

NUCLEAR WEAPONS ; THE RAIN OF DEATH

WITH SPECIAL FOCUS ON CASE LAWS AND THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS (TPNW) 2017

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“It doesn’t matter , whether it is X,Y or Z country ,every penny spends for nuclear weapons strengthen the hands of the evil force....”

-Amit Ray-

Introduction and Background

It was the final year of world war ii .On 6th of August 1945 ,Japanese civilians woke up with sorrowful minds. They have suffered a lot during this 6 years. Farmers, fishers and other civil workers were spending a tough time period. Japan had lost so many young lives due to this war , Most of the parents had lost their children. Some were wounded. Among all these tragedies they were asked for an unconditional surrender. But, Japan refused to surrender and the war continued .On that one of the most darkest days in world history a uranium gun-type “Little boy” was dropped on Hiroshima and three days later a plutonium implosion “Fat man” was dropped on Nagasaki. Ultimately, Japan surrendered to the allies. The Manchester Guardian’s lead story declared Britain and America had won the greatest scientific gamble in history¹ “The

atomic bomb has been dropped on Japan. It has two thousand times the last power of the R.A.F, a ten -tonner, which was previously the most powerful bomb in use. Thus British and American scientists have achieved what the Germans were unable to do and have won the greatest scientific gamble in history”.² According to reports between 90000 -166000 Japanese civilians were killed from the above two explosions .The US department of Energy has estimated that after 5 years there were perhaps 200000 or more fatalities as a result of the bombing, while the city of Hiroshima has estimated that 237000 people were killed directly or indirectly by the bomb’s effects including burns, radiations ,sickness and cancer.³

Who was behind this inhumane act? The basic organization who was behind this was Manhattan Project. They were a research project of US government. They corporated to produce the first atomic bombs in world history. “The story of the Manhattan project began in 1938 and it was officially created in 1942.It’s weapons research laboratory was located at Los Alamos ,New Mexico”.⁴

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¹ The Manchester Guardian 7th August 1945

² The Manchester Guardian 7th August 1945

³en.wikipedia.org/wiki/Manhattan_Project

⁴ Atomic Heritage Foundation in partnership with National museum of nuclear science and

Since then, the world has engaged in so many activities by centralizing atomic power. Now a days most of the countries have engaged in peaceful nuclear innovations while others are still trying to fulfill their greedy and hatred through these evil weapons. So there must be ceiling which legally bind those people who try to empower evil forces.

Ryuichi Shimoda Vs The State **(The “Shimoda” Case)**

This is a civil action which brought before the Tokyo District court from 1955 to 1963 by the Japanese nationals who asked compensation for what they lost due to nuclear attack. “The plaintiffs were residents either of Hiroshima or Nagasaki when atomic bombs were dropped on these cities by bombers of the United States [Army] Air force in August 1945. Most of the members of their families were killed and many including some of the plaintiffs themselves, were seriously wounded as a result of these bombings. They claimed damages on the following grounds:

- That they suffered injury through the dropping of a atomic bomb by members of the [Army] Air force of the USA.
- That the dropping of atomic bombs as an act of hostilities was illegal under the rules of positive international law.
- That the dropping of atomic bombs also constituted a wrongful act on the

plane of municipal law ,ascribable to the United States and its President, Mr Harry .S.Trruman.

- That Japan had waived by virtue of the provisions of Article 19(a) of the treaty of peace with Japan of 1951 ,the claims of the plaintiffs under international law and municipal law with the result that the plaintiffs had lost their claims for damages against the USA and its President.
- That this waiver of the plaintiff’s claims by the defendant, the state gave rise to an obligation on the part of the defendant to pay damages to the plaintiffs.”⁵

