

DISARMAMENT AND THE RULE OF LAW

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2008 American Bar Association Section on International Law

Spring Meeting

United Nations, New York

31 March 2008

Ladies and gentlemen, distinguished members of the American Bar Association's Section on International Law, let me begin by extending you a warm welcome to the United Nations. It is fitting that you have chosen the UN as a venue for this meeting, given all this great organization and its member states have done to advance the cause of international law over the last six decades – and these efforts are continuing.

The “rule of law”, my subject today, had its origins in early efforts to constrain the rule of absolute monarchs. Over the last several hundred years, it has evolved to encompass the rule of law among – not just within – nation states. Yet the basic idea is similar – it refers to the conduct of international relations within a framework of norms that states regard as binding and that they consider to be in their best interest to uphold.

I am sure you are all quite familiar with this history. You may not, however, be as familiar with how this relates to the field of disarmament. While the rule of law has served disarmament in many ways, I believe that progress in disarmament has also helped – and will continue to help – to advance the rule of law. This is my theme today.

Now, what do I mean by “disarmament”? It appears twice in the UN Charter and has been on the UN agenda since 1946, when the UN General Assembly first identified the twin goals of the *elimination* of weapons adaptable to mass destruction – that is, nuclear, biological, and chemical arms (WMD) – and the *regulation* of conventional armaments.

This basic meaning of the term has changed very little over the last six decades. Borrowing a concept first coined at the League of Nations in the 1920s, the General Assembly first put the term “general and complete disarmament under effective international control” (or GCD) on its agenda in 1959. Then in 1978, at its first Special Session on disarmament, it declared GCD to be the “ultimate objective” of states in the disarmament process. This goal, which also appears in treaties establishing regional nuclear-weapon-free zones, was re-affirmed by the States Parties attending the 2000 NPT Review Conference, and remains today the ultimate strategic goal of the United Nations in this field.

The rule of law for disarmament is largely based on a set of multilateral treaties that seek the elimination of weapons of mass destruction, as well as additional constraints to ban or to limit certain types of conventional arms. Multilateral conventions have outlawed both biological and chemical weapons. Nuclear weapons, however, have been handled differently.

The Nuclear Non-Proliferation Treaty (NPT) prohibited the global spread of nuclear weapons, affirmed the inalienable right to peaceful uses of nuclear energy, and committed all its parties to pursue negotiations at an early date on nuclear disarmament. Upon a request by Costa Rica and Malaysia, Secretary-General Ban Ki-moon circulated last January an updated text of a proposed “Model Nuclear Weapons Convention” (UN document A/62/650), which is intended as a useful tool for exploring how a treaty banning nuclear weapons might be drafted.

Complementing the NPT are treaties establishing regional nuclear-weapon-free zones in Latin America and the Caribbean, the South Pacific, Southeast Asia, Africa, and Central Asia. Other

bilateral treaties between the United States and the Russian Federation – including the Strategic Offensive Reductions Treaty and the Strategic Arms Reduction Treaty (START-I) – have led to lower levels of deployed nuclear weapons and their delivery systems.

Together, these multilateral, regional, and bilateral instruments provide the fundamental building blocks for the international rule of law in the field of disarmament. My brief survey leaves little doubt that while the goals of disarmament are surprisingly constant – the ways and means to achieve such goals have changed considerably over the years.

There is no question that the rule of law for disarmament has evolved very unevenly. It is perhaps most elaborate with respect to WMD. At the multilateral level, it is only just starting to be developed in the field of conventional armaments, as our Member States continue their ongoing efforts to pursue an Arms Trade Treaty, along with additional efforts to prevent the illicit trade in small arms and light weapons, and to ban inhumane weapons. The rule of law is least developed, however, with respect to missiles and other delivery vehicles for weapons of mass destruction – and there is still no multilateral treaty banning space weapons.

Some progress has been made in recent years in establishing a global taboo against helping non-state actors to acquire nuclear weapons. This progress is consistent both with longstanding UN efforts against terrorism – including the antiterrorism resolution 1373 adopted by the Security Council after the 9/11 tragedy – and the UN's broader goal of eliminating all WMD. The Nuclear Terrorism Convention was another significant step in this direction, as was the Security Council's Resolution 1540, which obliges all states to prevent both the proliferation and terrorist acquisition of WMD.

But all I have said so far only refers to a collection of legal instruments – there remains the issue of how they are being implemented. The record here is actually far better than one might expect, if one relied exclusively on the media, which seldom provides updates on the record of international compliance with these great treaties. It is a truth universally acknowledged that violations of the law get more press attention than its day-to-day observance, and this truth is certainly applicable to the global legal regimes in the field of disarmament.

The problem of assessing compliance, however, is not easily solved by simply counting the number of countries that have joined treaties, nor even by just counting the number of violations in a particular year. There may be very few violations, yet the use of even a *single* weapon of mass destruction, especially a nuclear weapon, would have unique and catastrophic effects – both direct and indirect, and both short-term and long-term. International peace and security therefore clearly requires a very high standard of compliance. When it comes to such solemn goals as preventing proliferation and terrorism involving WMD, and fulfilling disarmament obligations – partial compliance is simply not good enough.

