

Critical Examination of the Law Relating to Denuclearization under International Law

Faridah Nabbosa

School of Law Kampala International University, Uganda

ABSTRACT

This study examines the law relating to denuclearization under international law. A cross-sectional mixed explanatory and interpretative research design was adopted, where the researcher focused on exploring the legal provisions relating to Denuclearization under International law, and the same time analyzing the same, to ascertain their efficacy in achieving complete Denuclearization. Upon analysis of the different laws relating to denuclearization under International law, it was concluded that, there exists a strong legal framework for further reductions in nuclear arsenals with evolving inspection, monitoring and confidence building measures. It was recommended inter alia that there is need for the International community to restore credibility between itself and the Nuclear-Weapon States by focusing on the relief of mutual concerns and distrust, as well as providing new hope to the deadlocked Denuclearization negotiations if any. In so doing, both sides need to recommit to their promises and to implement these in a proper and timely manner, so as to set the Denuclearization process in motion.

Keywords: Denuclearization, International community, International law, International legal framework, Nuclear disarmament

INTRODUCTION

Over the last two decades or so, the whole world has experienced rapid changes and social economic transformations. International law is a concern of the United Nations, with a key goal of establishing conditions under which justice and respect for the obligations arising from treaties and other sources of International law can be maintained [1]. The concept of Denuclearization is not new under International law. A number of countries have developed nuclear capacity over the past few decades. Different approaches have been adopted from time to time by different governments to put an end to nuclear weapon use [2]. Denuclearization is the process by which a State dismantles its nuclear weapons program or a physical stockpile of nuclear weapons that it has accumulated over time. The Trump administration regards Denuclearization as meaning North Korea 'no longer having nuclear weapons that can be used in warfare against any of our allies' [3]. The term Denuclearization is used interchangeably

with Nuclear disarmament which is the act of eliminating the production and use of nuclear weapons. The word 'Denuclearization' first emerged in the late 1950s in reference to Central Europe. It derived from the term 'Demilitarization' which had most recently been used in the 1955 British Arms Control Proposal for Central Europe as a means of reunifying Germany and aligning it with the North Atlantic Treaty Organization (NATO). Both East and West rejected the plan, but the idea of arms limitations in Central Europe endured [4]. A polarized debate over nuclear weapons and their legality has taken place over the past decades. Some States have asserted that International law permits the use of nuclear weapons, whereas others hold that their use constitutes a violation of International law. The debate gathered momentum with the UN General Assembly's request for an Advisory opinion by the International Court of Justice in 1994 and the subsequent court hearings as well as

the 1996 publication of the opinion[5]. Because the International Court of Justice did not resolve the issue, the frontlines remained where they were, but now with the added element of each side taking the advisory opinion as evidence that it was right. This stalemate over the legal issues might have contributed to neutralizing the public debate rather than provoking public action to pressure governments for greater efforts to diminish the risks posed by nuclear weapons[6]. Over the past five years, the International community has devoted attention to the humanitarian, environmental, and developmental consequences of nuclear weapons detonations. International law clearly places very heavy restrictions on nuclear weapons use. Nevertheless, there is no unequivocal and explicit rule under International law against either use or possession of such weapons[7]. Although the other two categories of non-conventional weapons are explicitly prohibited because their use would conflict with the requirements of International Humanitarian Law, the use, production, transfer, and possession of nuclear weapons are not explicitly prohibited. This may reasonably be labeled a legal gap. The final document of the 2010 Nuclear Non-proliferation Treaty Review Conference referred for the first time in NPT history to the 'Catastrophic humanitarian consequences of any use of nuclear weapons', and reaffirmed the need 'for all States at all times to comply with the applicable International law, including International Humanitarian Law[8]. The inclusion of this language in the 2010 document was perhaps not particularly significant in itself, as it

International Legal Framework for Nuclear Disarmament.

