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The Non-Proliferation Treaty in the Mirror of Contemporary International Public Order

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Abstract

International law is aimed to control self-interest seekers' behaviors with respect to very universal values which present foundations of the contemporary international community as a whole. The global pluralism may be considered as a product of international public order regulating common interests or needs. Achieving comprehensive results necessitate unified approaches to the most essential issues of international affairs such as non-proliferation of mass destructive nuclear weapons; however, paradoxical treatments in the context of nuclear international co-operations by influencer states show confusing directions against object and purpose of the Non-Proliferation Treaty. This paper through reviewing non-proliferation regime as a tool for global governance establishes that universal public policy requires nuclear-weapon states' compliance from integrity of the Treaty, including disarmament, non-proliferation, and peaceful use. Therefore, selective approach as well as inconsistency to object and purpose of the treaty weakens the pillars of the international public order consolidated by peremptory norms of international law.

Keywords: global governance, international public order, jus cogens, non-proliferation treaty, nuclear weapon states, peaceful use

1. Introduction

In spite of the fact the history of international relations is tied to concerns such as justice, reciprocity, and national interest, international law is mandated to regulate the main reciprocal interests of sovereign actors in the light of respect to universal values. Foundation of the European Concert, codification of international law of human rights, and establishment of international organizations as forums for cooperation, particularly the United Nations, are some instances to endeavor for developing the common interests. Thus, international law, *ab initio,* reflects the very dimensions of pluralism. (Note 1) (Mosler, 1992).

Pluralism in scale of the world to be regular and purposeful invites a kind of normative and structural authority which players share collectively and proportionately. The universal partnership on technical assistance, resource management, standard setting, and decision making represents the notion of global governance addressing transnational crises through organizations, arrangements, policies, rules, norms, procedures, and initiatives. Hence, the responses to challenges of the world may be more predictable and stable by subjects of current international legal system including states and their citizens. (UN Committee for Development, 2014).

While the global governance does not suggest a single universal sovereign, international public order may be considered as a by-product of the international community's will for maintenance of international peace and security, development of friendly relations, achievement of international cooperation. (Charter of the United Nations, Art. 1) That is why the preamble of the Charter of the United Nations entails "acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest." The unbalanced as well as selective application of mentioned principles and mechanisms generate asymmetric outcomes with respect to common interest.

The existence of international public order in the context of such a plurality-based system entails the essence of the international community which in turn necessitates rule of law as the main pillar of global governance. In effect, the international community, in a realistic view, is nothing more than a sufficient degree of interdependence upon the common needs and interests. Hence, the international community to be settled

profoundly demands a high standard of cooperation among national societies, but not only co-existence. Likewise, states as organized forms of national communities should function in the purpose of humanity, which constitutes the ultimate aim of governance, whether national or international.

Regarding the United States withdrawal from the nuclear deal with Iran, while U.S. president met North Korean Supreme Leader on denuclearization of the Korean Peninsula, it is not surprising to imagine that such a double standard current governing regime of non-proliferation as one core of today international public order, based on the Treaty on Non-Proliferation of the Nuclear Weapons (NPT), will be discredited dramatically. The circumstances incarnate cutting the tree while one is sitting on the tree's wing. For this reason, the Joint Comprehensive Plan of Action (JCPOA), dated July 14, 2015, under title of Preamble and General Provisions acknowledges that "the NPT remains the cornerstone of the nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament and peaceful uses of nuclear energy." (The Joint Comprehensive Plan of Action (JCPOA), Vienna, July 14, 2014, Para. vii) Furthermore, the United Nations Security Council reaffirms the need for full compliance of the NPT by the Member States to repel the emerging legality crisis for the fundamental instrument. (UN Doc. S/RES/2015/2231, July 20, 2015, Introductory Paragraph)

This paper seeks to show that relying on new governing constraints on the international community Article 4 of the Non-Proliferation Treaty (NPT) needs to be construed as one piles of the contemporary international public policy, *i.e. Jus cogens*. For instance, U.S. representative Stephen Rademaker made clear in his statement to the 2005 Preparatory Committee that the "NPT is fundamentally a treaty for mutual security." (Rademaker, 2005) Thus, universal adherence to full compliance of the Treaty by all the parties guarantees the security of all member states.

