nuclear weapons states have always violated their material obligations that have also established the fact that the nuclear powers have opted for nuclear deterrence as a permanent security narrative and the nonproliferation as its mechanism to monitor any other nuclear ambition in the world.

Suggestions

The NBT regime is an iconoclastic development that conveys to the present ideologues of the DoN that the public perception of the 122 countries has rejected the contemporary nuclear dogma of the world based on NPT model. Thus, NPT model cannot eliminate the Nuclearism, and it obfuscates the idea of denuclearization. Therefore, the NBT regime offers a two-fold strategy for nuclear disarmament; firstly, unequivocally prohibiting the use or threat of nuclear weapons and secondly, the relevance of the nuclear energy technology option must be addressed in the process of nuclear disarmament. It is my well-considered view that all opposition from all quarters including the US, UK, and France, the new NBT regime must be regarded an unprecedented opportunity to wipe out all the nuclear weapons in the world. The NBT process has been a peregrination from the Westphalian Exceptionalism to Universal Constitutionalism construed under the idea of common good for collective humankind that gives hope for the denuclearized world ahead.

Once again, the NBT regime has presented an occasion to the global community to substantiate its perennial will to eliminate nuclear weapons in commensurate with the UN Charter mandate. The NBT is a historical accomplishment of the collective wisdom of the 122 countries and their civil society institutions and individuals. The US, UK, and France and their assertions under the joint statement are fallible, flawed and they must not treat it a political project, but it is, indeed, a massive project for the humanity by the humanity for its existential survival on this beautiful planet. However, the biggest challenge before the international community is to take full measures for making the NBT regime functional with sufficient ratifications and achieve its objectives of the global nuclear justice to the hilt.