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International Law on Nuclear Disarmament: 80 Years of Development and Decline

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Abstract

This study aims to meticulously examine the historical evolution of international law on nuclear disarmament over the past 80 years. This examination aims to elucidate the substance and implications of international law on nuclear disarmament, underscore its substantial contribution to international peace and security, and assess the present state of decline in international law regarding nuclear disarmament.

The dropping of atomic bombs against the Japanese cities of Hiroshima and Nagasaki in August 1945 signaled the commencement of the nuclear age, leading to a gradual increase in the number of nations possessing nuclear weapons. Conversely, efforts to regulate the actions of nations that possess nuclear weapons through international legal frameworks have been vigorously advocated. While nuclear-weapon states are the primary parties to these treaties, many non-nuclear-weapon states also actively participate, international law on nuclear disarmament has become extensive in terms of both content and participating countries.

The issue of nuclear disarmament has been analyzed from various perspectives. This study examines the issue from the perspective of international law. In doing so, it focuses on the analysis of all disarmament-related treaties and comprehensively examines the formation, negotiation, implementation, and even extinction process of various nuclear disarmament-related treaties.

I The Emergence of Nuclear Weapons and Early Negotiations (1940s-1950s)

1 Initial Nuclear Test

The Manhattan Project, initiated by the United States and United Kingdom, was launched in response to the development of atomic bombs by Nazi Germany

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and other Axis powers during World War II. On July 16, 1945, a successful implosion-type plutonium atomic bomb experiment was conducted at the Trinity Test Site in New Mexico, United States. Subsequently, the United States dropped atomic bombs on Hiroshima on August 6 and Nagasaki on August 9, initiating the nuclear arms race.

2 Establishment of the United Nations and Its Mission

During the last stage of World War II, a concerted effort was made to achieve international peace and security. This effort culminated in the adoption of the “Four-Power Declaration on General Security” at the Moscow Conference in October of 1943. This declaration marked the inception of preparations to establish the United Nations. The Charter of the United Nations was drafted during the Dumbarton Oaks Conference, which took place between August and October 1944. The Charter of the United Nations, a foundational document signed in San Francisco on June 26, 1945, was enacted in October 1945. Notably, the Charter makes no explicit mention of nuclear weapons, because the first nuclear test had not been conducted when the Charter was signed.

The UN Charter prioritizes collective security over disarmament, designating collective measures as the primary means of achieving its objectives. Chapter VII of the Charter provides detailed provisions for implementing collective security measures. With regard to disarmament, it stipulates that the General Assembly may deliberate and make recommendations on the principles governing the reduction and regulation of armaments. It further stipulates that the Security Council is responsible for establishing plans to regulate armament.¹⁾

3 Negotiation at the Atomic Energy Commission and Others

In January 1946, the United Nations General Assembly adopted Resolution 1 (I), establishing the Atomic Energy Commission and initiating active discussions on nuclear weapons. The United States proposed the Baruch Plan for international control of atomic energy, whereas the Soviet Union proposed the Gromyko Plan for the prohibition of atomic weapons. At that time, the United States was the sole possessor of nuclear weapons. While the United States advocated for international control, the Russian Federation advocated the abolition of nuclear weapons. These positions were diametrically opposed, making any form of progress impossible.

1) Leland M. Goodrich, Edward Hambro and Ann Patricia Simons, *Charter of the United Nations*, 3rd ed., 1969, pp.211-212.

Following the acquisition of nuclear weapons by the Soviet Union in 1949, the Disarmament Commission was established under UN General Assembly Resolution 502(VI). Subsequently, the 10-Nation Disarmament Commission was established, guided by the principle of equitable representation between the East and West and presided over by the United States and the Soviet Union. This was followed by the 18-Nation Disarmament Commission, which incorporated eight non-aligned states. However, no progress was made in the realm of nuclear disarmament.

4 Nuclear Disarmament Negotiations during this Period

In light of the advent of nuclear armament, the United Nations General Assembly Resolution 1(I) saw the establishment of the Atomic Energy Commission, inaugurating the commencement of deliberations and negotiations within the 18-nation Disarmament Commission. However, the West prioritized control measures, while the Soviet Union prioritized disarmament measures; this fundamental conflict prevented negotiations from producing results.

II Nuclear Disarmament Treaties outside National Territory (1960s)

Since the late 1950s, international cooperation has developed beyond the confines of individual countries and their respective territories. After the Antarctic Treaty was signed in 1959, the Outer Space Treaty was signed in 1967 and the Seabed Nuclear Weapons Ban Treaty was signed in 1971. These treaties established the foundation for the development of international laws that regulate nuclear weapons outside national territory.

1 Antarctic Treaty

In 1957, an International Geophysical Year, the international community promoted the development of cooperative relationships in Antarctica. On December 1, 1959, the Antarctic Treaty was signed by 12 countries, including the United States, United Kingdom, France, and Japan, with the objective of promoting the peaceful use of Antarctica. The treaty formally came into force on June 23, 1961. The primary objectives of the treaty are twofold: first, to ensure that the Antarctic region was permanently and exclusively used for peaceful purposes, and second, to develop international cooperation in scientific research in the Antarctic region.

According to Article 1, Paragraph 1, the principle of peaceful use is stipulated

as follows: “Antarctica shall be used for peaceful purposes only. There shall be prohibited, *inter alia*, any measures of military nature, such as the establishment of military bases and fortification, the carrying out of military maneuvers, as well as the testing of any type of weapons.” This provision establishes complete demilitarization.²⁾ According to Article 5, Paragraph 1, “Any nuclear explosions in Antarctica and the disposal of radioactive waste material should be prohibited.” This prohibition extends to all nuclear weapons-related activities, including nuclear explosions for peaceful purposes.

2 Outer Space Treaty

Following the launch of Sputnik by the Soviet Union in 1957, the peaceful use of outer space has been a subject of considerable debate. In 1963, the United Nations General Assembly adopted Resolution 1884 (XVIII), which welcomed statements of intent by the United States and the Soviet Union regarding the peaceful use of outer space and urged all countries to do the same.³⁾ Subsequent treaty negotiations were conducted by the Committee on the Peaceful Uses of Outer Space, which recommended Resolution 2222 (XXI) and unanimously adopted the treaty draft prepared by the Committee. The treaty was opened for signature on January 27, 1967, and entered into force on October 10 of the same year.

