

Is nuclear arms control possible in Southeast Asia?

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Abstract:

This article critically explores some comments on whether nuclear arms control is possible in Southeast Asia. Though, this is a good question that can be addressed directly, the position that is maintained in this paper is that issues that are involved cannot be discussed exclusively in the context of Southeast Asia alone. It must be viewed in the context of everything that is happening in the world today.

The question whether nuclear arms control is possible in Southeast Asia is contentious enough to constitute a legitimate and an interesting debate on its own. However, to be able to grasp issues involved in the debate and underline their importance, there is need for broader perspectives from a larger context. It ought to be viewed in the context of everything that is happening in the world today. In this paper, I consider some events that are happening in the world that necessarily signal, at least for the time being, the death of arms control and nuclear non-proliferation regimes to some extent. I explore how these events signal the era of destruction of norms; the erosion of the principle of sovereignty, the collapse of the preventive measures usually associated with the phenomenon of deterrence and the emergence of the financial world wars.

The article concludes on the note about the advantages of ending the use and proliferation of nuclear weapons in the world but raises doubts on how to get there. It identifies how the war in Ukraine makes nuclear arms control not only extremely unlikely between the US and Russia and points at China having no interest in reducing its nuclear arms, as reasons for this pessimism. The same pessimism applies to the chances of nuclear arms control between India and Pakistan.

There is a saying, 'May you live in interesting times.' If I had to characterize these times, given some of the events that I will subsequently discuss, I would consider it to be a time to be noted for the destruction of norms. We have just been through a pandemic. Though that does not necessarily have anything to do with nuclear arms control, but there had been no pandemic of this magnitude for a hundred years.

The Russian invasion of Ukraine provides a good case study for this norm-destroying time. It knocks the head off of the peace that was established after WWII and that has held since then. Putin's specific threat to use nuclear weapons (albeit tactical nuclear weapons) - there is no difference in terms of the fire break of no nuclear weapons being used for almost 80 years. If you use or threaten to use a nuclear weapon, this is a different time. Something significant has changed.

Another related issue to note is the massive sanctions on Russia right now, which I categorize as the first financial world war. All of these sanctions on a major country! It is one thing to sanction North Korea, Iran or some tiny country that is not too engaged in the world, but Russia is a major country, a major geopolitical power, and a nuclear weapons state. I do not think any of us know how the sanctions are going to turn out, whether they hurt us more than Russia or whether it will end the dollar dominance. We do not know yet.

It is also arguable that this event signals, at least for the time being, the death of arms control and nuclear non-proliferation regimes to some extent. Mainly, arms control has gone on bilaterally between the USA and the Soviet Union, now Russia. Obviously there are a lot of multilateral international agreements on nuclear non-proliferation such as the Nuclear Non-proliferation Treaty. I will get into that a little more in the subsequent part of the paper. Of course, neither India nor Pakistan is a member state of the Nuclear Non-proliferation Treaty.

Finally, if we get into the actual use of nuclear weapons, we are definitely entering a new era. Certainly, we have the destruction of a norm that had been established in 1945 - that there would be no use of weapons. Putin, with his invasion, has already knocked off a norm that I think was established. A lot of people make fun of the Kellogg–Briand Treaty from WWI. It was laughed at and treated mockingly as the treaty to outlaw war. We all know that that total eradication of war is unrealistic and it is not surprising to everyone that it did not work. However, that is not really what the Treaty was meant to do. What it was meant to establish is the principle stating that war is wrong and that war would only be permissible in the context of self-defense. It is notable that prior to this treaty, war was simply viewed as a normal state of affairs in Europe. But now Putin has knocked the legs out from under that.

The pertinent question is: are we entering a changing time when sovereignty of a nation means something different from the traditional understanding of the concept? The concept of sovereignty and nation-state...which, of course, Ukraine counted on in the historical

they signed – I will also get to that in a minute. Or are we returning to the time of the Melian Dialogue which, for you history buffs, Thucycides wrote in the Peloponnesian Wars? The Melians refused to submit to the Athenians who demanded that they pay tribute and surrendered. They said, “Well, we are stronger. You have to surrender. You have no choice.” Because only power matters. But, in fact, the Melians did not want to surrender. The Athenians attacked them, killed the men, and enslaved the women and children. Honestly, Putin seems to think that way. And China does too. China has actually made statements relatively recently that China is a big country and that big countries do what they want, and small countries do what they want. That is exactly the point of the Melian Dialogue. Is that where we are heading?

