

Article VI and beyond: Finding ways to strengthen the obligation to nuclear disarmament



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Seventy years after the atomic bombings of Hiroshima and Nagasaki, the world still faces the threat of nuclear weapons. Despite arms control accords and disarmament talks, there are still thousands of nuclear warheads and states do not seem to be willing to give them up.

Regardless of their statements in favor of disarmament, the five recognized nuclear weapon states — the U.S, Russia, the U.K, France and China—continue to include nuclear deterrence in their defense doctrines. Moreover, they have undertaken modernization activities to improve their weapons systems, contradicting and undermining their stated goal of disarmament.

In view of the persistence of nuclear weapons, attempts have been made to remind the nuclear-armed countries of their pending commitments. Indeed, **disarmament is not a voluntary endeavor; it is an obligation stemming from the Nuclear Non-Proliferation Treaty (NPT)**. This point was confirmed by the International Court of Justice (ICJ), in 1996, when the Court unanimously decided that “there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects”.

Almost two decades after that ruling, the ICJ is once again the stage of a NPT-related controversy, as the Marshall Islands has recently filed a lawsuit against the nine nuclear-armed nations over their failure to disarm.

Based on its history, the Marshall Islands holds great moral authority on this issue. From 1946 to 1958, the United States conducted over 60 atmospheric nuclear tests in Marshallese territories, in the Pacific. The U.S. most powerful device, code-named “Castle Bravo”, was detonated there, causing radiological damage and forcing inhabitants to leave their homes.

Whereas the moral authority of the Marshall Islands stems from its past experience, the legal basis of this case derives from article VI of the NPT, which commands state parties to pursue negotiations “in good faith” on measures to cease the nuclear arms race and on a disarmament treaty. The Marshallese claim that the nine nuclear-armed states have not done so.

Interestingly, the claim extends the obligation of article VI to the nuclear countries that have not joined the Treaty: India, Pakistan, North Korea, and Israel. This suggests that the NPT should be

treated as part of customary international law by which all states must abide, regardless of whether or not they actually signed the treaty.

Although the nature of the international system makes it difficult to enforce international law, this lawsuit can help clarify the reach of the NPT and the requirements arising from the nuclear disarmament obligations.

In this sense, the ruling of the ICJ could elucidate whether modernization of nuclear arsenals is consistent with good-faith negotiation of cessation of the nuclear arms race at an early date. Also, it could decide whether opposition to disarmament resolutions at the United Nations General Assembly or refusal to participate in certain disarmament initiatives constitute violations of the NPT obligation to pursue negotiations in good faith relating to nuclear disarmament.

Strengthening the NPT in general and article VI in particular is important because that is the only binding disarmament commitment in a multilateral treaty. **Unlike the chemical and biological weapons, nuclear arms are not yet subjected to an explicit legal prohibition.**

Hence, the pledge issued by the Austrian government, at the end of the 2014 Vienna Conference on the Humanitarian Impact of Nuclear Weapons, which, among other things, calls on all NPT states parties “to identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons”. Even though this was a unilateral initiative, the Austrian government invited other states to formally endorse this document. Thus far, more than 100 states have signed the pledge.

In this context, an idea has been gaining momentum: the establishment of a nuclear weapons ban treaty. This instrument would institute a set of legal prohibitions related to the possession of nuclear weapons, including direct or indirect assistance of all kinds.

In the case of a ban treaty, prohibition would come first and then disarmament would follow in accordance with an agreed framework. As with similar ban treaties, states would not need to get rid of the weapons before joining the treaty. Likewise, countries stationing foreign nuclear weapons on their territory would not have to remove them before subscribing to the treaty.

Although the ban treaty would provide the legal clarity needed to make these weapons illegal, it would be naïve to assume that this would guarantee their elimination. Nevertheless, it could start a political process that undermines the acceptability and the utility of nuclear weapons. It would put pressure on all existing possessors, in a non-discriminatory way. In addition to the five nuclear powers recognized by the NPT, a new agreement could represent an opportunity to integrate the four *de facto* nuclear-weapon states.

Achieving such a treaty would impel governments to take a side, either for or against the prohibition of nuclear weapons. This process would require states to explain their position to domestic and international audiences; thus, increasing the political cost for those keeping such weapons. It would also augment pressure on the nuclear-dependent states and perhaps affect the way military alliances work today.

Article VI of the NPT, the legal opinion of the ICJ, the Austrian Pledge and the campaign for a ban treaty are all relevant instruments in the struggle to devalue nuclear weapons and move forward with nuclear disarmament.