The initial segment of Article 4 pertains to outer space, the Moon, and other celestial bodies in their totality. It stipulates that “State Parties to the Treaty undertake not to place in orbit around the Earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, install such weapons on celestial bodies, or station such weapons in outer space by any other manner.” The latter part of Article 4 addresses the utilization of celestial bodies, including the Moon, stipulating that “the moon and other celestial bodies shall be used exclusively for peaceful purpose. The establishment of military bases, installations, and fortifications, the testing of any type of weapon, and the conduct of military maneuvers on celestial bodies shall be forbidden.”

2) Eric Stein, “Legal Restraints in Modern Arms Control Agreements,” *American Journal of International Law*, Vol.66, 1972, p.259.

3) Manfred Lacks, “Some Reflections on Substance and Form in International Law,” *Transnational Law in a Changing Society: Essay in Honor of Philip C. Jessup*, 1993, pp.106-107.

3 Seabed Nuclear Weapons Ban Treaty

The concept of peaceful seabed use emerged with the Malta Proposal of 1967, leading the United Nations General Assembly to establish the Commission on the Peaceful Uses of the Seabed. However, the most salient issue—the demilitarization or denuclearization of the seabed—was addressed by the 18-Nation Disarmament Commission (ENDC). The Soviet proposal of March 1969 prohibited the military use of the seabed beyond 12 nautical miles from the coast. In May 1969, the United States proposed a prohibition on the installation of nuclear weapons and other weapons of mass destruction, as well as their fixed launch bases on the seabed beyond 3 nautical miles. The treaty was formally endorsed on February 11, 1971, and subsequently came into effect on May 18, 1972.

The treaty stipulates that “The States Parties to this Treaty undertake not to implant or emplace on the seabed and ocean floor and in the subsoil thereof beyond the outer limit of a seabed zone, as defined in article II, any nuclear weapons or any other types of weapons of mass destruction as well as structures, launching installations or any other facilities specifically designed for storing, testing or using such weapons.⁴⁾” The treaty covers more than 12 nautical miles from the coast.

4 The Significance of Treaties outside National Territory

These three treaties are of particular significance because they proactively addressed novel technologies and environmental concerns related to nuclear weapons that emerged between the late 1950s and the early 1970s. Additionally, they tackled critical international security and peace issues that, if left unaddressed, could have had irreversible consequences in areas not covered by the treaty’s jurisdiction. The establishment of these accords enabled the anticipation of unfavorable scenarios in these domains, thereby preventing the exacerbation of the situation.

III Nuclear Non-Proliferation Treaty (1960s)

1 The Emergence of Nuclear Non-Proliferation Issues

In the late 1950s, the issue of nuclear non-proliferation emerged as a prominent concern, precipitated by several factors. These included the expansion of nuclear arsenals by nuclear-weapon states, the deployment of nuclear weapons

4) *SIPRI Yearbook of Armaments and Disarmament*, 1969/70, pp.165-166.

in West Germany, and apprehensions regarding the dissemination of nuclear weapons related to technology and information, which coincided with the development of peaceful nuclear energy use. Additionally, there was broad discussion about the possibility that, if left unchecked, a significant number of countries could acquire the capability to develop nuclear weapons.

The initial proposals were put forth by non-nuclear-weapon states that designated certain regions as nuclear-weapon-free zones, including the 1957 proposals by Poland, which included East and West Germany, Poland, and Czechoslovakia; the 1958 Irish proposal to limit the membership of nuclear-weapon states to the current status; and the 1961 Swedish proposal that non-nuclear-weapon states should abstain from manufacturing or acquiring nuclear weapons. The Irish proposal was unanimously adopted by the United Nations General Assembly in 1961 and became the foundation of the Nuclear Non-Proliferation Treaty.

2 Partial Test Ban Treaty

Another salient issue that emerged during this period pertained to the deleterious effects of radioactive fallout, a consequence of the substantial number of atmospheric hydrogen bomb tests conducted by the United States and the Soviet Union in the early 1950s. The United States, the United Kingdom, and the Soviet Union initiated negotiations in 1958. A debate emerged concerning the optimal approach, namely, whether to impose a comprehensive or partial ban. Ultimately, the three countries signed the “Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water” on August 5, 1963, which came into force on October 10 of the same year. The prohibition of underground tests is applicable in instances where radioactive debris seeps beyond the territorial boundaries of the nation conducting the test.

This treaty represented a landmark achievement as an inaugural agreement on nuclear disarmament, prohibiting atmospheric testing of nuclear weapons, thereby eliminating the harm caused by radioactive fallout. This development signifies a crucial step forward in addressing environmental concerns. However, from the perspective of nuclear disarmament, the United States, United Kingdom, and Soviet Union persisted in conducting underground nuclear tests, while France and China opted not to join the treaty and continued to conduct atmospheric nuclear tests. While the treaty played a certain role in preventing the proliferation of nuclear weapons, it had no impact on halting the nuclear arms race or reducing the number of nuclear weapons.

3 Negotiations on the Nuclear Non-Proliferation Treaty and its Basic Content

The initiation of formal negotiations was contingent on the leadership of the United States and the Soviet Union. Consequently, both nations submitted treaty proposals in 1965. Following the resolution of the issue concerning NATO's Multilateral Nuclear Force (MLF), both countries submitted a unified treaty proposal in August 1967, resulting in the finalization of Articles 1 and 2 of the treaty.

A pivotal component of the treaty is the delineation between nuclear-weapon states and non-nuclear-weapon states, along with their respective definitions. According to Article 9, paragraph 3, a “nuclear-weapon state” is defined as a state that has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967. This was more than a year and a half before the treaty was signed, suggesting an intention to prevent last-minute nuclear tests. The fundamental obligations of the treaty are as follows: nuclear-weapon states are prohibited from transferring or assisting in the transfer of nuclear weapons or other nuclear explosive devices or their control, and non-nuclear-weapon states are forbidden from receiving, manufacturing, or seeking or receiving assistance in the manufacture of such weapons or devices.

