

International Law and the Challenge of Peaceful Application of Nuclear Energy

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Abstract: It is worthy of note that the use of nuclear energy for peaceful purposes has been recognized in many regional treaties, bilateral and multilateral conventions, as well as, basic principle of international law, namely, right to development and right of self-determination. In recent years, ambiguity determining the scope of peaceful application of nuclear energy technology has been posed serious challenges to the international community. The Non-Nuclear Weapon States (NNWS) believe international conventions recognizes all forms of peaceful use of nuclear energy, while Nuclear Weapon States (NWS) discuss this inalienable right of State Parties to use nuclear energy for peaceful purposes cannot include enrichment uranium, reprocessing and other sensitive nuclear fuel making activities.

Keywords: nuclear energy, peaceful application, international law, NPT Treaty.

I. INTRODUCTION

Recently, there has been a resurgence among nations in the international level towards the acquisition of nuclear energy for peaceful purposes as a favorable source of energy for the sustainable development in various economic fields¹. Indeed, this is due to peaceful application of nuclear energy can be used in the different fields, *namely*, electricity generation, water resources management, agricultural development, cancer therapy and improvement of poverty alleviation, environmental protection, food security, and general healthcare². The IAEA reported "there are 29 countries in the world operating nuclear power plants and about 65 countries without nuclear power plants but "are expressing interest in, considering, or actively planning for nuclear power at present"³. In this regard, "of the 65 countries expressing an interest in the introduction of nuclear power, 21 are in Asia and the Pacific region, 21 are from the Africa region, 12 are in Europe and 11 in Latin America"⁴. This research paper attempt to analysis the challenge of peaceful application of nuclear energy in the international law. A global campaign to halt proliferation of nuclear weapons and elimination of nuclear stockpiles and other nuclear explosive devices in NWSP has also led to promotion of peaceful application of nuclear energy technology among NNWSP. The international and regional treaties, as well as the basic principles of international law support peaceful application of nuclear energy technology without discrimination among states parties in conformity with international, regional and national safeguards to prevent proliferation of nuclear weapons and other nuclear explosive

¹ Adamantiades & Kessides. Nuclear power for sustainable development: Current status and future prospects. Journal of Energy Policy 12, Vol 37, Issue 12, 2008, p 1.

² Shenasaee, Hedayatollah& Taji, Hossien, Iran, Article IV and Multilateral Approaches for the Nuclear Fuel Cycle, presentation submitted during the 3rd Int. Virtual Conference on Iran and the World Contemporary Developments, October 2012.

³ IAEA, International Status and Prospects of Nuclear Power, Report by the Director General, IAEA Doc. GOV/INF/2010/12-GC (54)/INF/5.

⁴ Ibid, p 10.

devices⁵. In this Article, two distinct areas would be examined. First, the Article would focus on the review of basic and fundamental principles of international law upholding right of states parties to peaceful application of nuclear energy technology without discrimination which is derived from United Nations Charter. Furthermore, the Article would also look into the review of laws relating to international and regional regulations in the field of peaceful application of nuclear energy technology. In this respect, a proper review of peaceful application and uses of nuclear energy would be done in relation to the United Nations General Assembly Resolutions, regional treaties and NPT treaty.

II. PEACEFUL NUCLEAR ENERGY IN THE UNITED NATIONS CHARTER

There is no sentence in the Charter of United Nations about peaceful use of nuclear energy, but many international principles accepted by UN Charter encourages nations to use nuclear energy technology for peaceful purposes. Actually, after the dropping of two atomic bombs on Hiroshima and Nagasaki at the close of World War II, it was evident that nuclear weapons arsenals have inherent potential for destroying an essential portion of the earth's population, catastrophic and contaminating vast areas of earth's surface and producing unforeseeable and uncontrollable biological and environmental consequences.⁶ Thus, the basic principle of international law adopted by the UN Charter recognize the maintenance of international peace and security requires nuclear disarmament, non-proliferation of nuclear weapon and peaceful application of nuclear energy. In this regard, the preamble of UN Charter recognizes 'right to development' of nations "to promote social progress and better standards of life in larger freedom" and to ratify "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small" in the peaceful atmosphere.⁷ Article 1 of Declaration on the Right to Development (1986) defines such right as "an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized".⁸

Actually, right to development in this concept is a part of 'right of self-determination' which means all people have the right freely to determine their political status and to pursue their economic, social and cultural development, full and complete sovereignty over all their natural wealth and resources.⁹ The self-determination of people is listed in the Article 1(2) of the UN Charter as a general purpose of the United Nations, as follows¹⁰: "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace"; Article 55 of the UN Charter is known as a specific purpose of the United Nations in the promotion of economic and social cooperation "with a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote"¹¹ Moreover, Article 1 (1) (2) of International Covenant on Economic, Social, and Cultural Rights (1966) declares¹²:

1. "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence".

