



THE NUCLEAR NON-PROLIFERATION TREATY: A CRITICAL OBSERVATION

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The NPTL (Non Proliferation Treaty), was open for signature in 1968 and being enforced from 1970, with the aim to prevent the spread of nuclear weapons technology, to promote co-operation in the peaceful uses of nuclear energy, and to further the goal of achieving nuclear disarmament and general and complete disarmament. The treaty had been adhered to by maximum number of states. As of 2016, 191 states have adhered to the treaty though North-Korea after open violation of the terms of the treaty, unilaterally withdrawn itself from membership of the treaty in 2003 by declaring that it would no longer be bound by the treaty.

The Non-proliferation treaty defined nuclear weapon states as well as non-nuclear states. According to the treaty those states which built and tested nuclear device before January 1, 1967 which includes, United States, Russia, the United Kingdom, France and China are defined as nuclear weapons states. They are also called big 5 or veto powered states with permanent membership in the Security Council. Four other countries; India, Pakistan, Israel and North-Korea are believed to have possessed nuclear weapon though they are not declared as nuclear weapon states by the treaty.

As per the terms of the treaty, the non-nuclear states agreed to never acquire nuclear weapons and the NPT nuclear-weapon states in exchange agreed to share the benefits of peaceful nuclear technology and to pursue nuclear disarmament aimed at the ultimate elimination of

nuclear weapons from their arsenals. The treaty, one of the most successful treaties ever been signed for limiting armament race, is to be reviewed after every 5 years in a Review Conference of the parties to the treaty. Initially, the treaty was conceived for a period of 25 years, the parties to the treaty unanimously decided to unconditionally extend the treaty indefinitely. In other words, the treaty is not for a specific period, but would exist so long as it exists or till such time comes when there is no more need for the treaty.

At the time when the treaty was proposed, there was a prediction that within 20 years there will be 20 to 30 nuclear states. However, much contrary to this prediction, after over forty years of the signing of the treaty, 5 states are not parties to the NPT and they included only four additional states believed to have possessed nuclear weapons which are : India, Pakistan, Israel and North-Korea. Of these, North-Korea India and Pakistan openly tested the weapons while Israel have not so far openly tested. Several additional measures have been adopted to strengthen the NPT and the broader nuclear non-proliferation regime and make it difficult for states to acquire the capability to produce nuclear weapons, including the export control of the Nuclear Supplier Group and the enhanced verification measures of the International Atomic Energy Agency (IAEA) Additional Protocol.

Structure of NPT

The NPT consists of a preamble and eleven Articles. Though the term, pillars is not found anywhere in the treaty, it is sometimes, used as having 3 pillars, which are:

First pillar: Articles I of the treaty provides that the 5 declared nuclear weapons states shall not transfer nuclear weapons or other nuclear explosive devices to any non nuclear weapon states or to any recipient or in any way assist, encourage or induce any non-nuclear weapon state in the manufacture or acquisition of a nuclear weapons. Article II of the treaty provides that the non-nuclear weapon states pledge not to acquire or exercise control over nuclear weapons or other nuclear explosive devices and not to seek or receive assistance in the manufacture of such devices. Article III of the treaty provides that non-nuclear states pledge to accept International Atomic Energy Agency (IAEA) to inspect and verify that their nuclear activities are only for peaceful purposes.

The five declared nuclear weapon states have the responsibility in safe-guarding the spread of nuclear weapons. Of these five, Russia, USA and United Kingdoms signed the treaty in 1968, while China and France signed in 1992. Under the term of the treaty, the 5 declared nuclear weapon states pledged not to use nuclear weapon against non-nuclear weapon states, except in response to nuclear attack or conventional attack in alliance with a nuclear weapon state. However, this undertaking by the 5 nuclear weapon states have not been incorporated into the treaty and the exact details have varied overtime. In the absence of specific provision in the treaty, there can be variations in the interpretation of the terms of the pledge made by the 5 nuclear weapon states. It is reported that US had nuclear warheads targeting North-Korea, a non-nuclear weapon state from 1959 till 1991. The former UK Secretary of State for Defense, Geofhoon also once indicated that the country could use its nuclear weapons in response to a non-conventional attack by rogue states. Also the former France President, Jacque Chirac said that an incidence of state sponsored terrorist attack could be responded with a small-scale nuclear attack. It is, therefore, clear that nuclear weapon states reserved the right to use nuclear weapons against even a non-nuclear weapon state.