At least, Article 4 of the NPT represents as an explicit assertion of right by states which is accompanied with obligations *erga omnes* under Articles 1, 2 and 3. Nonetheless, the importance of global security dictates very basic contents of the NPT as *jus cogen*. Although the 1069 Convention on Law of Treaties does not provide us any definition about *Jus cogens*, the International Law Commission determined legal consequences of conflict of treaties and norms of *Jus cogens* under Articles 53 and 64 of the 1969 Vienna Convention. Therefore, considering that any agreement against foundations of non-proliferation principles remains ineffective and void, the corresponding obligation of non-proliferation which is emanated under Article 4 should be similarly characterized as a norm of *Jus cogens* to be meaningful.

These undertakings are originated from newly born humanity-oriented international public order, rather than sovereignty-oriented system; It is easy to find the infrastructural idea which was at the heart of President Eisenhower's Atoms for Peace proposal when he remarked "the contributing powers would be dedicating some of their strength to serve the needs rather than the fears of mankind." (Eisenhower, 1953) Construing the NPT regime disregarding requirements of current implications of global governance leads the Treaty to ultimate deterioration. Alternatively, distributing equal shares between nuclear weapon states and non-nuclear weapon states based on the NPT regime globally facilitates more effective and durable governance.

The Geneva Action Plan dated 2013 and the nuclear deal with Iran which was reached in July 14, 2015 should be interpreted according to the relevant observations. In this purpose, after reviewing the progressive development of international public order, the features of international legal system are studied. Thereafter, the concepts borrowed from current international public order are applied to the NPT by resorting to the provisions of the Treaty as well as jurisprudence of the International Court of Justice. Consequently, the withdrawal of the United States on May 8, 2018 as well as the way the European Union chooses to deal with the JCPOA should be studied in the present context, although some believe the nuclear deal has legal binding effects due to other grounds that there are no enough room to be discussed here.

2. Towards Evolution of International Public Order

The main line of the argument is dedicated to the idea that the gradual formation of international public order is owed one fundamental phenomenon which is so called as the international community. What we explain in this part concerns the issue that blossoms of the international community, rooted in number of universal elementary values, clearly justify the rise of the very essential notion of international public order. Such an approach is leant on maybe the most famous dicta of the International Court of Justice which is referred below.

One of the results derived from evolution of international public order leads us to the formation of a special set of norms, which was introduced by the International Court of Justice in 1970. The Court affirmed that there is a clear distinction between *ex parte* obligations of states, representing a bilateral nature, in contrast to states that have obligations to the international community as a whole. (Note 2) (ICJ Rep. (1970), para.33) The former

indicates obligation *si omnes* and the latter embraces legal interest of all international actors, which is called as obligation *erga omnes*. Subsequently, the ICJ in the case of U.S. Diplomatic and Consular Staffs in Tehran vitally prescribes the institution of diplomacy as the efficient tool for security and welfare of the international community. (Note 3) (ICJ Rep. (1979), para.19)

The approach adopted by international law implies the actual existence of a phenomenon in the name of the international community, which is unified geographically, scattered socially, and paralleled legally. (Rousseau, 1982) The international community is governed by "law of cooperation", rather than "law of subordination" and requires a framework for deployment of domain of international law to novel issues as well as new subjects, especially individuals, in addition to acceptance of developing consequences of governing economic, social, political, and martial principles on the universal structure of international law. (Note 4) (Henkin, 1997)

3. Governing Legal System on the International Community

The fundamental characteristic of each legal system Expects a systematic limitation of subjects' freedoms and rules of the legal system categorize the behaviours into lawful and unlawful. The global governance on the international community does not rely on any centralized executive organ. However, extreme pivotal contents of the constituent rules of international legal system guarantee the objectivity of such the governance.

International public order plays the role of applicable law on the international community. In other words, the global governance may not be described abstractly. The global governance should be deemed as one of main manifestations of international public order. Hence, to analyse the framework of global governance, its contents and characteristics should be evaluated. Interestingly enough, global governance provides a new path of interpretation as a supplementary guide.

3.1 Content of the Global Governance

The intension and fragmentation of the rules of international law as two main features of contemporary international legal system may display the facet of international legal system as a turbulent system; nonetheless, the international public order emerges as the cornerstone of the system, which denotes the most substantial rules of international law. The rules regulate the interactions between the addressees of the international community.