Majority of all nuclear disarmament agreements have been bilateral agreements between the United States and the Soviet Union (and later Russia)[13]. Here, a chronological examination of nuclear disarmament treaties is to be made. Many of the treaties mentioned hereunder are no longer in force, either because they have expired, or one or both parties have withdrawn. Two of the agreements discussed under this section are currently in force. The Intermediate-Range Nuclear Forces Treaty (1987)[14] which eliminated an entire class of

Strategic Arms Limitation Talks - SALT I

Early efforts to begin strategic arms limitation talks (SALT)[15] were not widely successful. United States President Lyndon Johnson announced on July 1st 1968, upon US signature of the Nuclear Nonproliferation Treaty that the United States and the Soviet Union had agreed to start talks. Two months later, when the USSR invaded Czechoslovakia, talks were postponed indefinitely.

The Anti-Ballistic Missile (ABM) Treaty (1972)

The Treaty between the United States of America and the Union of Soviet Socialist Republics on the

missiles in the United States and Russia and remains in force indefinitely, and the new START (2010)[13] between the United States and Russia to bring down levels of strategic forces in the two parties, which is to remain in force for ten years, with a possible five-year extension. These two treaties, in addition to the historical treaties, provide the framework for future nuclear disarmament agreements.

stated the obvious. Rather, its significance lay in the initiative it licensed. Arguing that the humanitarian dimension required increased attention, the Norwegian government invited all interested States and Organizations to a conference on the humanitarian impact of nuclear weapons in March 2013, in Oslo. The following year, the Mexican and Austrian governments organized follow-up conferences in Nayarit and Vienna, respectively, attracting more government delegations than the NPT Preparatory Committee meeting in 2013 and 2014. The series of humanitarian impact conferences appear to have supplied a meeting format that was in demand[9]. At the conclusion of the third, and hitherto last of these conferences, the Austrian hosts submitted a document calling on States and other Stakeholders to 'fill the legal gap for the prohibition and elimination of nuclear weapons[10]. A few months later, the Austrian government announced that this 'Austrian Pledge' would be called the 'Humanitarian Pledge', thus implying a broader ownership of the document. More than 120 States have now formally endorsed it[11]. Measures have been taken to denuclearize, most specifically by enacting and implementing laws in the form of international instruments such as the International Legal Framework for Denuclearization and Nuclear Disarmament[12]. However, some states like North Korea still engage in the manufacture and use of nuclear weapons. This study explores the law relating to denuclearization and its adequacy in achieving a nuclear weapon free world.

Eventually, negotiations were held between November 1969 to May 1972 during which time the United States and Soviet Union negotiated their first agreement to limit and restrain arms. The negotiations resulted in the signature of two agreements: The Anti-Ballistic Missile Treaty (1972) and the Interim Agreement (1972)[16].

Limitation of Anti-Ballistic Missile Systems was signed on 26th May 1972 and it comprehensively

limited the development and deployment of Anti-Ballistic Missile Systems and allowed for withdrawal after six-month notice only in the case that a State finds that its supreme interests are jeopardized by extra ordinary events[17]. On December 13th 2001, in the aftermath of the September 11th terrorist attacks, the United States announced its intent to

The Interim Agreement (1972)

The Interim Agreement between the United States of America and the Union of Soviet Socialist Republic on Certain Measures with Respect to the Limitation of Strategic Offensive Arms (1972) was signed on 26th May 1972 and expired on 3rd October 1977. Though the Interim Agreement did not attempt to disarm either State, it did serve as a stop-gap that could ease tensions to allow both States to negotiate for a decrease in strategic armaments. It froze the parties at their current levels of ICBMs and SLBMs, and was interpreted as a holding action to limit

SALT II (1979)

The United Nations and the Soviet Union began negotiations for SALT II in November 1972 to replace the Interim Agreement (1972) and began mutual reductions in force. The treaty was expected to initially reduce the number of Strategic Nuclear Delivery Systems to the same level for each party and then continue joint reductions and restrain

Intermediate-Range Nuclear Forces Treaty (1987)

