



TOWARDS FULFILLMENT OF FUNDAMENTAL RULES OF HUMANITARIAN LAW IN THE CONTEXT OF THE NUCLEAR NON-PROLIFERATION TREATY

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ABSTRACT

The Treaty on Non-Proliferation of Nuclear Weapons (NPT) is at the centre of this initiative, which advocates for global measures to curb the growth of nuclear weapons and move toward complete nuclear disarmament.¹ It was made available for signature in 1968 and was in force on March 5, 1970. On May 11, 1995, an agreement was reached to extend the Treaty indefinitely. The Nuclear Non-Proliferation Treaty (NPT) now has 191 signatory countries, making it the most widely ratified agreement dealing with nuclear disarmament, peaceful nuclear energy, and the spread of nuclear weapons. The Nuclear Non-Proliferation Pact (NPT) is a pact between countries that prohibits them from owning or developing nuclear weapons as well as from assisting or promoting the governments of such countries. The International Atomic Energy Agency" (IAEA), is charged with critical verification tasks under the Non-Proliferation Treaty (NPT). Article III of the NPT requires all nations that do not possess atomic energy to sign a comprehensive safeguards agreement (CSA) to ensure that their nuclear programs are solely for non-military purposes. The IAEA is critical to accomplishing the goals of Article IV, which include greater worldwide involvement in the peaceful use of thermal power.²

Keywords: Non-Proliferation Treaty, Nuclear Weapons, Humanitarian Laws.

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¹ Treaty on the Non-Proliferation of nuclear weapons (NPT) | IAEA. (n.d.). International Atomic Energy Agency. [online]. Available at: <<https://www.iaea.org/topics/non-proliferation-treaty>> Accessed 18th July 2023.

² NPT. (n.d.). The Nuclear Threat Initiative. [online]. Available at: <<https://www.nti.org/education-center/treaties-and-regimes/treaty-on-the-non-proliferation-of-nuclear-weapons/>> Accessed July 18, 2023.

PROVISIONS OF THE TREATY

Articles I, II, and III stipulate that no state with nuclear weapons may “send nuclear weapons to any other nation or provide assistance, encouragement, or urging for any state that does not have nuclear weapons” to develop or acquire nuclear weapons. No nuclear weapons may be transferred to a country that cannot create or acquire them.³ The rights of nations to use such energy for non-military use are not restricted by the Treaty, as long as they do so in a manner compatible with Articles I and II, as clarified in Article 4 of the Treaty. About the safe use of nuclear power, all participating states commit to facilitating and engaging in the free flow of related equipment, materials, and scientific and technical knowledge.

Article V of the Comprehensive Test Ban Treaty shall apply to the interpretation of the provisions of this Treaty relating to the use of nuclear explosive devices for non-military purposes. Article 7 affirms the sovereign authority of states to forge and ratify pacts with neighbouring states establishing nuclear-free zones inside their borders. “The remaining items are formalities. All Congregations will negotiate in good faith on robust measures related to the conclusion of the atomic weapons contest and atomic demobilization, as well as an agreement on comprehensive demilitarization, by Article 6 of the Atomic Peace Settlement. The NPT's Article 9 designates as “Atomic Weapon Expresses” any nation that, before January 1, 1967, produced and detonated an atomic weapon or other atomically hazardous device. The five nuclear-armed nations have given the Arrangement its stamp of approval.⁴

SOURCES OF INTERNATIONAL HUMANITARIAN LAW

Treaties, customs, and fundamental legal principles are the three pillars of “international humanitarian law” (IHL), as they are of every other body of international law. Furthermore, case law, philosophical concerns, and "soft law" have become increasingly important in the implementation of some IHL concepts. The regulation of international charitable organizations is an essential component of international law today. The most important sources of the law are the treaties that are relevant to the ongoing armed conflict. The 1980 Convention on Certain Regular Weapons” and the “2008 Convention on Certain Group Weapons” are two of the most

³ Kuster, E., & Melzer, N. (2016, August). International humanitarian law. JEP., [online] Available at: <https://www.jep.gov.co/Sala-de-Prensa/Documents/4231_002-IHL_WEB_13.pdf> Accessed July 18, 2023.