The District court held that this action must fail on the merits .So this is an unsuccessful case in the history. The court held that the aerial bombardment with atomic bombs of the cities of Hiroshima and Nagasaki was an illegal act of hostilities according to the rules of international law. It must be regarded as indiscriminate aerial bombardment of undefended cities, even if it were directed at military objectives only, inasmuch as it resulted in damage comparable to that caused by indiscriminate bombardment. Nevertheless, the claimant as an individual was not entitled to claim damages on the plane of international law, nor was he able as a result of the doctrine of sovereign immunity, to pursue a claim on the plane of municipal law. In these circumstances the plaintiffs had no rights to lose as a result of

history –The Manhattan Project article written on 12th May 2017 –atomicheritage .org/history/Manhattan-Project

⁵ Japanese Annual of International Law ,No.8(1964),p.212

the waiver contained in Article 19(a) of the treaty of peace with Japan⁶

So according to the law this was an unsuccessful effort which was taken by the bomb victims.

Legality of the Use by a State Of Nuclear Weapons in Armed Conflict. Advisory Opinion of 8 July 1996

In 1993 The World Health Organization requested the opinion from the international court of justice in Hague Netherlands, about legality of the use by a state of nuclear weapons in armed conflict .But the court refused to act on that request by saying that The WHO is acting ultra vires and they don't have a right for an such request. So the United Nations General assembly did another request in 1994 and an advisory opinion was issued in 1996.

“there is no source of law , customary or treaty that explicitly prohibits the possession or even use of nuclear weapons. The only requirement being that their use must be in conformity with the law on self – defence and principles of international humanitarian law”⁷

Therefore we didn't have any authority to prevent or prohibit the use of nuclear weapons. At this time peoples have the freedom to develop, test, produce,

⁶ Hanrei Jiho ,vol355,p17 translated in The Japanese Annual of International Law ,vol 8,1964

⁷ Legality of the Threat or Use of **Nuclear Weapons** [1996] ICJ 2

manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices in their countries .No one was looking at them.

Anti-nuclear movements were fighting for a future which has restrained the use of nuclear weapons. They enormously tried to show the bad outcomes and future losses of using nuclear power as a weapon against the mankind .Not only that but also they asked for a legally binding agreement or anything in that manner to bind those stubborn states who were training this evil force

Treaty on The Prohibition Of Nuclear Weapons (Tpnw) 2017

Treaty on the prohibition of nuclear weapons or the nuclear weapon ban treaty is one of the finest outcomes of the efforts of anti –nuclear weapons movements. This is the first agreement which ban the nuclear weapons with the ultimate goal of total elimination nuclear weapons .This treaty was passed on 7 July 2017⁸ Although this agreement is still not in force it bares treasures constituents as an international agreement.

Article 1 of the treaty strictly prohibits the use, develop, manufacture and other activities which is related to nuclear weapons. Therefore a party who have signed

⁸ en.wikipedia.org/wiki/Treaty_on_the_Prohibition-of_Nuclear_Weapons

the treaty don't have the power to develop nuclear weapons.

Article 1: Prohibitions

1. Each State Party undertakes never under any circumstances to:

(a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices;

(b) Transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly;

(c) Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;

(d) Use or threaten to use nuclear weapons or other nuclear explosive devices;

(e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty;

(f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this Treaty;

(g) Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control⁹

Each state who has signed the treaty has to declare about their current situation regarding the nuclear weapons. So states cannot launch

⁹ Article 1 of Treaty on the prohibition of nuclear weapons 2017

their nuclear weapons projects secretly and confidentially.

Article 2: Declarations

Each State Party shall submit to the Secretary-General of the United Nations, not later than 30 days after this Treaty enters into force for that State Party, a declaration in which it shall:

(a) Declare whether it owned, possessed or controlled nuclear weapons or nuclear explosive devices and eliminated its nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities, prior to the entry into force of this Treaty for that State Party;

(b) Notwithstanding Article 1 (a), declare whether it owns, possesses or controls any nuclear weapons or other nuclear explosive devices;

(c) Notwithstanding Article 1 (g), declare whether there are any nuclear weapons or other nuclear explosive devices in its territory or in any place under its jurisdiction or control that are owned, possessed or controlled by another State.

