



Nuclear Weapons and International Law in the Contemporary Era

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**Keynote Address by Ms. Izumi Nakamitsu
High Representative for Disarmament Affairs**

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Ladies and gentlemen,

It is an honour for me to have been given this opportunity to address this Video Conference on Nuclear Weapons and International Law. While there are many aspects of international law relevant to nuclear weapons, today I want to focus on the nuclear disarmament regime and its roots in international law.

In the 75 years since the creation of the United Nations, the international community has established an international regime composed of diverse instruments to advance its goal of the total elimination of nuclear weapons. It is a mix of multilateral, plurilateral and bilateral treaty law supported by enduring norms against nuclear weapons. Taken as a whole, the regime imposes a number of important obligations on States, many of which are domesticated into national law. It also forms the foundation for and provides fora to negotiate further nuclear disarmament measures.

Though this system has moved us closer to the goal of a world without nuclear weapons, we are not there yet. Comparing the situation of nuclear weapons to that of other weapons of mass destruction – chemical and biological weapons – there is still a considerable way to go. The latter have been totally prohibited by multilateral treaties that have been ratified by nearly all States, including many of those that possessed those weapons in the past. Today, I would like to provide an informal assessment of the nuclear disarmament regime as it stands now and make some suggestions for how it can be further strengthened.

Ladies and gentlemen,

It has become axiomatic that the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is the cornerstone of the global nuclear non-proliferation regime and an essential foundation for the pursuit of nuclear disarmament. Though not entirely successful in stopping the spread of nuclear weapons beyond the five countries that had acquired them by 1967, it has prevented the once-predicted nightmare scenario of a world with dozens of nuclear-armed States.

From a historical perspective, the negotiation of this Treaty came about as disarmament negotiators were shifting to what has become known as the “step-by-step” or “building blocks” approach. Such steps included the Partial Test Ban Treaty and the Threshold Test Ban Treaty, the Outer Space Treaty, the Seabed Treaty and reductions in the nuclear arsenals of the Soviet Union and the United States under various agreements.

While the NPT has been, by and large, successful in fulfilling its non-proliferation mission and facilitating the peaceful uses of nuclear energy, its non-nuclear weapon States Parties have long expressed concerns that their nuclear-weapon State counterparts are not living up to their obligations under Article VI of the Treaty, in which “[e]ach 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.”

After the indefinite extension of the NPT in 1995, its Review Conferences became de facto nuclear disarmament negotiating forums. Unfortunately, implementation of agreements on further steps in disarmament has been either slow or absent, as some consider them to be no longer reflective of the international security environment.

The Comprehensive Nuclear-Test-Ban Treaty (CTBT) – the next major step in the step-by-step process – was adopted in 1996 and has been widely ratified, but due to its onerous requirements, it has yet to enter into force. The Conference on Disarmament has since been unable to agree to begin negotiations on a fissile material cut-off treaty, or on any other instrument for that matter. Indeed, what is referred to as the “UN disarmament machinery” is by and large paralyzed when it comes to nuclear disarmament.

Ladies and gentlemen,

The multilateral, global nuclear disarmament regime has always evolved in parallel with and been complemented by, regional, plurilateral and bilateral efforts.

At the regional level, several regions have declared themselves to be nuclear-weapon-free zones and adopted treaty-based obligations to this effect. These include Latin America and the Caribbean, the South Pacific, Southeast Asia, Africa and Central Asia. While each of these treaties was separately negotiated, they all contain a legally binding renunciation of nuclear weapons by all States of the region. Today, approximately 39 percent of the world’s population lives in nuclear-weapon-free zones.

At the bilateral level, the most successful example is the series of treaties between the United States and the Soviet Union, and later the Russian Federation, on the reduction of the size of their deployed nuclear arsenals. As many of you will know, the final arms control treaty remaining in force between the United States and the Russian Federation – New START – is set to expire in February 2021 unless extended. Between them, these two countries still possess more than 90 percent of the world’s nuclear weapons. A return to unconstrained

strategic competition between them is a dangerous proposition. For this reason, UN Secretary-General António Guterres has called for the immediate extension of New START by the maximum five-year period, to buy time for negotiations on future agreements.

A key to the successful implementation of these arrangements has been the inclusion of strict verification mechanisms that build confidence in mutual compliance with treaty provisions.

Despite its often-rarified status, the nuclear disarmament regime does not exist in a vacuum. The trends towards so-called humanitarian disarmament, based on the disproportionate harm that certain weapons would cause, started to affect the nuclear weapons discourse by the end of the 20th century. The International Court of Justice, in rendering its 1996 advisory opinion on the legality of the threat or use of nuclear weapons, grappled with the tremendous humanitarian and environmental impacts of nuclear weapons. Among other things, the Court unanimously determined that nuclear weapons were subject to international law, including international humanitarian law.

In 2010, the NPT Review Conference expressed “deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons.” These potentially dire consequences were more fully explored in a series of conferences, which prompted many States to conclude that the only appropriate course of action was to “stigmatise, prohibit and eliminate nuclear weapons.”

