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ARGUING FOR A NORMS-BASED FRAMEWORK FOR NUCLEAR RESPONSIBILITIES

TANVI KULKARNI

INTRODUCTION

The nuclear disarmament and non-proliferation community is presently facing some of its most difficult years. Even though global nuclear stockpiles are at a historic low since the end of the Cold War, we are now looking at sharp political rivalries, nuclear weapons modernisation programmes, fast-evolving military technologies, and renewed arms races, without processes that can effectively and systematically ensure strategic stability. The breakdown of the old arms control architecture between the US and Russia, together with a reinvigorated arms race between them that also involves China, has significant consequences for the nuclear non-proliferation regime, nuclear security, regional stability and nuclear behaviours of the wider set of nuclear weapons powers. This scenario also presents the need and the opportunities for designing and developing new frameworks and measures to overcome the risks and dangers associated with nuclear weapons, in keeping with the realities of the post-Cold War global nuclear order.¹

Dr. **Tanvi Kulkarni** is currently teaching Defence and Strategic Studies at the Savitribai Phule Pune University.

This article examines the emerging ‘nuclear responsibilities’ discourse and argues for a ‘norms framework’ to provide a more robust framing for nuclear policymaking in terms of nuclear responsibilities. Further, the article argues that the norms framework has the potential to effectively engage the Southern Asian nuclear powers through the nuclear responsibilities discourse, in a way that today’s deterrence-centric legal regimes have failed to do.

THE GLOBAL CONTEXT

Challenges to the present Global Nuclear Order (GNO)—as it exists formally and informally—are legion, coming from the nuclear actors both inside and outside the Nuclear Non-Proliferation Treaty (NPT)—complex strategic relationships, rising regional tensions, emerging technologies, asymmetric capabilities, cross-domain threats, the breakdown of existing treaties and agreements and opposition to new agreements. These challenges are reflected in the NPT regime, which has struggled to achieve consensus among states to implement the provisions of the Treaty since 2010. Domestic decisions with international implications—such as the United States’ unilateral withdrawal from multiple treaties and agreements, including the INF Treaty, the Joint Comprehensive Plan of Action (JCPOA) and the Open Skies Treaty, and the initial foot-dragging on the prospects for the extension of the New START—have all created the impression of a wider deterioration of the GNO, but now present a unique opportunity to shape the debate.

It is difficult to celebrate the significance of the Nuclear Ban Treaty of 2017, which aims to hasten progress toward eventual nuclear disarmament, without acknowledging the fact that opposition from nuclear-armed states limits the Treaty’s ability to accomplish its stated aims.² Finally, 2019 and 2020 have seen disputes flare in Southern Asia, where conventional military escalation occurred between the

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1. Alexandra Bell and Andrew Futter, “Reports of the Death of Arms Control Have Been Greatly Exaggerated”, *War on the Rocks*, October 4, 2018, at <https://warontherocks.com/2018/10/reports-of-the-death-of-arms-control-have-been-greatly-exaggerated>. Accessed on January 26, 2019.
 2. John Carlson, “The Nuclear Weapon Ban Treaty is Significant but Flawed”, *The Interpreter*, The Lowy Institute, July 11, 2017, at <https://www.loyyinstitute.org/the-interpreter/nuclear-weapon-ban-treaty-significant-flawed>. Accessed on February 15, 2020.

nuclear weapons-armed neighbours India and Pakistan in 2019 and, more recently, a border stand-off raised fears of military escalation between China and India in the summer of 2020.

Therefore, deterrence-centric regimes that govern most aspects of nuclear weapons—possession, proliferation, development, utility, usability and discourse—remain rather inadequate in bringing together various actors in the international community to address the risks and dangers from nuclear weapons. One way to steer through this torpor is to engage with discourses outside the strictly deterrence paradigm that can build international consensus vis-à-vis the logic of nuclear weapons.

WHY NUCLEAR RESPONSIBILITIES?

The emerging discourse on nuclear responsibilities (defined as “the responsibilities of states and other actors around nuclear weapons”) invokes new thinking that can help to address the complexities of today’s nuclear politics. This discourse seeks to put greater emphasis on the values and responsibilities that underpin states’ nuclear weapons policy choices, as compared to the current discourse within nuclear regimes and policies which tend to focus on deterrence dynamics. Nuclear responsibilities encompass a broad spectrum of responsibilities including nuclear safety and security, non-proliferation, reduction of nuclear dangers from the inadvertent or accidental use of nuclear weapons, stewardship and modernisation of arsenals on the basis of the sufficiency principle, moratoriums on nuclear testing, responsible and clear postures and doctrines, promoting nuclear and strategic stability, commitments to nuclear disarmament, prevention of arms races, etc.³