The Principle II of the Rio Declaration on Environment and Development expressly recognise the 'states sovereignty' to exploit their own natural resources pursuant to their own environmental and developmental policies. Therefore, it should

⁵ Shenaseai, Hedayatollah & Hanim Kamaruddin, Sustainable Development and Peaceful Application of Nuclear Energy, the presentation submitted during 3rd International Conference on Business and Economic Research Proceeding, Indonesia, 2012.

⁶ E. L. Meyrowitz, 'The law of the war and nuclear weapons', BROOKLYN J.INT'L L (1983), Vol. IX:2,227

⁷ See UN Charter, preamble, para. 1.

⁸ See the Declaration on the Right to Development, Article 1.

⁹ See International Covenant on Economic, Social and Cultural Rights, Article 1.

¹⁰ See UN Charter, Article. 1 (2)

¹¹ Ibid, Article. 55

¹² See International Covenant on Economic, Social and Cultural Rights, supra note 28, Article 1(1)(2)

be said, although UN Charter has not mentioned directly about the use of nuclear energy for peaceful purposes, but there are a number of generally accepted principles in the UN Charter that encourage nations for the use of nuclear energy just for peaceful purposes. Actually, all nations of world have the inalienable right to progress economically, socially and culturally with due regard to their freedom to exploit their own resources pursuant to their own environmental and developmental policies.

III. PEACEFUL NUCLEAR ENERGY IN THE UN GENERAL ASSEMBLY RESOLUTIONS

The UNGA Resolutions have a key role in promoting the strategy of use of nuclear energy just for peaceful purposes. Under the Resolution 1515 (XV) has been emphasized expressly that "one of the principle objectives of the United Nations is to promote higher standards of living and that Member States have pledged themselves to take joint and separate action to achieve this purpose", thus, "the primary duty of the United Nations is to accelerate the economic and social advancement of the less developed countries of the world, contributing to safeguarding their independence and helping to close the gap in standards of living between the more advanced and the less developed countries".¹³ In this respect, the development of nuclear energy technology among nations is considered as one of the important matters in the UNGA Resolutions from discovery moment of atomic energy until today due to several reasons: 1) the importance of reduction of global dependence on fossil fuel imports; 2) global need to diversify fuel sources; 3) serious immunity improvement against power disruptions; 4) reducing greenhouse gas emissions and air pollution; 5) serious mitigation in the fuel costs; 6) the multiple uses of nuclear technology in the different fields namely, agriculture, medicine and electricity¹⁴.

After discovery of atomic energy, the UN General Assembly resolution expressly emphasized that all benefits arising from the discovery of atomic technology should be placed at the service of mankind in order to assist in lifting the burdens of hunger, poverty and disease¹⁵. To achieve to such goal "all nations should co-operate in promoting the dissemination of knowledge in the realm of nuclear technology for peaceful ends"¹⁶. For such reason, the resolution suggested all nations to negotiate for establishment of an International Atomic Energy Agency without delay to facilitate the use of peaceful application of nuclear technology and encourage nations for further co-operation in this respect. In the Resolution 1148 (XII), the Assembly declared the stocks of fissionable material must be used only for peaceful and non-weapons purposes under effective international control.¹⁷ Moreover, the UN General Assembly resolution 2092 (XX) declared all fissionable resources released from disarmament should be utilized for economic development of developing nations.¹⁸ For the first time, the term "inalienable right" to use nuclear energy for peaceful purposes has been used in the UNGA Resolution 2661 (XXV), as follow:¹⁹

The General Assembly

Noting the all States has the inalienable right to develop research, production and the use of nuclear for peaceful purposes without discrimination,

Aware of the development of new techniques for uranium enrichment,

Considering that these new techniques may contribute to the promotion of the use of nuclear energy for peaceful purposes,

Considering also that material produced by these new techniques may be diverted for weapons purposes unless subject to effective safeguards,

Noting that the International Atomic Energy Agency is engaged in the study of safeguards under the treaty on the non-proliferation of nuclear weapons,

¹³See GA Res. 1515(XV), Supplement No. 21, 29 (A/ 4648), 15 December 1960.