4 The Obligation to Negotiate Nuclear Disarmament

Article 6 of the Treaty 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.” In the course of treaty negotiations, the principle of “ensuring a balance of obligations between nuclear-weapon states and non-nuclear-weapon states” was established in the relevant United Nations General Assembly resolution. In accordance with the fundamental obligation of non-nuclear-weapon states to refrain from manufacturing or acquiring nuclear weapons, a provision pertaining to negotiations in good faith on nuclear disarmament was formally adopted.

This obligation does not entail the stipulation of particular nuclear disarmament measures; rather, it signifies effective measures relating to the cessation of the nuclear arms race at an early date and engagement in good-faith negotiations on nuclear disarmament. However, in the event that nuclear disarmament is deemed to be regressing, non-nuclear-weapon states are entitled to demand good-faith negotiations, for example, at NPT Review Conferences. On July 1, 1968, the day the treaty was signed, President Johnson announced that “the United States and

the Soviet Union have agreed to enter into negotiations in the near future regarding the limitation and reduction of offensive and defensive strategic weapons.”

This obligation to engage in good-faith negotiations on nuclear disarmament is not a direct and specific obligation to take concrete action; rather, it reinforces an important aspect of the significance of the nuclear non-proliferation regime and is a beneficial obligation toward progress in nuclear disarmament.⁵⁾ Consequently, non-nuclear-weapon states should ensure the effective exercise of this important right.

5 Nuclear Non-Proliferation Treaty as the Centerpiece of Nuclear Disarmament Treaties

The Nuclear Non-Proliferation Treaty (NPT) occupies a fundamental and central position in the development of international law on nuclear disarmament. Among the numerous treaties concerning nuclear disarmament, it is the most comprehensive in terms of the perspectives of the parties involved and the substantive issues of nuclear disarmament. The treaty stipulates the convening of a review conference at five-year intervals to assess the treaty’s operational effectiveness and ensure adherence to its provisions. Non-nuclear-weapon states should use review conferences as useful opportunities to ensure progress in nuclear disarmament.

IV Nuclear-Weapon-Free Zone Treaties (1960s-2000s)

A nuclear-weapon-free zone (NWFZ) is a designated geographical area where multiple countries have committed to the establishment of a nuclear-weapon-free zone. This commitment is formalized through a treaty that aims to ensure the complete absence of nuclear weapons within specified boundaries. Depending on the circumstances of the region, treaties have been established since the 1960s, extending through the 1980s, 1990s, and 2000s. Nuclear-weapon states have made “negative security assurances” to countries in nuclear-weapon-free zones, pledging not to use nuclear weapons against them.

5) Edwin Brawn Firmage, “The Treaty on the Non-Proliferation of Nuclear Weapons,” *American Journal of International Law*, Vol.63, No.4, October 1969, p.732.

1 Treaty on the Prohibition of Nuclear Weapons in Latin America

The Cuban Missile Crisis of October 1962 was a confrontation between the United States and the Soviet Union, with the former using military force in response to the latter's deployment of nuclear missiles in Cuba. This crisis precipitated the issue of a joint declaration of denuclearization by Brazil, Bolivia, Chili, Ecuador, and Mexico. The Nuclear-Weapon-Free Zone Treaty was signed on February 14, 1967, and entered into force on April 22, 1968. The treaty prohibits the testing, use, production, receipt, and deployment of nuclear weapons and established the Latin American Nuclear Weapons Prohibition Organization (OPANAL). All 33 countries in the region participated in the treaty. The Protocol on Negative Security Assurances, which prohibits the use of nuclear weapons against zone countries, was ratified by all five nuclear-weapon states.

2 South Pacific Nuclear-Free Zone Treaty

In the aftermath of France's nuclear tests in the South Pacific in 1966, Australia and New Zealand initiated legal proceedings against France before the International Court of Justice in 1973, challenging the legality of France's nuclear testing. In 1975, the South Pacific Forum (SPF) articulated its objective of establishing a nuclear-free zone and initiated negotiations in 1983. The treaty was signed on August 6, 1985, and entered into force on December 11, 1986. It prohibits even peaceful nuclear explosions, thereby establishing a "nuclear-free zone." The Protocol stipulates the prohibition of the use of nuclear weapons and nuclear explosions within the designated zone. Among the five nations that possess nuclear weapons, the United States is the only state that has not yet ratified it.

3 Southeast Asia Nuclear Weapon Free Zone Treaty

After the conclusion of the Cold War, the United States and the Soviet Union withdrew their military forces from Southeast Asia, and the Cambodian Civil War ended in 1991. In 1991, the Association of Southeast Asian Nations (ASEAN) declared the Southeast Asia Zone of Peace, Freedom, and Neutrality. However, even after the end of the Cold War, China and France persisted in conducting nuclear tests, and China, which was engaged in territorial disputes with several Southeast Asian countries, enhanced its nuclear capabilities. Negotiations commenced in 1992, and the treaty was signed on December 15, 1995, and subsequently entered into force on March 27, 1997. All ten countries in the region are parties to the treaty. However, none of the nuclear-weapon states have signed the protocol that imposes an obligation of negative security assurance on them.

One reason for this is that the treaty defines the nuclear-weapon-free zone as including not only national territory, but also continental shelves and exclusive economic zones. Additionally, it prohibits the use of nuclear weapons, as well as the threat of their use.

4 African Nuclear Weapon Free Zone Treaty

The genesis of this issue can be traced to France's inaugural nuclear test, which took place in the Sahara in 1960. The following year, the Organization of African Unity (OAU) adopted the African Nuclear Free Zone Declaration, marking significant development in the region's political landscape. Following the end of the Cold War, the Republic of South Africa acceded to the Nuclear Non-Proliferation Treaty (NPT) in 1991, a development that coincided with the withdrawal of Soviet and Cuban forces. In 1993, Prime Minister De Klerk announced the destruction of all nuclear weapons in South Africa. Consequently, these conditions were conducive to the commencement of treaty negotiations. The treaty was signed on April 11, 1996, and came into effect on April 11, 2009. China, France, the United Kingdom, and Russia ratified protocols prohibiting the use or threat of use of nuclear weapons against treaty signatories and prohibiting nuclear testing. However, the United States has only signed the protocol and not yet ratified it.