The second Pillar: Articles VI of the treaty is a provision relating to nuclear disarmament and denuclearization of the world. Under this provision, all parties to the treaty undertake to pursue in good faith negotiations on effective measures relating to cessation of nuclear arms race to nuclear disarmament. This provision of the treaty is the only binding commitment in a multilateral treaty to the goal of disarmament by the nuclear weapon states. The preamble of the treaty (NPT) contains language affirming the desire of the treaty signatories to ease international tension and strengthen international trust so as to create someday the conditions for a halt to the production of nuclear weapons and treaty on general and complete disarmament that liquidates, in particular nuclear weapons and their delivery systems from national arsenals. This provision of the treaty is confusing in the sense that parties to the treaty, particularly, nuclear weapon states undertake to pursue the goal of disarmament in good faith, but does not say anything about penalty in case, any nuclear state do not pursue the goal of denuclearization or disarmament and continue to rigorously pursue their nuclear capability. Consequently, nuclear power weapon states continue enhancing their nuclear weapon capability by stockpiling more and more nuclear weapons. The nuclear weapon capabilities of USA and Russia are being largely enhanced after the signing of the treaty. In other words, the treaty appears to be binding on non-nuclear states

rather than nuclear states. It is for this reason that many non-nuclear states criticized the treaty as discriminatory in nature.

The treaty provides in Article VI, "Each of the Parties to the treaty undertakes to pursue negotiation in good faith on effective measures relating to cessation of the nuclear arm race at an early date and to nuclear disarmament....." As per this provision of the treaty, there is no time frame for cessation of nuclear arms race nor any timeframe is provided for total disarmament. Consequently, even after more than 40 years of the operation of the treaty, nations possessing the weapons have not shown any sign of denuclearization, but rather most of the nuclear weapon states have significantly increase their nuclear capabilities which is in contrast with the terms of the treaty on which they took the undertaking. Non-nuclear weapon states have interpreted Article VI's language as being anything, but vague. According to them, article VI of the Treaty constitutes a formal and specific nuclear weapon states to disarm themselves of nuclear weapon, and argue that these states have failed to fulfill their obligation.

The International Court of Justice (ICI) in its advisory opinion on the legality of the threat or use of nuclear weapon, unanimously interprets the text of Article VI as implying that " There exists an obligation to pursue in good faith and bring to a conclusion, negotiations leading to nuclear disarmament in all its aspects under strict and effective international control" The IJC opinion notes that this obligation involved all NPT parties, and not only nuclear weapon states, and does not suggest a specific time frame for nuclear disarmament. Critics of the treaty maintain that failure on the part of nuclear weapon states to disarm themselves of nuclear weapons have angered some non-nuclear weapon state signatories of the NPT. The critics further maintain that failure of nuclear weapon states to disarm themselves of nuclear weapon has angered some non-nuclear weapon state signatories of the NPT

It is also to be observed that the linkage between proliferation and disarmament may work otherwise. The failure to resolve proliferation threat in Iran and North Korea for instance, will cripple the prospect for disarmament. It is further observed, the nuclear weapon states without having full confidence that other would not acquire the weapons would not agree to eliminate their nuclear weapons. They would consider elimination of their nuclear weapons to be a highly risky step without having been assured that other would not try to acquire the weapons. Some observers even suggested that the very progress of disarmament by the super powers-

which led to the elimination of thousand of weapon and delivery system could eventually make the position of nuclear weapons more attractive by increasing the perceived strategic value of a small arsenal. One US official and NPT expert wormed, "logic suggests that as the number of nuclear weapons decreases the marginal utility of the nuclear weapons increases. At the extreme, which is precisely disarmament's hope to create the strategic utility of even one or two nuclear weapon would be huge."

However, though total elimination of nuclear weapons is the goal of complete disarmament, the realization of the goal seems to be difficult as nuclear weapon states, in-spite of their undertaking to take steps in the direction of nuclear disarmament, are reluctant to fully disarm themselves of nuclear weapons. This is one of the problems that has been making complete compliance with the NPT difficult.

Third Pillar: Peaceful use of nuclear energy: Article IV of the NPT relates to provision regarding use of nuclear energy by all parties to the treaty. It is provided in Articles IV of the treaty that all parties to treaty could pursue to develop nuclear energy for peaceful purposes and to benefit from international cooperation in the area, in conformity with non-proliferation obligations. The third pillar allows for and agrees upon the transfer of nuclear technology and materials to NPT signatory states for development of civilian nuclear energy programmes in those countries as long as they can demonstrate that their nuclear programmes is purely for peaceful purposes, and has nothing to do with nuclear weapons.

This Pillar of the NPT accepts the inalienable rights of states to pursue nuclear programmes of their own so long as such programmes are not intended for production of nuclear weapons. As per the provision of this Articles, 13 states have the capability to enrich uranium for peaceful uses. However, nuclear activities of states parties to the treaty should open their nuclear activities for verification by IAEA to prove that their nuclear activities are only for peaceful uses. Iraq was cited by IAEA with punitive sanctions enacted by UN Secretary Council for violating its NPT safe-gourd obligations. North-Korea never came into compliance with its NPT safe-gourd agreement and was cited repeatedly for these violations, and later withdraw from NPT and tested multiple nuclear devices. Iran was also found violation the treaty relating to its NPT safe-gourd obligation. Romania was also reported to have conducted undeclared nuclear activity in 1991. The matter was reported to Security Council for information only.