In my opinion, right now, having studied this phenomenon for well over 20 years, I really believe that we are only two to three steps away (on the geopolitical chessboard) from the use of tactical nuclear weapons, and only other one or two steps away from a literal nuclear war. We certainly hope that people are going to be very careful as they contemplate their next moves.

The question is: what about the conception of deterrence and the preventive measures traditionally associated with it? Doesn't that prevent the use of nuclear weapons and a nuclear war anymore? The thing is, the whole thing about deterrence was that it was based on mutually assured destruction, mass retaliation and launches of thousands of nuclear weapons. Putin is not talking about that. He is talking about the use of a single tactical nuclear weapon. Mutually assured destruction never envisioned the deterrence of a single nuclear weapon. Putin well knows that we are not going to massively retaliate. NATO will not massively retaliate for the use of a single tactical nuclear weapon.

The point to note is that there is no really a big difference. I do not care if you use a nuclear hand grenade (not that there is such thing – it is ridiculous to think about). The use of any nuclear weapon, having not been used in 1945, would be an earthquake geopolitically, even if it is used lawfully. I will also get into that in a minute.

Now, we get to the issue about deterrence and the idea of deterring Putin. This is the point where I will say that a lot of people criticized President Bush as being like a cowboy or Trump as being unpredictable or impulsive... but from a deterrence standpoint, those approaches are tactically good. Just like if some crazy guy is walking down the street, wildly gesticulating and talking to himself, you might walk to the other side of the street because you do not know what he is going to do. I am not exactly making any analogy to President Bush or Trump to that kind of a guy, but that is what deterrence is all about. It is making your opponent hesitate. Meanwhile Obama or Biden who are much more in favor of arms control and treaties and agreements clearly do not want to use nuclear weapons and clearly do not want to ramp up things. Biden has made statements that we are going to defend every inch of NATO territory, which means clearly we are not going to defend a single inch of Ukrainian territory. I contend that that position does not help deterrence. I think that that has actually helped Putin feel freer to move.

Let me just review the legal landscape because I am the lawyer on the panel. The NPT was negotiated in 1968 and entered into force in 1970. It is known to be a discriminatory treaty which is part of the reason why India and Pakistan did not join it. Because as opposed to the Chemical or Biological Weapons Convention where chemical and biological weapons are simply outlawed outright by every signatory, in the NPT five states get to keep nuclear weapons - the US, the UK, France, Russia and China - and everyone else cannot have them.

The P5 are called nuclear weapons states in the NPT. Everyone else is called a non-nuclear weapons state. In that sense, the treaty is inherently discriminatory.

In 1994, the Budapest Agreement was signed by the US, Russia, the UK and Ukraine. This guaranteed Ukraine's territorial sovereignty if it returned its nuclear weapons. Ukraine complied. Could things would have been different if Ukraine had kept its nuclear weapons? I do not think so. Although I am only familiar with American nuclear weapons, I do not know what the Russian's nuclear weapons are like. But I am assuming that they have something that would have limited the capability of Ukraine to use those weapons. In addition, it is notable that Ukraine has no vast establishment of nuclear weapons such as laboratories and scientists. These are all things that the Russians have. I am not convinced that these nuclear weapons that were just stationed there would have been much different from US nuclear weapons stationed, say in Germany, where they remain under US control. The US has full control over them. The Germans cannot use them. Even if they physically take them, they cannot use them. They cannot detonate them. So I am not so sure that Ukraine really would be in a much different situation if it had kept the nuclear weapons. But that perhaps is a debate for another day. I just wanted to point that out.

Finally, another piece of international law that is of interest here is the International Court of Justice Opinion in 1996 that stated that neither customary nor international law authorizes or prohibits the threat or use of nuclear weapons. But, of course, that use should be compatible with the Law of Armed Conflict and International Humanitarian Law. The biggest restriction there is proportionality. It is very difficult to use a nuclear weapon proportionally. You can only imagine its use... for example, if you can envision an armored column operating in a field somewhere well away from the desert or a city or civilian populated areas and then you took out that column with a tactical nuclear weapons such that it did not harm any civilian sites or cities, that would be lawful use of a nuclear weapon. However, it really should only be used if your survival is threatened.

And, of course, no one is threatening Russia's survival right now. They are not under attack. They are attacking somebody else. But in Russian doctrine, they have this concept of escalating to de-escalate. One wonders if that would apply to India and Pakistan if they get into a brushfire over Kashmir and then suddenly one power launched an attack of a nuclear weapon. What would be the response of the other party? Putin's concept is that by escalating - and it is supposed to be in response to a NATO attack on Russia, as if that were to happen - in order to de-escalate, meaning to stop NATO from attacking. It would probably work. NATO would not then launch a tactical nuclear weapon - certainly not a strategic nuclear weapon - against Russia. We might well respond with conventional weapons, but even that would be dicey because if a submarine launched or something, Russia might well mistake it for a nuclear attack. Then all of a sudden you are in a nuclear war. It is a very problematic scenario here.