5 Central Asia Nuclear Weapon Free Zone Treaty

Five countries—Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan—gained independence from the Soviet Union and were located between the two nuclear-armed states of Russia and China. During the Cold War, the Soviet Union deployed nuclear weapons in Kazakhstan and conducted nuclear tests. This historical context served as the backdrop for the promotion of the treaty. Negotiations commenced in 1997, culminating in the adoption of the Almaty Declaration, which sought support from the relevant countries. The treaty was signed on September 8, 2006, and came into force on March 21, 2009. The protocol, which prohibits the use or threat of use of nuclear weapons and stipulates that no party shall contribute to a violation of the treaty, has been signed by all nuclear-weapon states except for the United States, which has not ratified it.

6 The Significance of the Nuclear-Weapon-Free Zone Treaties

The various treaties agreed between the 1960s and 2000s for the establishment of the aforementioned nuclear-weapon-free zone treaties were initiated by non-

nuclear-weapon states. These treaties can be evaluated as important contributions of non-nuclear-weapon states to the development of international law on nuclear disarmament. While each treaty is unique, it establishes the basic principle of prohibiting the deployment⁶⁾ and use⁷⁾ of nuclear weapons. The number of signatories to these five treaties exceeds 110, including all countries in the Southern Hemisphere. In the coming years, it is anticipated that non-nuclear-weapon states in the Northern Hemisphere will fortify regional solidarity, expedite the establishment of additional nuclear-weapon-free zones, and extend geographical areas free from nuclear weapons.

V Strategic Arms Limitation Treaties (1970s)

The strategic arms limitation negotiations that began in 1969 were preceded by a period of significant military and strategic parity between the United States and the Soviet Union.⁸⁾ They committed to engage in sincere negotiations on nuclear disarmament under the Nuclear Non-Proliferation Treaty. On the day the Nuclear Non-Proliferation Treaty was signed, the two countries announced that they would begin negotiations on the limitation and reduction of offensive and defensive weapons. The Anti-Ballistic Missile (ABM) Treaty and the Interim Agreement on Strategic Offensive Limitations were signed by the United States and the Soviet Union on May 26, 1972, and both treaties entered into force on October 3, 1972.

1 ABM (Anti-Ballistic Missile) Limitation Treaty

The rationale behind the prioritization of defensive armaments over offensive armaments in the negotiations stemmed from the concept of mutual deterrence based on the theory of mutual assured destruction (MAD). The underlying assumption was that limiting defensive armaments would facilitate the effective functioning of this deterrence mechanism. Initially, both nations consented to abstain from the deployment of ABM systems across their respective territories, permitting the implementation of such systems solely in two designated locations: one for capital defense and the other for ICBM base defense. At these locations,

6) David R. Robinson, "The Treaty of Tlatelolco and the United States: A Latin America Nuclear Free Zone," *American Journal of International Law*, Vol.64, 1970, p.286.

7) P. K. Jha, "Treaty for the Prohibition of Nuclear Weapons in Latin America – 1967: A Critical Appraisal," *Indian Journal of International Law*, Vol.8, No.1, 1968, p.71.

8) J. I. Coffy, "Strategic Superiority, Deterrence and Arms Control," *Orbis*, Vol.13, No.4, Winter 1970, p.1000.

the deployment of 100 ABM launchers and 100 ABM interceptor missiles was authorized. At the time the ABM treaty was signed, the Soviet Union deployed ABMs for capital defense, whereas the United States deployed ABMs for ICBM base defense. Pursuant to the “Protocol to the ABM Treaty” that was signed on July 3, 1974, the two countries agreed to restrict deployment to a single location. This resulted in a freeze of the systems possessed by the two countries at the time of the treaty’s signing. Moreover, the treaty prohibits the development, testing, and deployment of ABM systems on sea-, air-, space-, or mobile ground-based platforms^{9),10)}.

2 Provisional Agreement on Limitation of Strategic Offensive Arms

With regard to ICBMs (intercontinental ballistic missiles), the construction of additional fixed ground-based ICBMs was prohibited. At that time, the United States deployed 1,054 ICBMs, while the Soviet Union deployed 1,618. The agreement also stipulated the maintenance of the status quo for submarine-launched ballistic missiles (SLBMs), limiting the United States to 656 SLBM launchers and the Soviet Union to 740. The development of new ballistic missile submarines was also limited to existing models. The agreement stipulated a five-year validity period, after which negotiations were to commence. However, this agreement expired on October 3, 1977.

3 Strategic Offensive Arms Limitation Treaty

Subsequent negotiations led to the signing of the Strategic Arms Limitation Treaty on June 18, 1979. The treaty stipulated a limit on the total number of strategic offensive weapons, including ICBM launchers, SLBM launchers, heavy bombers, and ASBMs (air-to-surface ballistic missiles), which was set at 2,400 on the treaty’s effective date and subsequently reduced to 2,250 by January 1, 1981. The Treaty also established numerous detailed restrictions regarding MIRVs (Multiple Independently Targetable Reentry Vehicles) and other related matters. However, the United States determined that the treaty jeopardized national security from both military and strategic perspectives. This was particularly concerning because of the Soviet Union’s advancement in MIRV nuclear weapons and its

9) George W. Rathjens, “The SALT Agreements: An Appraisal,” *Bulletin of the Atomic Scientists*, Vol.28, November 1971, p.8.

10) Mason Willrich, “SALT I: An APPRAISAL,” Mason Willrich and John B. Rhinelanders, (eds.), *SALT: The Moscow Agreements and Beyond*, 1974, p.264.

improvement of high-accuracy missiles. Consequently, the United States did not ratify the treaty and never enforced it. Nonetheless, the majority of the treaty's provisions were observed by both the United States and the Soviet Union. However, in May 1986, the United States declared its intention not to be obligated to follow the treaty.

4 The Significance of Strategic Arms Limitation Negotiations

The most significant accomplishment of the nuclear disarmament negotiations during this period was the enactment of the ABM Treaty. There was considerable debate over whether to prioritize negotiations on offensive or defensive weapons. It was generally considered a matter of common sense that offensive weapons should be reduced, while defensive weapons should be maintained. However, according to the theory of mutual assured destruction (MAD), which asserted that it would be challenging to restrict offensive weapons without constraining defensive weapons, the objective was to halt the nuclear arms race.¹¹⁾ A treaty containing meticulous provisions for strategic offensive weapons was ratified. However, divergent views became evident concerning the particulars of the intercontinental ballistic missiles possessed by the United States and Soviet Union.