It is indeed a great tribute to the resiliency of these regimes that the rare cases of non-compliance have in fact not led to their collapse. In the cases of the well-documented violations of the NPT by Iraq, Libya, and the Democratic People's Republic of Korea – as well as persisting concerns over nuclear activities in Iran – none of these developments has led to a cascade of

proliferation. This is not to say, of course, that the future of these treaties should be taken for granted. A chronic pattern of non-compliance can indeed jeopardize these treaty regimes, and this applies to disarmament as well as non-proliferation.

So how has the world been working to improve compliance under these regimes? The answer relies very heavily upon the pursuit of measures to enhance accountability. When the NPT was extended indefinitely in 1995, for example, the States Parties adopted that decision as part of a package deal that included three additional elements: a decision on a set of “principles and objectives for nuclear non-proliferation and disarmament”, various means to strengthen the treaty’s review process, and the Middle East Resolution, which concerns the goal of establishing a WMD-free zone in that region.

In several General Assembly resolutions and also at the 2000 NPT Review Conference, states have elaborated a set of standards for assessing the performance of agreed commitments. In the field of nuclear disarmament, “irreversibility” is one such standard – namely, that reductions must be undertaken in a manner that will effectively guarantee that the relevant warhead materials will not be re-fabricated into weapons. Another standard is “transparency” – by which states share information to document what they are doing to fulfil their commitments. Disarmament must also be subject to “verification”, which involves active, direct monitoring of disarmament activities. These standards must also be binding – disarmament is clearly not simply a matter of policy, but a legal obligation.

The future of the rule of law for disarmament will depend crucially upon how these standards are implemented. Nobody should expect states to disarm in the mere hope that other states will follow suit. Disarmament must serve national security interests, not jeopardize them. This is the whole point of all the new standards for compliance – to strengthen mutual trust and confidence, and thereby, to enhance security. Disarmament is not a philanthropic act. It is done to provide a level of security that cannot be achieved by other means.

There are of course risks in disarmament – including risks of non-compliance, risks of a sudden “break-out” from a treaty, and risks of failing to detect a prohibited activity. Yet these risks can only be fairly assessed relative to the risks of disarmament’s alternatives. These include the exclusive or combined reliance on nuclear deterrence, non-proliferation controls alone, missile defences, and ever-increasing expenditures on conventional arms.

All of these alternatives, however, have their own risks, very serious ones. The perpetuation and legitimization of deterrence virtually invites proliferation, as more and more states come around to adopting their own deterrent postures. The potential utility of export controls to prevent proliferation by simple denial is eroding with the appearance of new suppliers, and is in constant jeopardy by clandestine supplier networks. Missile defences can be a catalyst to missile proliferation. And there is no permanent security in massive arsenals of conventional arms, which may only inspire states to seek WMD as an asymmetrical response.

This brings me back to my original theme. I think it is clear that the rule of law has served the cause of disarmament by giving commitments in this field the qualities of bindingness and permanence that are simply indispensable. The rule of law not only provides the framework within

which commitments are undertaken, it also provides tools to assist in interpreting them, in confirming their full implementation, and in responding to violations.

Yet disarmament also serves to strengthen the broader rule of law among nations. In the great contest in our world between the rule of law and the law of the jungle, disarmament can be viewed as a process of progressively eliminating weapons that have the potential capability to wipe out entire states, perhaps even jeopardizing human life on the planet. The rule of law among nations would not be of much value in a world left devastated by weapons of mass destruction – and certainly not a world in which nations themselves ceased to exist. As disarmament proceeds, prospects would grow for fulfilling the Charter’s norm against the threat or use of force. By eliminating WMD and curbing the means to launch large-scale conventional wars of aggression, disarmament will also go far in fulfilling the Charter’s mandate for the UN to “establish conditions” under which respect for the obligations of treaties can be maintained.

In a nutshell – disarmament serves the interests of all nations by strengthening international peace and security, which is the highest mission of the United Nations.

Just imagine the conditions facing the rule of law that would exist if one day all legal constraints on the world’s deadliest weapons were suddenly to disappear. We would face a world in which arsenals of WMD were not only growing – both in quantity and in quality – but also appearing in more and more states. Risks would increase that non-state actors would acquire WMD, as the legal and political barriers to such acquisition would fall. This would be a world of might-makes-right – a dark, nightmarish vision indeed.

Many of you here today may recall the many efforts of Hans Corell, the former Legal Counsel of the United Nations, to promote the rule of law. At a conference on the subject in Moscow in November 2000, he appealed to his audience of lawyers, urging them in his words:

... to take whatever action you reasonably can to raise consciousness – amongst parliamentarians, public society research centers, legal professional associations, students, and the public at large – of the key multilateral treaties that international community has concluded over the past half century and of the pressing importance that your government sign and ratify, or accede to them, if has not already done so.

My only contribution to these quotes would be to add that strengthening the rule of law for disarmament is surely among the most challenging responsibilities the world will face in the years ahead. So I warmly welcome you *not only* to the United Nations. I warmly welcome your interest in exploring the field of disarmament – which offers many surprising and important contributions to the rule of law. This is the vision I would like to leave you with today – the vision of a world that takes disarmament seriously by promoting and respecting the rule of law.