The result of the ensuing process was the Treaty on the Prohibition of Nuclear Weapons (TPNW). When it enters into force on 22 January 2021, it will, for its States Parties, make the possession of nuclear weapons completely illegal in all circumstances. Many TPNW proponents argue that by prohibiting nuclear weapons in the same way as other weapons of mass destruction, the TPNW would contribute to the stigmatization of the possession of nuclear weapons. The Treaty, therefore, is not an end unto itself, but rather one more tool in the global regime that seeks the total elimination of nuclear weapons.

Ladies and gentlemen,

In his Disarmament Agenda “Securing Our Common Future,” Secretary-General Guterres noted that safeguarding the existing norms against nuclear weapons and their proliferation was an essential prerequisite for further progress towards the total elimination of nuclear weapons. Adherence to such norms reinforces the disarmament regime’s legal instruments.

Since they were first used against Hiroshima and Nagasaki 75 years ago, the norm against the use of nuclear weapons has been respected by all States. The logic for this was captured by President Reagan and General Secretary Gorbachev when they jointly stated that a nuclear war cannot be won and must never be fought. As a result of the further study of the humanitarian consequences of nuclear weapons, over 127 States affirmed that “it is in the interest of the very survival of humanity that nuclear weapons are never used again, under any circumstances.”

The norm against nuclear testing is one of the most important successes of the Cold War. Nuclear weapons have had devastating and long-term environmental and health effects on the regions in which they are tested and have historically disproportionately affected indigenous populations. Since 1998, with one exception, all States possessing nuclear weapons have abided by a moratorium on explosive tests.

As essential as the continued existence of these norms is, States have long sought the certainty brought by codification into treaty law. The norm against the use of nuclear weapons, for example, is enshrined in the nuclear-weapons-free zone treaties and the TPNW. The norm against the testing of nuclear weapons is likewise enshrined in the nuclear-weapons-free zone treaties, the TPNW and the CTBT. Unilateral moratoria on the testing of nuclear weapons are valuable but no substitute for a verifiable, legally binding obligation. The verification regime managed by the CTBT continues to demonstrate its effectiveness, yet it will only be fully operational – and therefore able to provide even greater confidence – with the Treaty’s entry-into-force.

Ladies and gentlemen,

The nuclear disarmament regime is a patchwork of overlapping treaties, instruments, agreements and norms. While factors such as the current international security context have, unfortunately, impeded its further development, there are, I believe, a number of steps States can take to lay the foundations for a strengthened regime:

First, long-overdue goals such as the entry-into-force of the **CTBT** and the negotiation of a **fissile material cut-off treaty** should be pursued as a matter of priority and as integral elements of a world free of nuclear weapons.

Second, with the **TPNW** about to enter its force, its States Parties will have to operationalize and develop a Treaty regime, including by completing the tasks related to the total elimination of nuclear weapons left to them by the Treaty's drafters.

Third, I encourage the inhabitants of other regions to pursue **further nuclear-weapon-free zones** as effective measures in pursuit of a world free of nuclear weapons. In this context, the beginning of long-overdue negotiations between States of the region on a Middle East zone free of nuclear weapons and other weapons of mass destruction are welcome.

Fourth, treaty-based nuclear disarmament will require effective **nuclear disarmament verification**. Achieving the total elimination of nuclear weapons will require all States to have confidence in compliance through verification – trust but verify, as the saying goes. Though the exact nature of a nuclear disarmament verification regime will depend on the specifics of the treaty it is meant to verify, important technical work can already begin. Discussion on principles by UN Groups of Governmental Experts and practical exercises to explore the necessary procedures and technologies by groups of States are already ongoing.

Fifth, increased attention is also being paid to ways of **reducing nuclear risk**, including risks for the accidental or unintended use of nuclear weapons. Nuclear risk reduction is no substitute for nuclear disarmament, but it can reinforce the norm against the use of nuclear weapons.

Sixth, States, including the nuclear-weapon States, have already made a number of detailed commitments related to nuclear disarmament, most notably in the context of previous NPT Review Conferences. The **reaffirmation and expedited implementation of these previous commitments** is the logical next step.

The commitments and obligations that make up the nuclear disarmament regime are mutually reinforcing. Failure to honor these commitments or fulfil those obligations weakens the regime and, therefore the framework we use to prevent the use of and bring about the elimination of nuclear weapons. Given the implications of nuclear weapons for human, national and international security, this is in no one's interest. Conversely, prioritizing the fulfilment of nuclear disarmament commitments and obligations improves the security of all and is in the interest of all.

Ladies and gentlemen,

I would like to conclude my remarks with a hope that whatever positions you take on the legality of the threat, use or possession of nuclear weapons, we can all agree that over time, laws and norms evolve and develop. We –humankind – have witnessed this over our history. Through the United Nations, we continue to pursue the progressive development of international law.

With good reason, nuclear disarmament remains the United Nations highest disarmament priority and supporting dialogue to return to a common path towards the total elimination of nuclear weapons remains the first task towards its achievement. The Secretary-General and I remain committed to facilitating this dialogue and will continue to work with all States towards this end.

I thank you very much for your attention.