VI Intermediate-Range Nuclear Forces Treaty (1980s)

1 The Emergence of the Issue of Intermediate-Range Nuclear Forces

The reasons why the issue of intermediate-range nuclear forces (INF) began to attract attention in the late 1970s include the following: the Strategic Arms Reduction Treaty (START) had progressed to the point where substantial parity had been established between the U.S. and the Soviet Union in terms of strategic nuclear capabilities; the Soviet Union had begun deploying its new intermediate-range nuclear missile, the SS-20, in the late 1970s; and the U.S. had not sufficiently taken into account the interests of NATO countries in its nuclear disarmament negotiations with the Soviet Union. In response, NATO made a “double decision” in December 1979 to begin negotiations with the Soviet Union and deploy its own intermediate-range nuclear forces. As a result, negotiations began in 1981.

11) Statement by ACDA Director Smith to the House Armed Service Committee: Strategic Arms Limitation Agreements, 25 July 1971, *Documents on Disarmament 1971*, p.521.

2 Developments in Negotiations on the Intermediate-Range Nuclear Forces Treaty

Despite the consensus between the United States and the Soviet Union to commence negotiations, discord persisted concerning the specific weapons to be deliberated upon, the nations to be included in the negotiations, the geographical scope of the negotiations, and the standards for regulation to be established. Consequently, the negotiations were suspended when NATO began deploying weapons in 1983. Negotiations resumed in 1985 with the emergence of Mikhail Gorbachev as the General Secretary of the Soviet Union, leading to the 1986 Reykjavik Summit.¹²⁾ The treaty was signed on December 8, 1987, and subsequently entered into force on June 1, 1988.

3 Obligations of Intermediate-Range Nuclear Forces Treaty

The treaty's regulatory scope encompasses ground-based missiles ranging from 500 km to 5,500 km, encompassing both medium- and short-range missiles. According to the provisions outlined in the treaty, the United States destroyed 866 missiles over a three-year period, whereas the Soviet Union destroyed 1,752 missiles. In addition, the United States destroyed 283 missile launchers, whereas the Soviet Union destroyed 845. The NATO countries that deployed these missiles were West Germany, the United Kingdom, Italy, Belgium, and the Netherlands.

4 Significance of the Intermediate-Range Nuclear Forces Treaty

During the period of heightened tensions and geopolitical rivalry known as the Cold War, significant negotiations were conducted between President Ronald Reagan of the United States and General Secretary Mikhail Gorbachev of the Soviet Union concerning the most contentious issue between the two nations. These negotiations culminated in a groundbreaking agreement aimed at the complete global elimination of ground-based intermediate-range missiles.¹³⁾ This agreement subsequently served as a catalyst for the declaration of the "end of the Cold War" at the U.S.-Soviet summit in December 1989. In 1991, the Strategic Arms Reduction Treaty (START) was ratified, stipulating a 50% reduction in strategic weapons for both the United States and the Russian Federation.

12) Stephan F. Larrabee and Allen Lynch, "Gorbachev: The Road to Reykjavik," *International Journal*, Vol.40, No.1, Winter 1984-85, p.57.

13) Testimony by Maynard W. Glitman before the Senate Foreign Relations Committee, January 26, 1988.

Consequently, the establishment of the INF Treaty contributed to the conclusion of the Cold War and served as a catalyst for the advancement of cooperative international relations.

VII Strategic Arms Reduction Treaties (1990s–2010s)

1 Strategic Arms Reduction Treaty (START)

The commencement of negotiations in 1982 was met with reluctance, which was attributed to the deterioration of diplomatic relations. During the summit meeting in November 1985, President Ronald Reagan and General Secretary Mikhail Gorbachev reached a consensus on the principle that “there can be no winners in a nuclear war, and a nuclear war must never be fought,” and established a fundamental agreement to reduce strategic offensive weapons by 50%.¹⁴⁾ At the Reykjavik Summit in October 1986, a consensus was reached to reduce the number of delivery vehicles to 1,600 and nuclear warheads to 6,000. However, the agreement was not successfully implemented due to the United States’ insistence on its Strategic Defense Initiative (SDI), which involved the development of a substantial missile defense system in space.

In 1989, President George Bush Senior terminated the Strategic Defense Initiative (SDI), thereby paving the way for agreement with START. START was signed on July 31, 1991. In the aftermath of the dissolution of the Soviet Union, the “START Treaty Protocol” was formally endorsed by Russia, Ukraine, Kazakhstan, Belarus, and the United States, with the treaty coming into force on December 5, 1994.

The treaty stipulated a reduction in strategic delivery systems (ICBMs, SLBMs, and heavy bombers) to 1,600, a decrease in the number of nuclear warheads to 6,000, and a limit on the total number of nuclear warheads on ICBMs and SLBMs to 4,900. Furthermore, START II, which sought to reduce strategic nuclear warheads to 3,000–3,500, was signed in January 1993, but never entered into force.

2 Strategic Offensive Reductions Treaty (SORT Treaty)

In a significant development, in May 2002, US President George Bush Junior stated that Russia was no longer regarded as an adversary, and announced a strategic reduction in the number of nuclear warheads, with the objective of

14) William G. Hyland, “Reagan-Gorbachev III,” *Foreign Affairs*, Vol.6, No.1, Fall 1987, p.11.

reducing the total to between 1,700 and 2,200 over the course of the next decade. This announcement was accompanied by the United States' declaration of its withdrawal from the 1972 ABM Treaty. Russia objected to the decision, but President Bush was determined to ensure that the U.S. position would be formally recognized in a legal instrument. Consequently, consensus was reached between the two nations, resulting in the establishment of a new treaty. This treaty was formally signed on May 24, 2002, and subsequently entered into force on June 1, 2003. The treaty stipulates that "each signatory shall reduce and limit strategic nuclear warheads, so that by December 31, 2012, the aggregate number of each such weapons does not exceed 1,700 to 2,200."¹⁵⁾

While the establishment of the treaty itself may be commendable, its content was a unilateral decision by the United States and the treaty lacked verification provisions, making it insufficient for maintaining strategic stability.¹⁶⁾ This initiative represented the pragmatic execution of President Bush's advocacy of U.S. unilateralism.