1. The Secretary-General of the United Nations shall transmit all such declarations received to the States Parties.¹⁰

Article 3: Safeguards

¹⁰ Article 2 of the Treaty on the prohibition of nuclear weapons 2017

Each State Party to which Article 4, paragraph 1 or 2, does not apply shall, at a minimum, maintain its International Atomic Energy Agency safeguards obligations in force at the time of entry into force of this Treaty, without prejudice to any additional relevant instruments that it may adopt in the future.

Each State Party to which Article 4, paragraph 1 or 2, does not apply that has not yet done so shall conclude with the International Atomic Energy Agency and bring into force a comprehensive safeguards agreement (INFCIRC/153 (Corrected)). Negotiation of such agreement shall commence within 180 days from the entry into force of this Treaty for that State Party. The agreement shall enter into force no later than 18 months from the entry into force of this Treaty for that State Party. Each State Party shall thereafter maintain such obligations, without prejudice to any additional relevant instruments that it may adopt in the future.¹¹

Article 4: Towards the total elimination of nuclear weapons

This is the ultimate goal of the agreement. According to this Article with the time passes states will be refraining from developing , manufacturing or testing new nuclear weapons.

Each State Party that after 7 July 2017 owned, possessed or controlled nuclear weapons or other nuclear explosive devices and eliminated its nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities, prior to the entry into force of this Treaty for it, shall cooperate with the competent international authority designated pursuant to paragraph 6 of this Article for the purpose of verifying the irreversible elimination of its nuclear-weapon programme. The competent international authority shall report to the States Parties. Such a State Party shall conclude a safeguards agreement with the International Atomic Energy Agency sufficient to provide credible assurance of the non-diversion of declared nuclear material from peaceful nuclear activities and of the absence of undeclared nuclear material or activities in that State Party as a whole. Negotiation of such agreement shall commence within 180 days from the entry into force of this Treaty for that State Party. The agreement shall enter into force no later than 18 months from the entry into force of this Treaty for that State Party. That State Party shall thereafter, at a minimum, maintain these safeguards obligations, without prejudice to any additional relevant instruments that it may adopt in the future.

Notwithstanding Article 1 (a), each State Party that owns, possesses or controls nuclear weapons or other nuclear explosive devices

¹¹ Article 3 of the Treaty on the prohibition of nuclear weapons 2017

shall immediately remove them from operational status, and destroy them as soon as possible but not later than a deadline to be determined by the first meeting of States Parties, in accordance with a legally binding, time-bound plan for the verified and irreversible elimination of that State Party's nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities. The State Party, no later than 60 days after the entry into force of this Treaty for that State Party, shall submit this plan to the States Parties or to a competent international authority designated by the States Parties. The plan shall then be negotiated with the competent international authority, which shall submit it to the subsequent meeting of States Parties or review conference, whichever comes first, for approval in accordance with its rules of procedure.

A State Party to which paragraph 2 above applies shall conclude a safeguards agreement with the International Atomic Energy Agency sufficient to provide credible assurance of the non-diversion of declared nuclear material from peaceful nuclear activities and of the absence of undeclared nuclear material or activities in the State as a whole. Negotiation of such agreement shall commence no later than the date upon which implementation of the plan referred to in paragraph 2 is completed. The agreement shall enter into force no later than 18 months after the date of initiation of negotiations.

That State Party shall thereafter, at a minimum, maintain these safeguards obligations, without prejudice to any additional relevant instruments that it may

adopt in the future. Following the entry into force of the agreement referred to in this paragraph, the State Party shall submit to the Secretary-General of the United Nations a final declaration that it has fulfilled its obligations under this Article.

