

The Role of International Law, Human Rights Law and Young Generation in the Field of Nuclear Disarmament

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Introduction

Nuclear disarmament has been recognised as a crucial issue under international law after World War II. This is because the United States of America dropped nuclear bombs on the Japanese cities, Hiroshima and Nagasaki.¹ This has proved that nuclear weapons are game-changers in the international community. Against this background, this short article will briefly consider the role of international law, human rights law, and young generation in the field of nuclear disarmament to open the door for a new idea to advance this activity.

International Law in the Field of Nuclear Disarmament

International law has played an important role in the field of nuclear disarmament. Firstly, Article 2(4) of the UN Charter stipulates that:

All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

In other words, the threat or use of force is not permitted under the UN system. Regarding nuclear disarmament, the Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT), adopted by the UN General Assembly on 1st July 1968 and came into force on 5th March 1970,² prohibits nuclear weapons states from proliferating nuclear weapons to other states. Thus, it divides into the following two groups³: Nuclear Weapons States (NWS) and Non-Nuclear Weapons States (NNWS).

More importantly, Article VI of the NPT stipulates that:

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

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¹ ICAN, *Hiroshima and Nagasaki bombings*, https://www.icanw.org/hiroshima_and_nagasaki_bombings.

² See <http://disarmament.un.org/treaties/t/npt>.

³ Article I and II of the NPT.

According to the traditional interpretation, Article VI of the NPT has not been interpreted that it aims at eliminating all nuclear weapons, but, at least, reducing the quantity and limiting the use.⁴ After the end of the Cold War, the interpretation of the Article VI of the NPT has been gradually changed from the reduction or limitation of nuclear weapons to the total elimination of nuclear weapons in light of the NPT Review Conferences.⁵

Furthermore, the International Court of Justice (ICJ) issued the Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*.⁶ It stated that:

... the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law ...

In other words, the threat or use of nuclear weapons violates the rules of international law, especially international humanitarian law. However, it also indicated that:

... in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.⁷

Therefore, the threat or use of nuclear weapons is unlawful but it depends on the political decision of the NWS groups in an extreme circumstance of self-defence. Regarding Article VI of the NPT, the ICJ pointed out in the Advisory Opinion that “[t]here 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” under Article VI of the NPT.⁸ In other words, the contracting states must implement “an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament” under Article VI of the NPT. Therefore, the ICJ considered that state parties to the NPT must bring to a conclusive negotiations leading to nuclear disarmament under Article VI of the NPT.⁹

⁴ This article will refer to three books written by Mohamed I. Shaker in 1980 which are famous to know the creation and development of the NPT as the *travaux préparatoires*. Mohamed I. Shaker, *The Nuclear Non-Proliferation Treaty: Origin and Implementation 1959-1979, Volume I-III* (Oceana Publications Inc., 1980), Volume II, 563-564.

⁵ The 1995 NPT Review Conference firstly pointed out that interpretation by the Decision 2. See United Nations, *1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Part I*, NPT/CONF.1995/322 (Part I), New York, 1995, pp. 9-12.

⁶ Christopher A. Ford, *Debating Disarmament: Interpreting Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons* (2007) 14(3) Non-proliferation Review, 402.

⁷ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996, para. 105 (2) F, p. 266. <https://www.icj-cij.org/en/case/95>.

⁸ *Ibid.*, para 105 (2) E, p. 267.

⁹ Daniel H. Joyner, ‘The legal meaning and implications of Article VI of the Non-Proliferation Treaty’ in G. Nystuen, S. Casey-Maslen, & A. Bersagel (eds.), *Nuclear Weapons under International Law* (Cambridge University Press, 2014), 397-417 at 405.

Based on the NPT regime and the ICJ judgement, the international community recently approved the Treaty on the Prohibition of Nuclear Weapons (TPNW) which came into force 22 January 2021.¹⁰ However, the NWS group strongly opposed to or ignored the TPNW. The main reason is that the TPNW may destruct the NPT regime because the TPNW aims at comprehensively prohibiting all nuclear weapons,¹¹ and clarifying the international obligations for “the total elimination of nuclear weapons”.¹²

In conclusion, there is no treaty regime including both NWS and NNWS groups, to achieve the total elimination of nuclear disarmament under international law. In this situation, what should we do to achieve this ultimate goal? The next section will indicate a new initiative from a human rights perspective.

Human Rights Approach in the Field of Nuclear Disarmament

To progress the process of nuclear disarmament, there is a new initiative from a human rights perspective. According to Article 1(3) of the UN Charter, the UN’s purpose is to “achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion”.¹³ Therefore, the respect for fundamental rights and freedoms has been considered an important factor that cannot be ignored within the international community.