The authors of the report, *Responsible Nuclear Sovereignty and the Future of the Global Nuclear Order* (2017), at the British-American Security Information Council (BASIC) and the Institute for Conflict, Cooperation and Security (ICCS) at the University of Birmingham, have framed attention to nuclear responsibilities as one ‘strategic responsibility’ among many, which broadly means “acting

3. Tanvi Kulkarni, “Assessing the Impact of Crises and International Norms on Nuclear CBMs: A Study of Nuclear Dyads”, PhD Thesis (Unpublished), Jawaharlal Nehru University, August 2019, p. 161.

responsibly and in accordance with international laws and norms that strengthen global security for all at a strategic level".⁴ In other words, attention to nuclear responsibilities alone is not enough, but needs to come as part of a wider attention to responsibility within strategic decision making.

In a subsequent report, *Nuclear Responsibilities: A New Approach for Thinking and Talking about Nuclear Weapons* (2020), Brixey-Williams and Wheeler observe that even though 'responsibility talk' is not new to global nuclear politics, the ideas of 'shared', 'special' or 'primary' responsibilities, in the context of nuclear weapons, have not been explored deeply. The effect is that these ideas remain fuzzy and contested; they exist as a normative category and not as actionable policies.⁵ Moreover, a culture of blame currently impairs nuclear regimes from achieving their stated objectives. Brixey-Williams and Wheeler argue for a dialogue-based approach to nuclear responsibilities that seeks to move away from a culture of nuclear blaming ('who is responsible' and 'who is not responsible'), and instead toward collectively held ideas of nuclear responsibilities ('what are our responsibilities') that facilitate empathic and value-based nuclear policies.⁶

THE SOUTHERN ASIA CONTEXT

In Southern Asia, nuclear responsibilities have been primarily associated with non-proliferation, safety and security of nuclear materials and active national pronouncements about nuclear policy.⁷ On many of the issues concerning nuclear safety and security, India and Pakistan have been participating in multilateral engagements⁸

4. Sebastian Brixey-Williams and Paul Ingram, "Responsible Nuclear Sovereignty and the Future of the Global Nuclear Order", The British American Security Information Council (BASIC) and the University of Birmingham, p. 14.
5. Sebastian Brixey-Williams and Nicholas J. Wheeler, "Nuclear Responsibilities: A New Approach for Thinking and Talking about Nuclear Weapons", The British American Security Information Council (BASIC) and the University of Birmingham, p. 21.
6. *Ibid.*, p. 29.
7. Kate Sullivan, "Is India a Responsible Nuclear Power", *Policy Report*, Rajaratnam School of International Studies, March 24, 2014, at <https://www.rsis.edu.sg/rsis-publication/idss/is-india-a-responsible-nuclear/#.XLLhqOszbBJ>. Accessed on June 13, 2018.
8. Rajesh Rajagopalan, "Multilateralism in India's Nuclear policy—A Questionable Default Option", in C. Raja Mohan, David Malone and Srinath Raghavan (eds.), *The Oxford Handbook of Indian Foreign Policy* (New Delhi: Oxford University Press, 2015), pp. 650-62.

and forums, even if there they have fewer bilateral measures to boast about. Even as critics of the NPT regime, India and Pakistan have sought to project the self-image of 'responsible' possessors, as a way of legitimising their nuclear weapons status. By the time India and Pakistan had attained nascent nuclear capability in the 1990s, certain ideas of nuclear responsibilities were already established in Southern Asia in the form of received wisdom from the Superpower strategic rivalry during the Cold War, like nuclear restraint, no direct fighting, crisis communication, robust command and control systems, and embedding deterrence stability through agreements and bilateral or multilateral institutions. These ideas were embedded in a series of conventional military and nuclear confidence-building measures (CBMs) that were negotiated between India and Pakistan during this decade. A significant bilateral success in this regard was the Joint Declaration on the Complete Prohibition of Chemical Weapons which was signed in August 1992. In attempts to socialise themselves into the emerging global nuclear order after the Cold War, India and Pakistan actively participated in multilateral non-proliferation negotiations like the Comprehensive Test Ban Treaty (CTBT) and the Fissile Material Ban Treaty (FMCT). Additionally, India also put in place its first rudimentary nuclear export controls.