Notwithstanding Article 1 (b) and (g), each State Party that has any nuclear weapons or other nuclear explosive devices in its territory or in any place under its jurisdiction or control that are owned, possessed or controlled by another State shall ensure the prompt removal of such weapons, as soon as possible but not later than a deadline to be determined by the first meeting of States Parties. Upon the removal of such weapons or other explosive devices, that State Party shall submit to the Secretary-General of the United Nations a declaration that it has fulfilled its obligations under this Article.

1. Each State Party to which this Article applies shall submit a report to each meeting of States Parties and each review conference on the progress made towards the implementation of its obligations under this Article, until such time as they are fulfilled.
2. The States Parties shall designate a competent international authority or authorities to negotiate and verify the irreversible elimination of nuclear-weapons programmes, including the elimination or irreversible conversion of all nuclear-weapons-related facilities in accordance with paragraphs 1, 2 and 3 of this Article. In the event that such a designation has not been made prior to the entry into force of this Treaty for a

State Party to which paragraph 1 or 2 of this Article applies, the Secretary-General of the United Nations shall convene an extraordinary meeting of States Parties to take any decisions that may be required.¹²

Article 6: Victim assistance and environmental remediation

Each State Party shall, with respect to individuals under its jurisdiction who are affected by the use or testing of nuclear weapons, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.

Each State Party, with respect to areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons or other nuclear explosive devices, shall take necessary and appropriate measures towards the environmental remediation of areas so contaminated.

1. The obligations under paragraphs 1 and 2 above shall be without prejudice to the duties and obligations of any other States under international law or bilateral agreements.¹³

¹² Article 4 of the Treaty on the prohibition of nuclear weapons 2017

¹³ Article 6 of the Treaty on the prohibition of nuclear weapons 2017

According to Article 6.2 the states shall take necessary actions to prevent the environmental pollution which rose as a result of using nuclear energy. Nuclear power and environment .What is the relationship between these two? Specially, nuclear weapons are consisted of various components which hazardous to the environment.

“There is a great deal of hazardous substances used and disposed of during production of nuclear weaponry. These include plutonium, uranium, benzene, polychlorinated biphenyls (PCBs), strontium, cesium, mercury and cyanide. All of these materials have negative impacts on the environment and often find their way into oceans, rivers and soil harming wildlife living local to the production of the weaponry. Unlike conventional bombs, the power of nuclear weapons comes from thermal and ionizing radiation generated by the splitting or joining together of atoms. Ionizing radiation, unique to the nuclear bomb, causes additional damage and death. Exposure to this form of radiation causes the victim to suffer greatly, with no effective medical treatments to help them. Synonymous with nuclear explosions, "mushroom clouds" are formed through the displacement of vast amounts of earth, water and debris which becomes radioactive. This debris then falls back to earth and contaminates very large areas surrounding the initial location of the explosion rendering it uninhabitable for many years.”¹⁴

¹⁴Alessandro Pirolino-How nuclear warfare affects the environment-
Azocleantech.com/article.aspx?ArticleD=31

Conclusion

According to specialists the life on the Earth began nearly 4.28 billion years ago and it was microorganisms who originated firstly on earth. Since then, with the help of the nature and other chemical components on earth, organisms have developed and have come this far. Now we are influential humans who have knowledge and capacity to invent new things which will definitely brighten our race. With the revolution of human, peoples invented so many new things. They invented fire, wheel, writing systems, vehicles, medicines and etc. So undoubtedly nuclear power is one of the greatest achievements of mankind. With the decrease of natural energies, nuclear power is a new solution. Most of the countries use nuclear power to fulfill their day today energy essentials.

But, the problem is with the master of this servant. If he uses this servant to kill or threaten his enemies it obviously turns into an evil who can't differentiate good or bad. So as developed humans we must stop the evil use of nuclear power because every living creature on this earth deserves an undisrupted life.

Earlier we didn't have any binding authority to stop the use of nuclear weapons. So as the first international agreement on prohibiting the use of nuclear weapons, The Treaty on prohibition of nuclear weapons 2017 is a helping hand to protect mankind being the victims of this evil force.

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