Based on this understanding, the Human Rights Committee (HRC), a UN human rights body for the International Covenant on Civil and Political Rights (ICCPR), issued the HRC General Comment No. 36 on the right to life. It states that:

66. The threat or use of weapons of mass destruction, in particular nuclear weapons, which are indiscriminate in effect and are of a nature to cause destruction of human life on a catastrophic scale, is incompatible with respect for the right to life and may amount to a crime under international law. (...) ¹⁴

¹⁰ See https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-9&chapter=26&clang=en; See also Tsubasa Shinohara, *L’analyse de la jurisprudence pertinente pour le désarmement nucléaire dans le cadre juridique du Traité sur l’interdiction des armes nucléaires (TIAN)* (SAFNA Blog, 13 February 2020), <https://safna.org/2020/02/12/lanalyse-de-la-jurisprudence-pertinente-pour-le-desarmement-nucleaire-dans-le-cadre-juridique-du-traite-sur-linterdiction-des-armes-nucleaires-tian/>.

¹¹ Article I of the TPNW.

¹² Michael Hamel-Green, *The Nuclear Ban Treaty and 2018 Disarmament Forums: An Initial Impact Assessment* (2018) 1(2) *Journal for Peace and Nuclear Disarmament*, 436-463 at 441-442.

¹³ See also Articles 1 and 2 of the Universal Declaration of Human Rights: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

¹⁴ Human Rights Committee, *General Comment No. 36: Article 6: right to life*, 3 September 2019, CCPR/C/GC/36, para. 66. <https://www.ohchr.org/en/calls-for-input/general-comment-no-36-article-6-right-life>.

On this basis, the HRC indicates that the threat or use of nuclear weapons is incompatible with respect for the right to life guaranteed by Article 6 of the ICCPR and may be considered a crime under international law. To avoid the infringement of the right to life due to the threat or use of nuclear weapons, it clarifies negative obligations to “refrain from developing, producing, testing, acquiring, stockpiling, selling, transferring and using them” and positive obligations to “take all necessary measures to stop the proliferation of weapons of mass destruction”, to “destroy existing stockpiles”, and to “take adequate measures of protection against accidental use”.¹⁵ In this connection, some non-governmental organisations, the Lawyers Committee on Nuclear Policy, Basel Peace Office and Association of Swiss Lawyers for Nuclear Disarmament (SAFNA), submitted a statement on the right to life and nuclear weapons to the Human Rights Council on the Universal Periodic Review.¹⁶ Therefore, human rights approach has gradually become an important tool to open the door for a new discussion in the field of nuclear disarmament.

Conclusion

In conclusion, international law has played a significant role in illegalising the threat or use of nuclear weapons. However, the trend towards nuclear disarmament has stagnated or even moved closer to nuclear weapons expansion. To break the stagnation of nuclear disarmament, it is necessary for us to find other solutions from a different angle and perspective. In doing so, an interdisciplinary approach is required. This approach might open the door for the access of the young generation to the field of nuclear disarmament. In this context, a human rights approach deserves attention as a new approach in the field of nuclear disarmament

However, what should the young generation do in the field of nuclear disarmament? They should not be a political and symbolic tool for activism, but be a part of the progress of nuclear disarmament. Despite the fact that young students are important, they usually lack sufficient knowledge to understand this issue. To solve this problem, states or civil society should establish a youth forum for exchanging their opinions and ideas from a different perspective. For instance, SAFNA Youth Forum is an educational and neutral institution for the young generation in the field of nuclear disarmament and arms control to provide students with an opinion forum where they freely express their opinions and ideas on all topics relevant to this field. As this remains a new initiative, future developments will need to be seen.

¹⁵ See also Daniel Rietiker, *Threat and use of nuclear weapons contrary to right to life, says UN Human Rights Committee* (SAFNA Blog, 7 November 2018), <https://safna.org/2018/11/07/threat-and-use-of-nuclear-weapons-contrary-to-right-to-life-says-un-human-rights-committee/>; See also Tsubasa Shinohara, *Analysis of the ECtHR’s Nuclear-related Jurisprudence* (SAFNA Blog, 5 December 2021), <https://safna.org/2021/12/05/analysis-of-the-ecthrs-nuclear-related-jurisprudence/>.

¹⁶ See <http://www.lcnparcive.com/USUPRLCNP.pdf>; https://baselpeaceoffice.org/sites/default/files/imce/articles/2021/submission_to_un_human_rights_committee_on_issues_relating_to_dprk_nuclear_weapon_policies.pdf.