3 New Strategic Arms Reduction Treaty (New START)

The Barack Obama administration, which took office in January 2009, adopted a markedly proactive stance on nuclear disarmament, marking a significant departure from previous administrations' policies. This commitment was further demonstrated by the decision to initiate negotiations on the reduction of strategic nuclear weapons at a summit meeting with President Dmitrii Medvedev on April 1 of the same year. During the July summit that year, the two parties arrived at an agreement to reduce the number of delivery vehicles to a range between 500 and 1,100, and the number of nuclear warheads to a range between 1,500 and 1,675, over the course of a seven-year period following the treaty's entry into force. A number of issues gave rise to disagreements between the two nations, including the implementation of missile defense and potential increases in warhead numbers. However, these divergent interests were ultimately addressed through a consensus during the summit meeting in March 2010. The treaty was formally signed on April 8 and came into force on February 5, 2011.

The treaty stipulates the following reductions: (1) reducing the number of

15) "Testimony of Secretary of States, Mr. Powell, before the Senate Foreign Relations Committee," *Washington File*, 09 July 2002.

16) John Wolfsthal, "Toothless, Nameless Treaty," *Carnegie Analysis*, May 24, 2002.
<http://www.armscontrol.ru/start/archive/nuc-cuts/htm>

nuclear warheads on deployed ICBMs, deployed SLBMs, and deployed heavy bombers to 1,550 or fewer; (2) reducing the total number of deployed ICBMs, deployed SLBMs, and deployed heavy bombers to 700 or fewer; and (3) reducing the total number of deployed and non-deployed ICBMs, deployed and non-deployed SLBMs, and deployed and non-deployed heavy bombers to 800. On-site inspections are detailed for both locations where nuclear weapons are deployed and other locations.

In evaluating the treaty, S. Pifer argues that it (1) reduces the strategic nuclear forces of the United States and Russia while allowing the United States to maintain a strong nuclear deterrent; (2) provides transparency and predictability regarding Russia's strategic nuclear forces; (3) demonstrates that the United States and Russia are fulfilling their obligations under the NPT; (4) strengthens US–Russia relations; and (5) provides a framework for further reductions in strategic nuclear forces.¹⁷⁾ The treaty stipulates that these reductions should be implemented over a seven-year period and that they have been fully implemented, including verification.¹⁸⁾ The treaty was initially set to expire after seven years; however, it was extended by five years in accordance with the provisions stipulated within the treaty itself. Consequently, the expiration date was set for February 5, 2026 and the treaty expired at this point.

VIII Treaty on the Prohibition of Nuclear Weapons (2010s)

1 Humanitarian Approach to Nuclear Disarmament

At the 2010 NPT Review Conference, Switzerland made the following statement: “As a nuclear war would threaten the survival of our common humankind, a debate should be launched concerning the legitimacy of the use of nuclear weapons regardless of the legitimacy of the motive of defense that can be invoked. In addition to military and legal considerations, Switzerland’s aim is to bring the humanitarian aspect to the heart of current debates on nuclear disarmament.”¹⁹⁾ In 2013 and 2014, international conferences deliberated on the humanitarian impacts of nuclear weapons. The English word “humanity” also signifies “human beings” and “human.” From a security perspective, it advocates

17) Steven Pifer, “New START: Good News for U.S. Security,” *Arms Control Today*, Vol.49, No.4, May 2010, pp.8-14.

18) Ivan Oelrich, “Hardly a Jump,” *FAS Strategic Security Blog*, March 29, 2010.
<https://www.fas.org/blog/ssp/2010/03/hardly-a-jump-start.php>

19) Statement by Switzerland, 8th NPT Review Conference, New York, 4 May 2010.

the “security of human beings” and “human security” rather than “national security” and “international security.” This fundamental basis is encapsulated in the Treaty on the Prohibition of Nuclear Weapons.

2 Treaty Negotiations and Treaty Adoption

On December 23, 2016, the UN General Assembly adopted a resolution that called for the convening of a conference in 2017 to negotiate a treaty prohibiting nuclear weapons, with the objective of achieving their complete elimination. At the conference, states that possessed nuclear weapons and those under the nuclear umbrella articulated their opposition to the treaty. In the first session, the fundamental principles and objectives of the treaty and the fundamental obligations to be prohibited were discussed. On May 22, the Chairperson submitted the initial draft. The second session commenced on June 15, and the chairperson submitted a revised version on June 22. Following a series of amendments, the treaty was adopted on July 7, with a substantial margin of 122 in favor, 1 against, and 1 abstention.

3 Contents of the Treaty’s Fundamental Obligations

The preamble of the treaty asserts its commitment to a humanitarian approach, underscoring the importance of international and international humanitarian law. It further stipulates that the use of nuclear weapons is in direct contrast to international law and constitutes an egregious violation of humanitarian principles. Article 1 “Prohibition” prohibits (a) the development, testing, production, manufacture, or other acquisition, possession, or stockpiling of nuclear weapons, (b) the transfer of nuclear weapons, (c) the receipt of nuclear weapons, (d) the use or threat of use of nuclear weapons, (e) the provision of assistance, encouragement, or inducement of prohibited activities, (f) requesting or receiving assistance for prohibited activities, and (g) permitting the deployment of nuclear weapons within a territory. Article 4 delineates the specific measures by which nuclear-weapon states and states that have deployed nuclear weapons are obligated to undertake the complete elimination of nuclear weapons.