The Intermediate-Range Nuclear Forces (INF) Treaty was a landmark agreement between Russia and the United States, in part because of its use of intrusive verification provisions, but also as a model on how to eliminate an entire class of missiles. The INF Treaty entered into force on 1st June 1988 and remains in force indefinitely[14]. In May 1991, the United States and the Soviet Union both eliminated their last missile systems covered under the INF Treaty. A total of 2,692 missiles were eliminated after the treaty's entry into force. The breakup of the Soviet Union in December 1991 resulted in six countries with facilities that were considered to be INF-Inspectable. Today, four of the six INF successor

START I (1991)

Unlike previous SALT Agreements, SALT I which froze force levels and SALT II which never entered into force, START aimed to reduce the number of Strategic weapons held by both parties. This was especially significant in that, it is the first treaty to come into force that would actually reduce the parties' nuclear arsenals. INF however would have provided positive momentum for the agreement in that the States were able to agree on eliminating a complete class of missiles, with intrusive verification[23]. The treaty uses 'attributable warheads' as a unit of measure, measuring the number of warheads that each type of delivery

withdraw from the treaty. The then US President George Bush announced that the Anti-Ballistic Missile Treaty hinders the US government's ability to develop ways to protect its people from future terrorists or rogue state missile attacks[18]. Per Article XV of the Treaty, American withdrawal became effective six months after its notification to Russia.

competition between the United States and the Soviet Union, and give time for additional negotiation[19]. As noted in the preamble of the Agreement, The Agreement sought to provide more favorable conditions for active negotiations on limiting strategic arms as well as to the relaxation of International tensions. The Agreement was significant as being the first by which the United States and the Soviet Union could agree on some level of nuclear disarmament discussions, which had been under negotiation for several years.

modernization or improvements that could threaten stability[20]. Each party was committed to comply with their side of the agreement even before proper ratification, but due to political disagreements, the Treaty was never ratified, and as such never entered into force.

states (Belarus, Kazakhstan, Russia and Ukraine) ate active participants in the treaty, and Turkmenistan and Uzbekistan, each with only one treaty-relevant site on its territory have assumed less active roles. INF inspections ceased as of June 1st 2001 after all missile systems were eliminated[21]. The treaty requires destruction of the parties' ground-launched ballistic and cruise missiles and associated support structure and support equipment within three years of the treaty's entry into force. The treaty mandates both parties to eliminate their intermediate-range missiles within three years of the treaty's entry into force[22].

system was capable of carrying, This system of using attributed warheads was new to the arms control agreements, whereby previously only the delivery systems themselves were counted. The arms reductions were to be implemented in three phases, each of which had corresponding arms limitation levels. In the first phase, within 36 months of entry into force of the treaty, aggregate limits were:

- i) 2100 for deployed ICBMs and their associated launchers, deployed SLBMs and their associated launchers, and deployed heavy bombers.
- ii) 9150 for warheads attributed to deployed ICBMs,

- iii) deployed SLBMs and deployed heavy bombers. 8050 for warheads attributed to deployed ICBMs and SLBMs.
- The second phase, which was to be completed within 60 months of entry into force of the treaty, set the following aggregate limits:
 - i) 1900 for deployed ICBMs and their associated launchers, deployed SLBMs and their associated launchers and deployed heavy bombers.
 - ii) 7950 for warheads attributed to deployed ICBMs, deployed SLBMs and deployed heavy bombers.
 - iii) 6750 for warheads attributed to deployed ICBMs and deployed SLBMs.

Finally, in the third phase which was to be

START I and the Breakup of the Soviet Union

The breakup of the Soviet Union in December 1991 caused a significant turn of events into the US-USSR bilateral talks on Nuclear Disarmament. It was not immediately clear under International law which States succeeded to the International obligations of the USSR. The breakup resulted in four Sovereign States with nuclear weapons (Russia, Belarus, Kazakhstan, and Ukraine), none of which had signed the START I agreement with the United States. Russia worked quickly to secure agreements to have all nuclear weapons and their delivery systems returned as soon as possible to Russian soil^[24]. The three newly nuclear States that resulted from the breakup of the Soviet Union therefore made arrangements with Russia and the United States to remove nuclear weapons from their territories, join the Nuclear

The Alma-Ata Agreement (1991)