It is not important how we imagine the structure of international system (balance of power system, loose bipolar system, tight bipolar system, hierarchical system, or even unit veto system), while the global governance which is conceptualized on the international public order deals with the reality and role of power, modes of peaceful settlement of disputes, and more premier, making an equitable as well as sustainable harmony of individual interests in conformity with the most accepted international values.

If the current global governance is rooted in international public order, such a software-oriented governance dictates a paucity of peremptory standards: a) the determinant role of the most logic-driven creatures lies in the centre of the governance. In other words, the interest of humanity, which may be construed in the title of peace or justice and rules "ought" and "ought not" cannot be neglected; b) profound origins of the global governance are inspired from general principles of ethics, which are assumed stable and consistent in different times and places; c) although sub-international systems may be applied in the arena of the international community, international public order as a partial centralized legal order secures the unity and integrity of the global governance; and d), the resort to force is the very exceptional alternative of international relations. Indeed, the global governance instead of contouring a structure which is based on formula of power emphasizes on a system which is fueled by "relative advantages", particularly commercial, forms the groundwork of interdependence.

In sum, the body of global governance should be equipped by at least the three essential requirements: a) The most principal standards concerning the formation of rights and obligations in the scale of international relations like law of treaties and responsibility of states; b) The very fundamental rules which are related to the structure of the international community such as territorial integrity, self-determination, and establishment of international organizations; and c) The substantive laws, law-making international conventions and resolutions, in the service of the most important interests of the international community; for example, the United Nations Convention on the Law of the Sea, the Convention on Diplomatic Relations, and the NPT. (Jaencke, 1987)

3.2 Descriptions of Global Governance

Nowadays, international public order is cultivated by current features of international law which are manifested by two somehow different faces of "the law of co-existence" and afterwards "the law of co-operation". Undeniably, the law of co-operation may be recognized as a more developed product of a combined commodity of peace and humanity.

The modern global governance invokes an order upon the pure definition of common interest which looks impossible to be preserved unilaterally. (Note 5) (Mitrany, 1943) The development of some great notions such as "positive peace" referring causes of tensions and conflicts, points out that contemporary global governance tends toward a normative framework based on obligations to means, but less obligations to results. Hence, the soft law may contribute more efficiently than the past to regulate the wide range of international relations. That is why the process of self-regulating system no longer works. Consequently, the system of sanctions which relied on retaliatory measures of short of war is replaced by deprivation of advantages. For example, Articles 5 and 6 of the Charter of the United Nations require some restrictions on rights emanated from membership. (Leben, 1979)

Although powerful states mostly utilize international law as a tool for stabilization of their influence (Note 6), (Barnett & Duvall, 2005) international legal system, whether we like it or not, is going far from the world of superpowers. The emerging legal system is establishing its pillars on the principle of equal sovereignty, in practice. In the case of the advent of such a system, no world power would be recognized. (Ginther, 1986)

4. Application of the NPT in the Light of the Global Governance

While complicated impasses of current international relations have provided a reinforced excuse for great powers to renew the old architecture of policy of international relations, the global governance implies some considerations which may restrict discretionary powers of hegemon. General implications on the NPT, particularly mutual duties of nuclear-weapon states and non-nuclear-weapon states, constitute one of instances of the mentioned limitations.

In the early 1960s, the U.S. and Soviet governments found out that coordinated limitation of nuclear arms race would work for their national interests. Thus, the three principled pillars of disarmament, non-proliferation, and peaceful use were balanced in the NPT and equally prioritized in the treaty. (Joyner, 2013) In this purpose, the U.S. representative Lawrence Scheinman explicitly recognized a balanced approach to the three pillars of the NPT which "are mutually reinforcing and cannot be considered in isolation . . . . The United States is no less committed to peaceful nuclear cooperation than to non-proliferation and nuclear disarmament goals of the treaty." (U.S. Statement to the First Preparatory Committee Meeting for the 2000 NPT Review Conference, April 8, 1997)