In the aftermath of the 1998 tests, India carefully invested in a political and diplomatic narrative of nuclear 'restraint' and 'responsibility'. Its crisis behaviour during the Kargil and Twin Peaks crises, in 1999, were presented as testimony of its nuclear restraint and responsibility.⁹ This approach comes very close to Walker's conception of 'responsible nuclear sovereignty', in which nuclear states seek to balance between their primary responsibility of safeguarding its population and territory and the moral responsibility of treating nuclear weapons with great restraint.¹⁰ C. Raja Mohan and Peter Lavoy have described this approach of nuclear restraint as the rise of "nuclear realism"¹¹ in South Asia. Indeed, there is some

9. Karthika Sasikumar, "India's Emergence as a 'Responsible' Nuclear Power", *International Journal*, vol. 62, no. 4, 2007, p. 829.

10. William Walker, "The UK, threshold status and responsible nuclear sovereignty", *International Affairs*, vol. 86, no. 2, 2010, p. 449.

11. C Raja Mohan and Peter Lavoy, "Avoiding Nuclear War", in Michael Krepon and Amit Sevak (eds.), *Crisis Prevention, Confidence Building and Reconciliation in South Asia* (New Delhi: Manohar Publishers, 1996), pp. 40-41.

conflation of restraint and responsibility in India's formal declaratory nuclear policy, such that restraint is understood as responsibility. India's nuclear policymakers have usually emphasised on minimum nuclear deterrence and no first use (NFU) as the cornerstones of India's nuclear doctrine. The doctrine, which was first drafted in 1999 and formalised in 2003, in fact made an implicit connection between the two policies, as if they were pieces of the same mould—that is, of regarding nuclear weapons as political weapons rather than military weapons. While the NFU declaration is meant to minimise the eventuality of the use—especially a pre-emptive use—of nuclear weapons,¹² the small deterrent would back it up with a credible deterrent capability. Therefore, the minimum deterrence and NFU declarations not only helped to project the image of India as a non-threatening, non-aggressive, and what was frequently labelled as a 'reluctant' nuclear power, but it also helped to project the Indian government as a responsible wielder of that power.¹³ Outside the purview of declaratory doctrines and bilateral agreements, both India and Pakistan declared unilateral restraint by committing to a voluntary moratorium on further nuclear testing.

Evidently, there is much scope for further exploring, enhancing and strengthening nuclear responsibilities in Southern Asia. For this, it helps that the responsibilities discourse is not entirely alien to this region, where three nuclear weapons powers exist in close geographical proximity to each other. For India and Pakistan, bilateral nuclear CBMs have been exercises in establishing their credentials as 'responsible' nuclear powers. For India and China, the NFU policy has been an important rallying point to strengthen the norm against the use of nuclear weapons. In 2014 the two countries even called upon the world's nuclear powers to negotiate a global no-first-use convention.¹⁴ All three countries participated in the Nuclear Security Summits (NSS), held from 2010 to 2016, which aimed at strengthening

12. Stephen Cohen and Sunil Dasgupta, *Arming Without Aiming: India's Military Modernization* (Washington, DC: Brookings Institution Press, 2010).

13. Bharat Karnad, *India's Nuclear Policy* (Connecticut: Praeger Security International Series, 2008).

14. Ramesh Thakur, "A No First Use Policy Reduces the Risk of Nuclear War", Australian Strategic Policy Institute, August 25, 2016, at <https://www.aspistrategist.org.au/no-first-use-policy-reduces-risk-nuclear-war/>. Accessed on October 15, 2019.

the national and international nuclear security systems. At the NSS, participant-countries emphasised the fundamental responsibility to secure their nuclear materials and facilities.¹⁵ Among their specific achievements with respect to nuclear security, India, Pakistan¹⁶ and China¹⁷ established centres of excellence to provide training to their human resource on issues of nuclear safety and security.

THE ADVANTAGE OF A NORMS FRAMEWORK

Nuclear responsibilities can be articulated and explored through two frameworks. First, how the nuclear weapons powers understand their responsibilities is already expressed and embedded through the nuclear policies and behaviours (policy framework). Second, reference and adherence to nuclear responsibilities—which this article advocates—can be viewed as a collectively-held nuclear norm (norms framework).

The challenge with a strict policy framework is that national nuclear responsibilities are tailored to the requirements of the national interests and nuclear relationships (dyads, triads, extended deterrence, etc.) that states find themselves in. Another challenge with this framework is that some policy declarations may not contribute effectively to the discourse of nuclear responsibilities. For instance, although the Lahore Declaration between India and Pakistan sought to establish the credentials of India and of Pakistan as responsible nuclear weapons powers, it did not really shape a shared understanding of nuclear responsibilities in Southern Asia. Moreover, nuclear policymakers often find themselves choosing between responsibilities to their domestic public and those to the international community.