One of the problems faced by the Non-proliferation treaty (NPT) is that no nation could be forced to be a party to the treaty. As such, four, nations, India, Pakistan, Israel and South-Sudan had never been parties to the NPT regime. India and Pakistan, among the non-signatories have publicly declared their weapon programs, and Israel has a longstanding policy of deliberate ambiguity with regards to its nuclear programmes. India has tested its nuclear weapons by detonating the devices, first in 1974, and again in 1998. It is believed that India has enough fissile material for more than 150 nuclear warheads. However, as far as India's nuclear doctrine is concerned, it adopted the no-first use policy, a pledge not to use nuclear weapons unless first attacked by an adversary by using nuclear weapons. However, there was a policy shift from no first use to no first use against non-nuclear weapons states. This implies that India, now reserves the right to first use against a nuclear weapon states. India and Pakistan, both nuclear weapon states and permanent enemy of each other. India reserves the right to launch nuclear attack on Pakistan as Pakistan is a weapon state. India argues that the NPT creates a club of nuclear haves and a larger group of "nuclear have knots" by restricting the legal possession of nuclear weapons to those states that tested them before 1967, but the treaty never explains on what ethical grounds such distinction is valid. The then external Affairs Minister of India, Pranab Mukherjee, explaining India's position on NPT, said in Tokyo in 2007, "If India did not signed the NPT, it is not because of its lack of commitment for non-proliferation, but because we consider NPT as a flawed treaty and it did not recognize the need for universal, non discriminatory verification and treatment'

As for Pakistan, it is unlikely to sign the treaty for two reasons. First, unless India signs the treaty, second, it believed that the treaty is discriminatory in nature. Now, Pakistan clarified its stands on NPT saying that it is willing to sign treaty only as a recognized nuclear weapon states along with the other 5 declared nuclear weapon states. The NSG (Nuclear Supplier Group) currently rule out nuclear export to Pakistan. Pakistan sought nuclear co-operation with USA, but considering Pakistan track record USA refused to sign a deal on nuclear supply to Pakistan. In 2010, however, China reportedly signed a civil nuclear agreement with Pakistan using the justification that the deal was for "Peaceful use".

Israel, another non-signatory state has been developing nuclear technology as early as 1958. It is now, estimated that Israel already has 100 to 200 nuclear warheads in its arsenal. Israel's position on NPT is explained in terms of "Israel exceptionally" a term coined by

Professor, Gerald M Steinberg, in reference to the perception that the country's small size, overall vulnerability as well as the history of deep hostility and large scale attacks by neighboring states, require a deterrent capability. As far as Israel is concerned it neither confirm nor deny its possession of nuclear weapon. But, it is now an open secret that Israel possessed nuclear weapon though the exact number of warheads it possessed could to be ascertained.

Critical Observation

The NPT has been seen by many Third world countries as a conspiracy of the nuclear have to keep the nuclear have knots in their place. "This argument relates to Article VI of the treaty according to which the nuclear have or the nuclear weapon states are obliged to liquidate the stockpile of their nuclear weapons and pursue complete disarmament. The non-nuclear states are having the opinions that there is no signs of this happening. They argue that the nuclear weapon states have not fully complied with their disarmament obligation. It has been criticized by many countries including India and Pakistan that it is truly discriminatory to divide the signatories of the treaty into two groups one group, which is much larger in number not allowed to pursue and develop the weapons, and the other group much smaller in number, are legally allowed to pursue and develop nuclear weapons. Critic also pointed out that there are states which are not among the authorized group, but yet possessed nuclear weapons. These countries are not paying price for pursuing nuclear weapon capability and international community is not doing anything against them.

As seen the above discourse on NPT, it has been established that there are certain defects in the text of the treaty, particularly the text relating to disarmament. Disarmament, though constitutes the second Pillar of the treaty, could not be enforced unless the concerned signatories of the treaty are willing to comply voluntarily. It is a pledge undertaken by the nuclear weapons states to pursue the process of disarmament, but they are showing reluctance to eliminate nuclear weapons from their arsenals and the non-nuclear weapon states are in a helpless situation. As they are devoid of coercive power to force the nuclear weapon states to fulfill their pledge commitment.

Again, members of NPT could do little when some signatories of the treaty are believed to have pursued the weapon programs secretly. The only things that could be done is to impose

economic and military sanctions but there is a problem when members of Security Council lack unanimity on the issue.

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