The proliferation of nuclear weapons, discussed in Articles 1, 2, and 3 of the treaty, constitutes a top international security concern as well. However, following attacks of September 11, 2001, due to domination of security-oriented international policies, non-proliferation issues increasingly discussed from 2003 onwards and the U.S. pioneered global war on terror simultaneously. Such a new legal interpretation of the NPT which is offered in securitized international legal perspective justifies primacy of non-proliferation over disarmament and peaceful use principles. As a result, peaceful use in particular sit as a secondary status in the NPT regime. For example, France observed: " . . . the commitment on which the NPT is founded, which is to prevent proliferation, cannot under any circumstances be made conditional upon progress towards the other goals of the Treaty." (Dobelle, 2008) Moreover, Russian representative emphasized all non-nuclear weapon state parties to the NPT must conclude a safeguard agreement with the International Atomic Energy Agency (IAEA) for verification of its obligation to prevent diversion from peaceful uses. (Antonov, 2008)

In spite of the fact that non-proliferation, disarmament, and peaceful use together represent the object and purpose of the NPT, the focus of nuclear weapon states tend to be more policy-oriented than legal. Consequently, officials did not run analytical discussions and cherry-picked legal arguments were remarked by global governors on the rare occasions. To illustrate, John Bolton emphasized on conditionality of right to peaceful use of nuclear energy. Furthermore, he reiterated that the treaty does not stipulate right to possession of the nuclear fuel cycle domestically. (Bolton, 2005)

Shortly, the NPT can be evaluated as a significant success for the U.S. in reaching some goals such as managing its relations with Soviets, strengthening the defense of NATO, facilitating European political integration, preventing the uncontrolled spread of nuclear weapons, and building support for global nuclear safeguard. Despite that the NPT regime should not be judged as a perfect achievement in preventing the proliferation of nuclear weapons, it remains an admirable win on March 1963, if consider the fears of many when President Kennedy voiced the future would see 25 or more nations constructing nuclear weapons by the 1970s. (Alberque, 2017)

Iranian nuclear issues invited policymakers and academics to rethink the core underlying elements of one of the main international order-making applicable instruments' preparatory works, *i.e.*, the negotiating history of the treaty which conduced to the final agreement of the two opposite groups of states on the most welcomed martial international convention in 1960s.

While the Joint Comprehensive Plan of Action (JCPOA) was endorsed by the United Nations Security Council, the United States without resorting to the JCPOA's settlement of disputes mechanisms withdrew from the Iran nuclear deal on May 8, 2018. Undoubtedly, preservation and observation of the Iran Deal which the five permanent members of the United Nations Security Council and the European Union agreed representing the international community as a whole requires a collective process, but the United States neglecting the firm decision taken by the involved powers break it individually. Oppositions against the United States withdrawal clearly determines that the deal was not considered as a bilateral agreement and it was matter of concern to whole the world.

On the other hand, Singapore was a host between U.S. President and North Korean Chairman on June 12, 2018. They agreed to new peaceful relations, security guarantees for North Korea, the denuclearization of the Korean Peninsula, and follow-up negotiations between both parties. However, Iran warned North Korea against trusting a rogue U.S. administration against trusting President Trump's promises. Subsequently, the second meeting between Kim Jong-un and Donald Trump held in Vietnam and the White House announced that no agreement was reached on February 28, 2019.

Surprisingly enough, the White House planned to transfer sensitive nuclear power technology to Saudi Arabia based on the President's meeting with nuclear power developers on February 12, 2019. Although it is claimed that the civilian nuclear cooperation agreement with Saudi Arabia blocks routes to making nuclear weapons, concerns around Iran nuclear achievements get escalated and makes Iran and Saudi Arabia bitter rivals in the region. The conflicting behaviours of contemporary U.S. administration disclose that the most powerful nuclear state of the world totally ignores the role which atom plays in terms of global governance, while U.S. nuclear cooperation plans, particularly in the Middle East, raise national security interests against financial prosperity.

Richard Butler *AC* in a paper he delivered a few years ago argued the NPT constitutes one of pillars of the global governance. By referring to the negotiating history of the Treaty, he introduced a proper reading of this epochal deed. In fact, he intends to remind us the forgotten obligations of nuclear-weapon states besides the unforgettable non-nuclear-weapon states. He bitterly laughs at the widespread proverb of disarmament activists, namely "disarmament is a great idea for the other guy", which is clearly understood between the lines of the NPT. (Butler, 2013)

In addition, the fundamental reason that the NPT may play as a pillar of the global governance is absolutely vested in the idea of the grand bargain at the outset of the negotiation and thereafter the conclusion of the Treaty. Moreover, the Treaty, in the context of international law of treaties, will not be binding if we claim the denial of the infrastructural give-and-take among states with and without nuclear weapons. Simply, it is inconsistent with the purpose and object of the Treaty.