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15. “Communiqué of the Washington Nuclear Security Summit”, April 13, 2010, at <https://photos.state.gov/libraries/libya/19452/public/NSS%20-%20Communique%20With%20Logo%20040710.pdf>. Accessed on February 12, 2021.
 16. Sharon Squassoni, “Charting Nuclear Security Progress in South Asia”, *Policy Perspectives Series*, Centre for Strategic and International Studies, December 1, 2017, at <https://www.csis.org/analysis/charting-nuclear-security-progress-south-asia>. Accessed on February 12, 2021.
 17. Miklos Gaspar, “China’s Nuclear Security Technology Centre supports international training efforts”, *IAEA Bulletin*, vol. 61, no. 1, 2020, at <https://www.iaea.org/bulletin/nuclear-security/chinas-nuclear-security-technology-centre-supports-international-training-efforts>. Accessed on February 12, 2021.

On the other hand, a norms framework as a way to shape, strengthen and institutionalise the nuclear responsibilities approach and discourse has three advantages:

First, a norms framework is broader and an inclusive one, in which nuclear responsibilities constitute the standard for 'legitimate behaviour' for all nuclear weapons possessors.¹⁸ In keeping with the function and nature of norms, it constitutes the identity of the states that possess nuclear weapons (constitutive norm) and it also lays down the expected standards for legitimate behaviour for the nuclear weapons powers (regulative and evaluative norm).

Second, the policy and norm frameworks are intricately connected. On the one hand, norms reflected through nuclear policies and strengthened by them. For instance, a Nuclear No First Use (NFU) policy reflects the norms of nuclear non-use, deterrence and responsible ownership, by castigating the early use of nuclear weapons and treating them as weapons of 'last resort'. On the other hand, a strong norm based on shared understandings of a nuclear power's nuclear responsibilities can constrain or expand nuclear policy choices for states. It could also have constitutive effects at a more elemental level by codifying ideas like strategic nuclear stability, mutual deterrence, non-proliferation, non-initiation of nuclear war and nuclear confidence building as some of the benchmarks for 'responsible' nuclear behaviour. Processes like the Nuclear Security Summits (NSS) have been able to codify the 'responsible' norms for the nuclear weapons possessors and non-possessors, rather than relying on the first-tier nuclear powers to ensure the sustainability of these responsibilities.

Third, a norms framework can be an effective way to engage Southern Asia in the discourse of nuclear responsibilities. The norms of responsible ownership and non-proliferation have already had an impact on the nuclear behaviours in Southern Asia.¹⁹ These

18. Kate Sullivan, "Is India a Responsible Nuclear Power", *Policy Report*, Rajaratnam School of International Studies, March 24, 2014, p. 2, at <https://www.rsis.edu.sg/rsis-publication/idss/is-india-a-responsible-nuclear/#.XLLhqOszbBJ>. Accessed on June 13, 2018.

19. Tanvi Kulkarni, "Assessing the Impact of Crises and International Norms on Nuclear CBMs: A Study of Nuclear Dyads", PhD Thesis (Unpublished), Jawaharlal Nehru University, August 2019, p. 226.

normative impacts are also able to explain some of the nuclear confidence-building measures that have been negotiated between India and Pakistan over the past three decades.²⁰ The emulation of international nuclear norms and practices has been an important way in which the two NPT-outlier states have been able to mainstream themselves into the global nuclear order²¹ more effectively than states like North Korea. An inclusive norms framework allows these countries to participate as shapers of nuclear responsibilities and not simply as recipients of a 'responsibilities regime' created by the NPT-recognised nuclear weapons states. Collectively developed and held norms facilitate institutional and policy changes that can better accommodate shared nuclear responsibilities.

CONCLUSION

This article has argued for a 'norms framework' that can provide a robust framing for nuclear policymaking in terms of nuclear responsibilities. The article has also argued that the norms framework has the potential to effectively engage the Southern Asian nuclear powers through the nuclear responsibilities discourse, in a way that today's deterrence-centric legal regimes have failed to do.

At the moment, there is no single institutional or regime structure that maps the nuclear responsibilities norms. Developing international consensus on states' nuclear responsibilities will have to take place through a process of meaningful political engagement among nuclear possessors and between possessor and non-possessor powers which will involve convergences and contestations. This will likely be an evolving and dynamic process, possibly without a final end-state. These processes and engagements are important stages in strengthening the normative framework of nuclear responsibilities, which in its present state is only just beginning to emerge.

20. Ibid., pp. 213-20.

21. Happymon Jacob, "The Concept of Nuclear Learning: A Study of the Indian Experience", in Feroz Hasan Khan, Ryan Jacobs and Emily Burke (eds.), *Nuclear Learning: The Next Decade in South Asia* (Monterey: Naval Postgraduate School, 2014), p. 22.