4 Opposition to the Treaty

The treaty has encountered significant opposition from nuclear-weapon states and countries under the nuclear umbrella. Firstly, the joint statement by the five nuclear-weapon states asserts, “The nuclear-weapon states (P5) express profound concern regarding endeavors to pursue an approach to nuclear disarmament that

disregards the strategic context of the world. These efforts, however, contradict the consensus-based approach that has strengthened the NPT regime over the past several decades and promoted the NPT's contribution to international peace and security. Consequently, these efforts are likely to have a negative impact on the prospects for consensus at future NPT Review Conferences."²⁰⁾ The United States cited the following four reasons for its opposition at the 2016 UN General Assembly: (1) The treaty does not include nuclear-weapon states; therefore, it would not lead to further reduction. (2) The treaty would weaken current non-proliferation and disarmament regimes. (3) Verification systems were a fundamental element of successful disarmament and non-proliferation agreements; however, the treaty did not include them. (4) The treaty would undermine regional security.²¹⁾

5 The Significance of the Treaty and Future Challenges

The primary significance of the treaty is its adoption of a humanitarian approach seeking to ensure the security of humanity as a whole and human security, rather than national security. Secondly, it underscores the unfortunate reality that the current state of affairs concerning nuclear armament is antithetical to the pursuit of nuclear disarmament. The impending challenges that must be addressed include the resolution of the prevailing discord between nations that advocate for and those that oppose the treaty. The obligations undertaken by treaty signatories must be fulfilled with utmost fidelity, and the same is true for NPT signatories. Furthermore, it is incumbent upon states that have ratified the treaty to make greater efforts to de-legitimize nuclear weapons.

IX Unfinished Nuclear Disarmament Treaties

1 Arguments at the 1995 NPT Review Conference

The NPT stipulates that a review conference should be held every five years to evaluate the operation of the treaty. Additionally, 25 years after the treaty's

20) U.S. Department of State, "Joint Statement from the Nuclear-Weapon States at the 2016 Washington D.C. P5 Conference," September 15, 2016.

<https://2009-2017.state.gov/r/pa/prs/ps/2016/09/261994.html>

21) Statement by Ambassador Robert A. Wood, Delegation of the United States of America, 71st UNGA First Committee, October 14, 2016.

<https://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com16/statements/14Oct.USA.pdf>

implementation, a decision should be made by majority vote on whether the treaty shall remain in force indefinitely or be extended for an additional fixed period. The review conference decided to extend the treaty indefinitely and adopted a document entitled “Principles and Objectives of Nuclear Non-Proliferation and Nuclear Disarmament.”²²⁾

The document stipulates that (1) negotiations on the Comprehensive Nuclear-Test-Ban Treaty (CTBT) should be completed by the end of 1996, and (2) negotiations on a treaty banning the production of fissile material for nuclear weapons and other nuclear explosive devices (FMCT) should begin immediately and conclude at an early date. The nuclear-weapon states’ proactive stance toward CTBT and FMCT was an important factor in securing the decision to extend the NPT indefinitely^{23), 24)}.

2 Comprehensive Nuclear-Test-Ban Treaty

After the end of the Cold War, nuclear-weapon states initiated voluntary moratoriums on nuclear testing, and negotiations commenced at the Conference on Disarmament in 1994. The treaty was formally signed on September 24, 1996, pursuant to a decision made at the Review Conference in 1995. The treaty stipulates the formation of the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO), which consists of a Conference of States Parties, an Executive Council, and a Technical Secretariat as its internal bodies. The verification system, designed to ensure compliance with treaty obligations, comprises an international monitoring system, consultations, explanations, and onsite inspections. The international monitoring system incorporates various monitoring methodologies including seismic, radionuclide, hydroacoustic, and microparametric monitoring. Collectively, these methods establish a network of observations. Although the CTBTO has not yet been established because of the treaty’s lack of entry into force, a provisional secretariat has been instituted, and the majority of monitoring stations have been finalized and are currently

22) NPT/CONF.1995/32, 1995, 1995 NPT Review and Extension Conference, Final Document Part 1.

<https://documents-dds-ny.un.org/UNCOC/GEN/N95/176/16/PDF/N9517816.pdf?OpenElement>

23) Lewis A. Dunn, “High Noon for the NPT,” *Arms Control Today*, Vol.25, No.6, July/August 1995, pp.3-5,9.

24) John Simpson, “The Nuclear Non-Proliferation Regime after the NPT Review and Extension Conference,” *SIPRI Yearbook 1996*. p.562.

operational.²⁵⁾

Two reasons have been proposed to explain why the CTBT has not yet entered into force despite the fact that nearly 30 years have passed since the treaty was signed. First, in the context of the conditions for the treaty's entry into force, the United States, Japan, and others have asserted that its ratification by the five nuclear-weapon states and numerous additional countries should be sufficient. Conversely, the United Kingdom, France, and Russia contended that the ratification of India, Israel, and Pakistan, in addition to the five aforementioned nuclear-weapon states, should be a prerequisite for the treaty's entry into force. Ultimately, the latter opinion was adopted; given that the names of the three countries could not be specified in the treaty, it was stipulated that countries participating in the Conference on Disarmament and possessing research or power reactors should be included. Second, while the U.S. government was proactive in ratifying the CTBT, the Republican-controlled Senate opposed its ratification and has since maintained a negative stance toward participating in it. Presently, India, Pakistan, and Israel have not signed the treaty, while the United States, China, Israel, Iran, and Egypt have not ratified it.

3 Fissile Material Cut-off Treaty (FMCT)

At the 1995 NPT Review Conference, it was decided that FMCT negotiations should commence immediately and conclude early. However, some 30 years later, the treaty has not been concluded, and negotiations have not even begun. The reasons for the failure to commence negotiations are as follows: (1) although several issues are being discussed at the Conference on Disarmament, the priorities of each country differ; therefore, the agenda for negotiations has not been decided. (2) while many countries are considering future production halts, Pakistan insists that existing stockpiles be included in the negotiations; and (3) decisions in the 65-member Conference on Disarmament are made by consensus, so if even one country opposes them, no decision can be made. Concerns have been raised that verification systems may become excessively complex. Given that the initiation of negotiations at the Conference of Disarmament is determined by consensus and that Pakistan maintains its opposition, it is imperative to explore and implement negotiations in alternative forums such as the United Nations General Assembly.

25) Spurgeon M. Keeny, Jr. and Craig Cerniello, "The CTB Treaty: A Historical Opportunity to Strengthen the Non-Proliferation Regime," *Arms Control Today*, Vol.26, No.6, August 1996, pp.15-16.

4 Obligation to Negotiate in Good Faith under Article 6 of the NPT

The commencement of negotiations and entry into force for these two treaties are crucial measures for realizing the fundamental purpose of the NPT, namely, maintaining the balance of obligations between nuclear-weapon states and non-nuclear-weapon states.” Non-nuclear-weapon states consented to the perpetual extension of the NPT, operating under the assumption that these accords would be ratified and executed. In this regard, it could be contended that these actions are in direct violation of the stipulated “obligation to pursue negotiations toward nuclear disarmament,” as outlined in Article 6 of the NPT.