⁴ Lopez, S. (n.d.). Treaty on the Non-Proliferation of Nuclear Weapons - Main Page. United Nations - Office of Legal Affairs., [online] Available at: <<https://legal.un.org/avl/ha/tnpt/tnpt.html>> Accessed July 18, 2023.

prominent sources of substantial IHL applicable to situations of international armed conflict involving a state's use of armed forces and armaments.” Article 3 and, in some instances, Convention II are the most appropriate sources for the resolution of IHL applicable to non-global-equipped conflicts.⁵

While treaties provide the most direct foundation for international humanitarian law, the norms and ideas that underpin them are frequently derived from custom, in the form of common State practice (*usus*) acknowledged as law (*opinion juris*). This established normative framework, known as customary law, coexists with and is distinct from treaty law. Other than treaties and customs, it is from these “general principles of law recognized by civilized nations” that international law is developed. No one definition or set of rules may be taken as definitive. Concepts of law such as the right to defend oneself, the presumption of innocence, and the need to act in good faith are all examples of common law concepts that are upheld by all modern legal systems.⁶

NUCLEAR NON-PROLIFERATION TREATY

The General Assembly examined demobilization and strategies to prevent nuclear weapon proliferation at its fourteenth meeting in 1959. "From 1959 to 1967, the General Assembly passed a few goals encouraging the USSR and the USA to focus on the exchange of a global instrument to prevent the proliferation of atomic weapons.⁷ The United States and the Soviet Union proposed a non-proliferation treaty to the ENDC on March 11, 1968. This report was then presented to the Assembly. This is mentioned expressly in the preamble as well as Articles I and II of the 1968 Treaty on the Non-Proliferation of Nuclear weapons their devastating consequences on people and the planet beg the issue of whether or not their usage is consistent with the norms of human decency” and the principles of international humanitarian law (“IHL”). Law and order must be maintained even in times of conflict if our civilization is to survive. This principle was created to sustain the applicability of the international rules to nuclear weapons by the International Court of Justice (“ICJ”) “in its “1996 Advisory Opinion.

⁵ DIH Consuetudinário - Nuclear Weapons. (n.d.). International Humanitarian Law Databases., [online] Available at: <<https://ihl-databases.icrc.org/pt/customary-ihl/v2/nuwea>> Accessed July 18, 2023.

⁶ Article in the Journal: Moxley Jr, C. J., Burroughs, J., & Granof, J. Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty. *Fordham International Law Journal*, 2011, Vol. 34, Issue 4, Article 1 <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2290&context=ilj>>”

⁷ Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. 226, 11 35-36., [online] Available at: <<https://www.icj-cij.org/public/files/case-related/95/095-19960708-ADV-01-00-EN.pdf>> Accessed 18th July 2023.

In May 2010, the NPT states reaffirmed their commitment to nations to comply with prescribed international norms.” A definition is urgently required of what must be done immediately to include strategies of nuclear weapons states.⁸

These fundamental concepts form the backbone of humanitarian law and may be found in the many documents that make up this body of legislation. The first seeks to shield civilians and civilian property by clearly delineating between combatants and noncombatants. Governments must never intentionally target civilians, and they must avoid employing weapons that can't tell the difference between civilians and military personnel. The second tenet is that no one should have to go through pain just to do their job, thus it goes without saying that no weapons should be used that would bring about such needless suffering for the other side. For the second principle to take effect, it must be recognized that states do not have complete leeway in selecting how they use their armaments.