What is also interesting is that Russia along with the USA has been a key member of the IAEA and the international non-proliferation regime, allowing all states to enjoy the benefits of nuclear energy and nuclear medicine while avoiding the bad aspects of nuclear power which, of course, is nuclear weapons proliferation. And now we have a key nuclear state, Russia, acting like a rogue state. That throws off the entire nuclear non-proliferation regime off balance. What happens now? No one really knows.

What is so interesting is that the war on Ukraine has obscured what would have been major and stunning news of when India launched a nuclear capable missile into Pakistan recently (by mistake) on 9 March, not very long ago, and Pakistan fortunately reacted very calmly and appropriately to this. The incident could have caused a nuclear exchange. But it was handled diplomatically and thank god for that. And thank god the missile was simply a test missile and not actually nuclear-armed. This is the kind of thing that would have been major news had the Ukraine war not been filling the news' screen.

Many people view the India-Pakistan border as one of the most dangerous places in the world because of the skirmishes between Pakistan and Kashmir. And, of course, India has had physical skirmishes with China. Fortunately, the skirmishes have involved nothing more than clubs, I believe. May be some small arms were involved. Although it did result in a number of deaths, but it certainly did not escalate to a nuclear exchange.

It is notable that where we have nuclear weapons armed states that border each other and that are skirmishing over some contested territory, what we do not have is the luxury of the thirty-minute time warning which was well illustrated in the movie Doctor Strange. This is imaginary scenario where some planes mistakenly launched against Russia by a rogue Air Force general and they had 30 minutes to resolve this conflict. There was a hotline set up between the US and the Soviet Union at the time. I do not know if there is one that exists between India and Pakistan or India and China. But even if there was a hotline, if there was already a launch of a missile (particularly in times of hypersonic missiles) it is hard to imagine that a hotline would do much good with that little bit of warning time between them. That is certainly of concern.

India tested what it deemed a peaceful nuclear explosion in 1974. India didn't test an actual nuclear weapon until 1998 which I vividly remember because I was swimming in the Pentagon pool at the time and I was yanked out soaking wet to go brief the Chairman and Joint Chief of Staff. And his question was, "Was this legal?" And, of course, as a lawyer I said that yes, it was legal because India was not signed up to the NPT. And when Pakistan tested 15 days later, it was the same thing. They were not party to the NPT. Along with Israel, those states never signed the NPT. Then there is North Korea, the only state to have been a member and to pull out.

That is where we are. It's very difficult to say - we are all familiar with the Comprehensive Nuclear-Test-Ban Treaty. Because it was difficult to negotiate and is very difficult to enter into forced provision, even though the treaty was signed back in 1998 and President Clinton was the first signatory, the US has not ratified it. India and Pakistan must also ratify it before entering into force. A lot of people keep pushing for this, but it doesn't appear to be anywhere close to happening.

The next big treaty in the non-proliferation regime is supposed to be the Fissile Material Cutoff Treaty. I was actually there in 1998 for several weeks of actual negotiation on that treaty. But the Conference on Disarmament does a programme of work each year at the beginning of its session, and they have simply not been able to agree in years. They haven't

done anything since 1998. Great place to have a job, I guess, if you want to go to cocktail parties and not do a lot of work. They are not getting a lot done over there. But that treaty has been held up by India, Pakistan, China and Russia. In 1998, I thought India and Pakistan were holding it up because they wanted to make more fissile material for nuclear weapons. But now they seem to have plenty and are still not willing to sign that treaty.

There was a Civil Nuclear Agreement between the US and India. I was one of the negotiators on that agreement. I spent much time in New Delhi. That treaty is going well. We will not be able to negotiate a similar treaty with Pakistan, even though that idea has been floated, because Pakistan does not have any solid non-proliferation track record with India because of a general who ran a nuclear Walmart and gave a lot of nuclear technology away to some not-so great regimes.

We would love to see nuclear weapons done away with, but I just don't see how we are going to get there. This war in Ukraine makes nuclear arms control not only extremely unlikely between the US and Russia, but China has also made no interest in reducing its nuclear arms. They are one state that is radically ramping up its nuclear weapons production. I am not all that confident about the chances of nuclear arms control between India and Pakistan either.