X Decline of International Law on Nuclear Disarmament

1 Unilateral Withdrawal from Treaties

Three events can be seen as demonstrating the destruction of the international legal framework upholding the nuclear disarmament regime. First, U.S. President George Bush Junior asserted that the proliferation of weapons of mass destruction and ballistic missiles represented a threat to the country. Consequently, he emphasized the necessity of developing and deploying missile defense systems. On December 13, 2001, he declared withdrawal from the ABM Treaty, which formally expired on June 13, 2002. Second, on October 20, 2018, U.S. President Donald Trump formally notified the Russian government of the U.S. withdrawal from the Intermediate-Range Nuclear Forces (INF) Treaty. This notification was precipitated by alleged Russian violations of the treaty. Consequently, it formally expired on August 2, 2019. Third, in May 2018, U.S. President Donald Trump unilaterally withdrew from the Iran nuclear agreement (JCPOA), citing Iran’s violation of the agreement, and resumed economic sanctions. These three cases exemplify the actions undertaken by the Republican administration in the United States, reflecting policy decisions that prioritize “the rule of power” over “the rule of law.” Consequently, these decisions have undermined the significance of international law on nuclear disarmament. However, these actions have been profoundly regrettable.

2 Expiration of Treaties

First, the Interim Agreement on the Limitation of Strategic Offensive Arms, which entered into force on October 3, 1972, had a validity period of five years and expired on October 3, 1977. Second, New START, which entered into force on February 5, 2011, with a seven-year term, was subsequently extended for five

years in accordance with the provision of the treaty. However, as there was no further extension provision, the treaty expired on February 2, 2016. To maintain the obligations inherent in such treaties, the parties involved are compelled to reach a consensus on a new treaty.

3 Treaties that Have not Entered into Force

As elaborated in the section entitled “IX Unfinished Nuclear Disarmament Treaties” the Comprehensive Nuclear-Test-Ban Treaty (CTBT) has not yet entered into force, despite the passage of three decades. New developments are unlikely to occur in the future. From the perspective of international law on nuclear disarmament, this implies an extremely unstable situation. The U.S.–Soviet Strategic Arms Limitation Treaty was formally signed on June 18, 1979. However, the United States has not ratified the treaty for various reasons, including the advancement of the Soviet Union in the development of Multiple Independent Reentry Vehicle (MIRV) nuclear weapons. Consequently, the treaty has not come into effect.

4 Non-Ratification of the Protocols

As delineated in the preceding section on the “IV Nuclear-Weapon-Free Zone Treaties,” the notion of “negative security assurances” is a central tenet of the treaties. This concept stipulates that nuclear-weapon states undertake a commitment not to utilize nuclear weapons against countries that have established a nuclear-weapon-free zone within a specific geographical area. With respect to the Southeast Asia Nuclear-Weapon-Free Zone, none of the five nuclear-weapon states have signed the protocol because it includes continental shelves and exclusive economic zones within its scope of application and covers not only the use of nuclear weapons but also nuclear threats. While four nuclear-weapon states have ratified the other four protocols, the United States remains the only one that has not. It should then be ratified as expeditiously as possible.

5 Failure to Fulfill Treaty Obligations: Article 6 of the NPT

The Nuclear Non-Proliferation Treaty (NPT) plays a central role in contemporary international law on nuclear disarmament, not only because of the substantial number of parties involved but also because it is a multilateral treaty that encompasses the entire spectrum of nuclear disarmament. The fundamental tenet of the treaty is the delineation of nuclear-weapon states and non-nuclear-weapon states, a structure that is at times regarded as discriminatory. However, the

principle of balancing the obligations of nuclear-weapon states and non-nuclear-weapon states was agreed upon from the outset of negotiations, and its intention was clearly stated in Article 6 of the treaty.

According to Article 6, “The nuclear-weapon states undertake 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.” The article explicitly mentions “cessation of the nuclear arms race at an early date,” “effective measures relating to nuclear disarmament,” and “general and complete disarmament.” The treaty obligates parties to negotiate in good faith on two initial issues regarding nuclear disarmament. While earlier analyses have provided detailed examinations of “effective measures for nuclear disarmament,” no such detailed analysis has been conducted on “early cessation of the nuclear arms race.” However, the ongoing existence of the nuclear arms race is indicative of the failure of the “early cessation” clause in the treaty provisions, which was envisioned even 50 years after the NPT’s entry into force. Despite the occasional establishment of nuclear disarmament treaties, the accord on the cessation of the nuclear arms race has yet to be implemented, and nuclear-armed states have continued their nuclear arms races.

Consequently, a decline in international law regarding nuclear disarmament has occurred in various ways, as previously described. However, the fundamental cause of this decline is the insufficient implementation of obligations related to the “early cessation of the nuclear arms race” and “effective measures for nuclear disarmament.” To satisfactorily fulfill the obligations of Article 6, it is imperative to reach a consensus on “effective measures for nuclear disarmament” and “early cessation of the nuclear arms race.”

Conclusion

This paper examines the current state of international law on nuclear disarmament over the 80 years since the first use of nuclear weapons by reviewing the historical development of the subject and, specifically, the progress made. It also presents the reality of the numerous treaties that have been concluded. This study assesses the progression of these treaties from the vantage point of advancements in nuclear disarmament and employs a historical and specific examination of the decline of nuclear disarmament treaties. Considering both these perspectives, it is anticipated that a more nuanced and precise understanding of the prevailing state of international law on nuclear disarmament will be achieved.

It has been argued that each of the nuclear disarmament-related treaties agreed upon over the past 80 years has had a positive effect on international peace and security and has played an important role in the international community as a whole. This underscores the importance of international law on nuclear disarmament. Concurrently, we underscore the inherent limitations of international law on nuclear disarmament and the necessity of rectifying these deficiencies. In contemplating the prospective evolution of international law pertaining to nuclear disarmament, there is emphasis on the imperative for nuclear-weapon states to execute their commitments conscientiously, as stipulated in Article 6 of the NPT. A comprehensive analysis of the past eight decades is anticipated to further fortify and refine the international legal framework for nuclear disarmament.