The Alma-Ata Agreement is not under the auspices of the START I, but it is important to examine here as an effort to consolidate the nuclear arsenal of the former Soviet Union in Russia. The Alma-Ata Agreement establishes a commitment by Belarus, Kazakhstan, and Ukraine to cede nuclear weapons on their territories to Russia by July 1992^[25]. The primary goal of the Alma-Ata Agreement was to completely remove and destroy the nuclear weapons in Belarus, Kazakhstan, and Ukraine. In addition to providing for the transfer of nuclear weapons in Belarus, Kazakhstan and Ukraine back to Russia for destruction, the agreement provided for significant

The Minsk Declaration (1991)

The Minsk Declaration^[28], also known as the Agreement on Strategic Forces, was concluded by the 11 members of the Commonwealth of Independent States (CIS) as part of the Minsk Summit, just nine days after the Alma-Ata Agreement, on 30th December 1991. The summit was to determine how the former USSR's obligations related to International security would be borne by the CIS, specifically the joint command and destruction of strategic nuclear weapons. The Minsk Declaration placed all of the nuclear weapons on Ukrainian soil

completed within 60 months of the treaty's entrance into force, each party was to have the aggregate numbers listed under Article II Paragraph 1:

- i) 1600-deployed ICBMs and launchers, deployed SLBMs and launchers, deployed heavy bombers, including 154 deployed heavy ICBMs and their launchers.
- ii) 6000 warheads attributed to deployed ICBMs, SLBMs, and heavy bombers including 4900 warheads attributed to deployed ICBMs and SLBMs, 1100 warheads attributed to deployed ICBMs on mobile ICBM launchers and 1540 warheads attributed to deployed heavy ICBMs.

Nonproliferation Treaty (1968) as Non-Nuclear Weapon States, and sign safeguards agreements with the International Atomic Energy Agency (IAEA). One such agreement is the Lisbon Protocol; which multi-lateralized the START I Treaty to include all four of the former Soviet States with nuclear weapons. There were several additional agreements aimed at transferring and consolidating nuclear weapons in Russia, and bringing those weapons, as well as the former Soviet States, into the legal framework of the START and the NPT. Though these agreements differ in nature from the strictly bilateral agreements between the United States and the Soviet Union up to that point, they play an important role in understanding the historical context of the time.

policy cooperation between the States until the agreement was fully carried out. The agreement called for the withdrawal of all tactical nuclear weapons from Belarus, Kazakhstan and Ukraine, and transfer to 'Central bases' for dismantling under joint control by 1st July 1992^[26]. Ukraine and Kazakhstan also had bilateral agreements with Russia on how the disarmament would take place. There was no formal agreement with Belarus. The United States also negotiated 'side letters' with Ukraine, Kazakhstan and Belarus that all nuclear weapons would be returned to Russia^[27].

under joint command. Under Article 4, it reiterated the need for complete elimination of nuclear weapons from Belarus, Kazakhstan and Ukraine. Article II established that the former Soviet States would observe USSR's International treaties related to International security, disarmament and arms control, and enter into negotiations on how to implement them. Under Article VI, the agreement entered into force immediately upon signature. Article 3 of the agreement detailed some of the nuclear weapons policy that began to take shape in

the Alma-Ata Agreement. It outlined the need for joint command of strategic forces and for maintaining unified control of nuclear weapons among the CIS. Article 4 specified that, until the nuclear weapons located in Ukraine are completely

destroyed, they shall be under joint control via the Combined Strategic Forces Command. It noted that all nuclear weapons in Ukrainian territory would be dismantled by the end of 1994, including tactical weapons by July 1st 1992.