¹⁴ See A. Adamantiades &I. Kessides, supra note 1.

¹⁵ GA Res. 808 (IX), 4 November 1954. Supplement No. 20.68 (A/2779)

¹⁶ Ibid.

¹⁷ See GA Res 1148 (XII), 14 November 1957, Supplement No. 24 (A/3729 and corr.1).

¹⁸ See GA Res 2092 (XX), 20 December 1965. Supplement No. 44 (A/6195)

¹⁹ See GA Res. 2661 (XXV), 7 December 1970, Supplement No. 27 (A/8198).

1. Requests the International Atomic Energy Agency to pay attention also to the safeguards required with respect to new techniques for uranium enrichment

Moreover, the Resolution 3478 (XXX) clearly wanted to potential benefits peaceful application of nuclear explosions to be available to the all nations without any discrimination and dual standards²⁰. The Resolution 31/75 also emphasized on vital importance of establishment of effective international safeguards for ensuring this matter that peaceful nuclear technology cannot lead to further proliferation of nuclear weapons²¹. The legitimate right of states to develop or acquire nuclear technology for peaceful purposes also has been recognized the Resolution 32/50²². This Resolution also affirmed the legitimate right of nations to participate in the fullest possible transfer of nuclear equipment, materials and technology under international safeguards on non-discriminatory basis in order to prevent effectively proliferation of nuclear weapons²³. The Resolution 33/91H also prevented all nations to produce fissionable material for nuclear weapons purposes, while it is not mentioned any restriction for production of fissionable material for peaceful purposes²⁴:

Considering that the acceptance by all States of binding and verifiable controls in the form of full scope safeguards, on a non-discriminatory basis, on all production of fissionable material, so as to ensure that it is not used for nuclear weapons or other nuclear explosive devices, would contribute towards the efforts to promote non-proliferation, limit further production of nuclear weapons and facilitate nuclear disarmament;

The Resolution 2373 (XXII) also describe the applicable scope of the peaceful nuclear technology. Accordingly, all nations have the right "to engage in research, production and use of nuclear energy for peaceful purpose and will be able to acquire source and special fissionable material, as well as equipment for the processing, use and production of nuclear energy for peaceful purposes"²⁵.

IV. PEACEFUL NUCLEAR ENERGY IN THE REGIONAL TREATIES

The regional treaties are considered as one the most important source of international nuclear law, in particular, in relation to peaceful application of nuclear technology. The treaty of Tlatelolco is the first regional treaty supported peaceful application of nuclear technology. Article 1of the treaty promulgate the state parties should use nuclear material exclusively for peaceful purposes²⁶. Article 18 of the Treaty seem to be much more critical in the field of peaceful application of nuclear energy. Article 18 (1) expand the applicable scope of peaceful nuclear technology to explosions of nuclear devices for peaceful purposes, as follows²⁷:

"the Contracting Parties may carry out explosions of nuclear devices for peaceful purposes-including explosions which involve devices similar to those used in nuclear weapons- or collaborate with third parties for the same purpose, provided that they do so in accordance with the provisions of this article and the other articles of the treaty, particularly articles 1 and 5".

Moreover, Article 4 of the Treaty of Rarotonga recognized inalienable right of nations to use nuclear energy. It should be noted that this article expressly forbids the use or production of fissionable material for peaceful purposes unless subject to the international safeguards²⁸. Article 8 of the Treaty of Pelindaba also recognizes legitimate right of states parties to develop research, production and use of nuclear energy for peaceful purposes without discrimination in conformity with international safeguards²⁹. The use of nuclear technology for peaceful ends have been supported in Article 7 of the Treaty on a Nuclear-Weapon- Free Zone in Central Asia so that no provision of this Treaty shall prejudice the right of Parties to

²⁰ See GA Res. 3478 (XXX), 11 December 1975, Supplement No. 122 (A/10447).

²¹ See GA Res. 31/75, 10 December 1976, Supplement No. 116 (A/31/388)

²² See GA Res. 32/50, 8 December 1977. Supplement No. 14 (A/32/L.15/Rev.1 and Rev.1/Add.1).

²³ Ibid.

²⁴ See GA Res. 33/91H, 16 December 1978. Supplement No. 47 (A/33/435, A/33/L.33)

²⁵ See GA Res. 2373 (XXII), UN GAOR, 12 June 1968, Supp. No 1, UN Doc. A/S- 10/1)

²⁶ Treaty of Tlatelolco, Article 1.