HUMANITARIAN OBLIGATIONS CONCERNING THE NON-PROLIFERATION TREATY

The Final Document from the 2010 NPT Review Conference can be used to assess humanitarian pledges under the NPT according to the meeting, which was held in New York City, "the catastrophic humanitarian consequences of using nuclear weapons were emphasized, as was the need to adhere to international norms by all nations."⁹ With a lot of tensions between the states having atomic power and the states that do not possess such power and are signatories to the treaty, and nuclear weapons developments that had raised significant doubts about the treaty's viability as a nonproliferation mechanism, the final version from 2010 was extremely critical. Nuclear disarmament, nonproliferation, access to peaceful uses of atomic energy, and the establishment of a weapons-free zone (WMDFZ) in the Middle East were all discussed. Acceptance of a final agreement is positive, but more has to be done to fulfill the NPT's basic bargain (disarmament, nonproliferation, and access to peaceful uses of nuclear energy). The situation in the Middle East is also becoming a significant obstacle to the treaty's future implementation.

⁸ Dhanapala, J. (2010, 10 25). Evaluating the 2010 NPT Review Conference. United States Institute of Peace. [online]. Available at: <<https://www.usip.org/publications/2010/10/evaluating-2010-npt-review-conference>> Accessed 18 July 2023.

⁹ KOROMA, M. (n.d.). DISSENTING OPINION OF JUDGE KOROMA The Court, in this Advisory Opinion declines to grant the request of the WHO for. Accessed July 18, 2023, from <https://www.legal-tols.org/doc/6f4cf1/pdf/>.

EFFECTS OF USING NUCLEAR WEAPON IN ARMED CONFLICTS

According to research done by the WHO on the effects of nuclear war, given before the Court, a single nuclear bomb in a battle might have destructive force a million times that of the greatest conventional weapon.” The sudden surge in temperature and the subsequent radiation are two of the most damaging consequences of a nuclear explosion. The number of casualties will be mostly determined by the enormous quantity of heat energy emitted.

The parts of the body that are in contact with the heat will be burnt in an instant. Burns from a flash would start within milliseconds and reach their peak within seconds. There would be a lot more deaths from indirect burns. There was a tie vote in the ICJ, with the President casting the deciding vote. The use of nuclear weapons in defiance of the law in Bello has on occasion been misinterpreted as justified by a real promotion bellum justification. An essential question for this analysis is whether or not the separation principle between the two halves of global regulation is still applicable.

STOCKPILE OF NUCLEAR WEAPONS IN COUNTRIES

There are currently nine nations with nuclear weapons. Russia, China, the United States, France, the United Kingdom, and Britain and four rotating members (Pakistan, India, Israel, and North Korea).” There is a total of 12,700 nuclear weapons in the world, but only 9,400 are in the hands of these powers at any one moment. While this is a reduction from the peak of the Cold War, when over 70,000 warheads were in circulation among nuclear-armed nations, atomic bombs were expected to grow over the next decade, and modern armies are more resilient than ever before. There are 5,997 confirmed nuclear warheads in Russia's arsenal. Next in line is the United States, which has 5,428 nuclear weapons together with Turkey, Italy, Belgium, Germany, and the Netherlands.

Ninety percent of all nuclear warheads in the world are possessed by only two nations. It is unknown how many nuclear bombs North Korea and Israel possess. According to estimates, Israel has enough fissile material to build up to 200 nuclear bombs, while North Korea has enough to build 40-50 warheads. Hundreds of thousands of lives might be lost, and the environmental and humanitarian effects of even one nuclear bomb would be catastrophic. It is projected that 583,160 lives will be lost should a nuclear bomb be detonated over New York City. Russian, American, British, French, Chinese, Indian, Pakistani, Israeli, and North Korean nuclear arsenals are believed to have 13,000 warheads, the great majority of which are more

destructive than the Hiroshima bomb. 32 nations are participating in this, 5 of which have nuclear weapons on their soil, and another 27 that advocate the use of nuclear weapons.

THE PRINCIPLE OF PROPORTIONALITY

This principle applies only if the weapon used is legal under international law and the intended target is a legitimate military goal as defined by humanitarian rules. It prohibits conducting an attack if it is decided that the number of civilian casualties to the estimated deaths.¹⁰ Interestingly, this norm is not explicitly mentioned in the Opinion, but it was confirmed by other judges as being the norm. Justices Higgins, Schwebel, and Guillaume based their conclusion that nuclear weapons' collateral damage might be justified under certain circumstances on this principle. Respectful caution was voiced by the judges who argued that the catastrophic consequences of nuclear weapons imply that only in exceptional cases can military aims be balanced with the unavoidable level of collateral destruction.