The Lisbon Protocol

The Lisbon Protocol established Ukraine as, Belarus, Kazakhstan and Russia as successors of the USSR in relation to the former country's obligation under the START (1991) as of April 1992. In addition, under Article V, Belarus, Kazakhstan, Russia and Ukraine agreed to join the NPT as NNWS in the shortest possible time. Under Article I, Belarus, Kazakhstan, Russia and Ukraine are defined as the successors to

the USSR, and assume obligations of the former USSR under the START. Under Article II, the successor states defined above would make the necessary arrangements to implement START restrictions, allow for verification, and allocate costs. The limitations, implementation, and verification would fall under the auspices of the START I agreement.[26]

The Trilateral Statement (1994)

The signing of the Trilateral Statement in Moscow in January 1994 was seen as a significant success in ridding Ukraine of nuclear weapons. Under the agreement, the Russian Federation sent 100 tons of fuel to Ukraine for its nuclear power plants. The United States agreed to pay 60 million dollars to the Russian Federation in support of that process. For its part, Ukraine agreed to transfer 200 nuclear warheads over a 10-month period[29]. The annex of the statement specified that all nuclear warheads will be transferred from the territory of Ukraine to Russia for the purpose of their subsequent dismantling in the shortest possible time. The annex of the Joint Statement provided the 'meat' of the agreement. In the annex, Russia agreed to provide Ukraine within ten months, fuel assemblies for nuclear power stations containing

100 tons of low-enriched uranium. Ukraine agreed to transfer at least 200 nuclear warheads from RS-18 (SS-19) and RS-22 (SS-24) missiles to Russia for dismantling by the date that the fresh fuel was received. The United States underwrote the funding for the agreement, and agreed to provide 60 million dollars as an advance payment to Russia, to be deducted from payments due to Russia under the highly-enriched uranium contract. These funds would be available to help cover expenses for the transportation and dismantling of strategic warheads and the production of fuel assemblies. The annex set a seven-year time limit for Ukraine to eliminate all the nuclear weapons in its territory.

START II (1993)

The United States ratified the original START II text, but did not ratify other agreements that were negotiated at the same time, such as the 1977 Protocol that would have extended the implementation deadline, or the ABM Treaty Succession, demarcation, or Confidence Building Agreements[19]. Russia's ratification made the 1977 Protocol and the ABM agreements a requirement before exchanging instruments of ratification, and it was therefore never brought into force. The United States Congress did not vote on bringing the complete package into force.

Though the agreement never entered into force, the United States still pursued unilateral disarmament, with the deactivation of the Peacekeeper strategic missile. Deactivation of the Peacekeepers Was completed in September 2005[30]. However, START II can still be considered a success as it drove significant effort into verifiable nuclear warhead dismantlement and chain of custody development technology and demonstrations, which will likely play significant roles in the verification efforts for future disarmament treaties, especially as nuclear weapons limits get very low.

CONCLUSION

It is thus recognized that, previous Denuclearization negotiations have failed to achieve their goal, and there is need for new thinking grounded in the reality that the International community, 'particularly the Nuclear-Weapon States are highly unlikely to voluntarily abandon their nuclear programs. It is recommended that the International community should encourage States to extend the 2010 New START and renew diplomatic efforts to resolve the compliance disputes over Denuclearization laws, as

well as advance entry into force of the Comprehensive Test Ban Treaty (CTBT), including signature and ratification by all Nuclear-Weapon States, as part of the Denuclearization process. It is also recommended that, all Nuclear-armed States reduce the role and number of their nuclear weapons and their missile material holdings. The International community should underscore the catastrophic humanitarian consequences of nuclear weapons and the importance of reinforcing the norm against their

possession and use, including through the Treaty on the Prohibition of Nuclear Weapons (TPNW). Furthermore, denuclearization negotiations should aim for the complete and verifiable denuclearization of Nuclear-Weapon State. Nevertheless, the International community needs to consider different options to achieve this end. In order to pursue denuclearization in the short term, which is the most desirable objective, the structure of the negotiators should be such that they create a situation whereby each Nuclear-Weapon State must make a choice between regime survival and complete denuclearization. That is, the International community should mobilize sufficient

leverage and pressure to enforce a change in the Nuclear-Weapon States' calculations if denuclearization is to be achieved. Finally, there is need for the International community to adopt more flexible approaches where denuclearization negotiations are pursued on the basis of strict principles in which reward for partial denuclearization measures can be limited and strong punishment continuously imposed unless better measures are adopted. This approach would require strategic patience as well as strategic shaping through International coordination, and the construction of a suitable environment for the denuclearization negotiations.

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