²⁷ Treaty of Pelindaba, Article 1.

²⁸ Treaty of Rarotonga, article 4.

²⁹ Treaty of Pelindaba, Article 8.

use nuclear energy for peaceful purposes³⁰. Article 4 of Treaty of Bangkok also recognized the legitimate right of the state parties to use nuclear energy, in particular for their economic development and social-progress³¹.

V. PEACEFUL NUCLEAR ENERGY IN THE NPT TREATY

The NPT treaty should be considered as a centrepiece of multilateral efforts at arms control. Mohammed ElBaradei, the Former President of IAEA Board of Governors believed: "The core of the Treaty on the Non Proliferation of Nuclear Weapons can be summed in two words: "security" and "development". While the States Party to this treaty hold differing priorities and views, I trust that all share these two goals: development for all through advanced technology; and security for all by reducing –and ultimately eliminating– the nuclear threat"³². Historically, this treaty was result of several unsuccessful attempts to eliminate all nuclear weapons stockpile and other nuclear devices.³³ In fact, after the mass production of nuclear weapons, international community start to stop the proliferation of this weapon by other countries. Anyway, all international attempts to eliminate nuclear weapons was unsuccessful in practice. On 8 December 1953, a proposal submitted by President Eisenhower tried to create new prospect in the application of nuclear technology by stressing the most beneficial uses of nuclear energy for peaceful purposes.³⁴ The result of global negotiations on implementing Eisenhower's proposal (the Atoms for Peace) was the establishment of the IAEA with three main goals: non-proliferation nuclear weapon, peaceful application of nuclear energy and disarmament³⁵.

The conclusion of Irish Resolution should be considered as an end of nuclear disarmament dream and move towards realistic approaches to arms controls³⁶. In Irish Resolution, the UN General Assembly called international community for adopting measures to limit the spread of nuclear weapons to additional countries and prevent states to transfer or acquisition of such weapons.³⁷ After China nuclear detonation, the international negotiations was re-start in accordance with provision of UNGA Resolution 2028 which determined five principles for the NPT treaty, *namely*: 1) the Treaty should not have any loop-holes which may permit nuclear or non-nuclear weapon states to manufacture, use or proliferate nuclear weapons in any form; 2) the Treaty must contain an acceptable balance regarding the rights and obligations of both nuclear and non-nuclear weapon states; 3) the last goal of Treaty should be the achievement of complete nuclear disarmament.³⁸ Article IV of the NPT treaty is symbol of civilian use of nuclear technology that NNWS have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Article IV of the NPT treaty declares³⁹:

1. Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.
2. All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also co-operate in contributing alone or together with other States or international organizations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.

³⁰ Treaty on a Nuclear-Weapon- Free Zone in Central Asia was signed 8 September 2006 and entered into force 21 March 2009.

³¹ The Treaty of Bangkok, Article 4.

³² Mohammed ElBaradei, the Former President of IAEA Board of Governors,, Available at <<http://www.un.org/en/conf/npt/2005/statements/npt02iaea>>

³³ See Maurice Andem, 'The Treaty on the Non-Proliferation of Nuclear Weapons (NPT): Some reflections in the light of North Korea's refusal to all international inspection of its nuclear facilities' 64 Nordic Journal of International Law, 1995.575, 576

³⁴ Ibid.

³⁵ Ibid.

³⁶ Shirley V. Scott, International Law in World Politics, Lynne Rienner Publishers, 2004, p 191.

³⁷ 'See Xinjun Zhang, The Riddle of Inalienable Right in Article IV of the Treaty on the Non-Proliferation of Nuclear Weapons International Ambiguity, (2006) 5 Chinese Journal of International Law, p 3.

³⁸ See Emily Bailey et al, p 5.

³⁹ See NPT, Article IV.

Article IV include two basic parts that recognized an inalienable right of NNWS "to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with article I and II", as well as "the right of nations "to facilitate and participate in the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy"⁴⁰. The term 'inalienable right' in Article IV should be in conformity with articles I, II and III of the NPT⁴¹. Therefore, all signatures to the NPT Treaty have the right to enrich uranium, reprocessing and other sensitive nuclear fuel-making activities because it is part of the right of states for peaceful application of nuclear energy. Actually, states have the right [1] to develop research, production and use of nuclear energy for peaceful purposes [2] without discrimination and [3] in conformity with Articles I and II of this Treaty.