THE MARTENS CLAUSE

There is a broad variety of views on how this provision should be understood, but it is a potentially pivotal one in humanitarian law accords. It was first included in the preambles “to the “Fourth Hague Conventions” and then included in the wording of Additional Protocol I and the preamble to Additional Protocol II in 1977.¹¹ If no appropriate norm can be established under treaty law, customary law, humanist principles, and the Martens Clause all declare that the dictates of public morality remain under the protection and authority of belligerents. Both proponents and detractors of the idea that humanitarian principles and public awareness may be used as separate, legally binding yardsticks to determine whether or not a certain weapon or mode of behaviour is acceptable may make their case.

THE LAW OF SELF DEFENSE

For a long time, international humanitarian law has been an incontrovertible dogma, reinforced by extremely long customs and largely recognized by legal academia, that all participants in a

¹⁰ Countries with nuclear weapons - ICAN. (n.d.). International Campaign to Abolish nuclear weapons, [online]. Available at:

https://www.icanw.org/nuclear_arsenals#:~:text=Combined%2C%20Russia%2C%20the%20United%20States,nuclear%20weapon%20dropped%20on%20Hiroshim”> Accessed July 18, 2023.

¹¹ Doswald, L. (1997, February 28). International humanitarian law and the Advisory Opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons - ICRC. International Committee of the Red Cross. [online]. Available at:

<https://www.icrc.org/en/doc/resources/documents/article/other/57jnm.htm>”> Accessed July 18, 2023

conflict are subject to the same rules regardless of who is fighting in self-defense. The central dispute is on whether or not the wider necessity and proportionality requirements of self-defense law take priority over the more specific principles of humanitarian law during times of armed conflict.

DISSENTING OPINION OF JUDGE KOROMA IN THE SHIMODA CASE

Judge Koroma decided that the Court should have concluded that the use of nuclear weapons is prohibited by international law after hearing evidence that the radioactive repercussions that have been seen were larger than those created by poison gas.¹² According to evidence presented before the Court, the current stockpile of around 40,000 nuclear weapons has a destructive potential greater by more than a factor of one million compared to that of the bomb dropped on Hiroshima. It has been calculated that one nuclear bomb detonated over a big city might kill as many as one million people. Any large-scale use of these weapons has the potential to obliterate contemporary society. Judge Koroma disagreed with the conclusion that the Court cannot decide with certainty whether using such weapons would be legal or illegal in such an aggravated case in which the state would be at risk (emphasis added). This is stated in Paragraph 2E, Second Sentence.

In his argument, he wanted to show that the court's decision is not supported by current international law and is in fact at odds with the preponderance of evidence submitted to the court. The use of atomic weapons, he argues, is constrained by international law in light of the current legal system and the accessible realities. Such an application would be in direct breach of the norms and requirements of humanitarian law and, as such, illegal.

CONCLUSION

The NPT has become a symbol of a naturalized combination of power, influence, and ownership of nuclear weapons, reifying nuclear weapons as a currency of power for a privileged few. It is clear that the NPT, despite its central role in nuclear non-proliferation and disarmament efforts, faces many obstacles in its quest to uphold international law principles, including the stalling of disarmament efforts, the concept of nuclear deterrence, and the impact

¹² Borrie, J., & Caughley, T. (2013). Viewing Nuclear Weapons through a Humanitarian Lens. UNIDIR. [online]. Available at <<https://unidir.org/sites/default/files/publication/pdfs//viewing-nuclear-weapons-through-a-humanitarian-lens-en-601.pdf>>

of the withdrawal of certain states from the NPT. Even with these obstacles, significant progress has been accomplished, most notably the treaty banning the use of nuclear weapons.” increasing public awareness, diplomatic initiatives, and dialogues between governments. By upholding the principles of humanitarian law, we can move to a safer and more secure future.

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