The use of the term 'for peaceful purpose' in the Article IV is for re-emphasize this matter that states have the right to use sensitive and non-sensitive nuclear activities only for peaceful purpose. It should be noted that inalienable right of states to use peaceful nuclear energy must be exercised 'without discrimination'⁴². The use of term "without discrimination" not only included 'benefits-without-discrimination', but also all forms of sensitive and non-sensitive nuclear activities. The preamble of treaty recognizes the principle of ' benefits-without-discrimination' that "the benefits of peaceful applications of nuclear technology, including any technological by-products which may be derived by nuclear weapon States from development of nuclear explosive devices, should be available for peaceful purpose to all Parties of the treaty, whether nuclear-weapon or non-nuclear weapon states"⁴³. The drafter of the NPT intended to prevent any dual-standards between states parties to develop peaceful application of nuclear energy⁴⁴.

The lack of discrimination and dual standards in implementation of peaceful uses of nuclear energy was type of guarantee given by the NPT to the NNWSP⁴⁵. It should be noted the use of term "fullest possible" r in the paragraph six emphasized on the right of all nations to participate in the fullest possible exchange of scientific information⁴⁶. Therefore, the principle of the fullest possible in field of nuclear activities cannot be limited as long as it is under NPT treaty, IAEA safeguards and international community. Bertrand Goldschmidt, Former directors of the Board of Governors of the IAEA, believed based on the NPT Treaty the use of nuclear energy for peaceful purposes companied with no restrictions except the explicit ban on nuclear explosion in the international regulations⁴⁷. Thus, the peaceful application of nuclear energy is free from any technical fix of Safeguards which perhaps makes sensitive nuclear activities lead to the manufacture of nuclear weapon or other nuclear explosive devices. The peaceful uses of nuclear energy can be summarized in one sentence: 'explosion was forbidden, everything else was allowed; and that nothing in NPT prohibited Party States from following the technical path of their choice'⁴⁸. Actually, the sensitive nuclear activities should not be a taboo to exercise more restrictions on inalienable right of states parties to use nuclear energy for peaceful purpose because this can be considered to rewrite valid international norms and agreement⁴⁹.

VI. CONCLUSION

Generally speaking, the multilateral and bilateral measures, UN General Assembly and UN Security Council Resolutions, regional treaties and international conventions, as well as basic principles of international law support the use of nuclear energy technology for peaceful purposes without discrimination and dual standards among state parties in conformity with various national and international safeguards to prevent proliferation of nuclear weapons. Actually, the basic principle of International law, namely, right to development and right of self-determination of sovereign state emphasized on this matter that peaceful application of nuclear energy is the best way to prevent proliferation of nuclear weapons in whole world. For such reason, international community should respect to country's choices and decision regarding development of peaceful application of nuclear energy in developing nations. With regard to standpoint of NPT Treaty

⁴⁰ Ibid.

⁴¹ See NPT, Article IV (1)

⁴² Ibid.

⁴³ See NPT, preamble, para.7.

⁴⁴ Shenasaie, Hedayatollah & Taji, Hossien, supra note 2.

⁴⁵ Ibid.

⁴⁶ NPT. Preamble, para. 6.

⁴⁷ Zhang, supra note 38, p 21.

⁴⁸ Shenasaie, Hedayatollah & Shirvani, Faramarz, Article IV of the NPT Treaty and Legitimacy of Sensitive Nuclear Activities, Asian Social Science; Vol. 10, No. 3; 2014, p 120-128.

⁴⁹ Ibid.

about peaceful nuclear energy it should be said there is no difference between sensitive and non-sensitive nuclear activities under international law because sensitive nuclear activities are continuing of non-sensitive activities.

It is not logical to distinguish these activities from each other with an allegation that sensitive nuclear activities can eventually lead to proliferation of nuclear weapons in the whole world. Accordingly, it should be noted any action by states to create limitation on such right should be considered as a violation of basic principle of international law, *namely*, non-interference in domestic affairs of other states, right to development and right to self-determination. There is basic formula under international law regarding nuclear law on peaceful application of nuclear energy- “nuclear explosion is forbidden, everything else is allowed”. Thus, it is discrimination in international law, if some state parties can have indigenous nuclear fuel cycle, but unjustified restrictions imposed to developing nations for having full access to nuclear technology for peaceful purposes, namely, uranium enrichment technology, reprocessing activities and other nuclear fuel making activities. Therefore, the sensitive nuclear activities should not be taboo to exercise more restrictions on inalienable right of states parties to use nuclear energy for peaceful purpose because this can be considered to rewrite valid international norms and agreement.

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