On February 15, 2013 at the annual symposium of the Penn State Journal of Law & International Affairs on The U.S.-Iranian Relationship and the Future of International Order, Richard Butler *AC* remarked "almost from the beginning, the treaty has been misrepresented and mis-described", principally by the United States, Russia, the United Kingdom of Great Britain and Northern Ireland, France, and the People's Republic of China. "They have attempted to tell the world that the treaty … is about only… preventing others from getting the bomb." The NPT is designed to stop the spread of nuclear weapons and to foster the elimination of those already in existence. These two objectives should be seen linked together inherently.

Noteworthy, the Vienna Convention on the Law of Treaties (1969) under Article 53 refers to the international community as a whole which authorizes to recognize peremptory rules of international law, *jus cogens*. Definitely, international public order is compounded by non-violable rules of international law; thus, whenever the notion of the international community as a whole could not be confined to a scarce number of correlated states at all, the unfounded attempts of states with nuclear weapons to distort the origins and destinations of the Treaty will remain disappointed.

The NPT was concluded to reach two great goals: First, preventing the proliferation of nuclear weapons which is stipulated under Article III of the Treaty; Second, the nuclear disarmament as Article VI establishes the dreamful aim. Despite the increasing trends towards the emphasis on these two ends as the main subject matters of bargain in the Treaty, in addition to the negotiating history of the NPT, it is too vivid that due to the language of the Treaty, achieving the great mentioned purposes may not be realized unless the considerable degree of respect to safeguard arrangements articulated under Article III becomes applicable. While these arrangements produce significant restrictions on the sovereignty of the Member States, the sole motivation that justifies such limitations lies under Article IV. It means, Article IV protects the right of all states to access nuclear science and technology. In other words, the exclusive prize that non-nuclear-weapon states overlooked their sovereign rights is the

outcome of the referred trade-off, *i.e.* the basic privilege of right to either produce or enjoy peaceful nuclear energy.

According to the preamble of the Treaty, the trenchant wording establishes the above claim well: a) "affirming the principle that the benefits of peaceful applications of nuclear technology…should be available for peaceful purposes to all parties to the Treaty, whether nuclear-weapon or non-nuclear weapon."; and b) "convinced that… all parties to the Treaty are entitled to participate in the fullest possible exchange of scientific information for… the further development of the applications of atomic energy for peaceful purposes.". Referring to the Vienna Convention 1969 on the Law of Treaties, the preamble of the convention is considered as the way for determining the purpose and object of the convention as an efficient instrument of interpretation.

The very explicit guidelines of Article IV of the NPT disclose this Article should be construed as the heart of the Treaty, which operates as the basic guarantee of achieving the two great goals reminded earlier: preventing the proliferation of nuclear weapons and the nuclear disarmament. It seems that any prejudice to the basilar clause will cause deficiency of the whole product of Treaty of 1968. By neglecting the importance and proficiency of Article IV, there would not be any chance to keep the Treaty alive. Based on Article IV, it is unacceptable to rule that either disarmament or right to development is a great idea, for the other party.

Article IV(1) of the NPT stipulates that: "Noting 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* …" (emphasis added). Furthermore, Article IV(2) expresses: "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…." (Emphasis added). The ultra-sharp wording of the Treaty about the substantial motivation perhaps encourages reader to assent Article IV is a manifest decree of legal right to development as the third generation of human rights in the context of positive international law.

5. Global Public Order Before the ICJ

The rest of this paper concentrates on a recent application that reaffirms necessities of taking different attitudes towards one of the piles of the international public order. This application deserves to be highlighted as a perfect example of changes to elements of interpretation of global governance in the context of the NPT.

What makes the NPT regime distinguished from other international concerns as cornerstones of global governance pertains to states' appetite to sit at the position of regional hegemons. Although increasing trends towards unilateralism between regional counterparties do not refuse cooperation on common interests like confrontation with terrorism, conservation of environment, and promotion of development, martial superiority in terms of mass-destructive arms such as nuclear weapons deems as a reliable guarantee of survival and influence of sovereigns.

Assuming the NPT regime as a backbone of global governance's skeleton refers to the very intrinsic nature of law of nations, based on self-help, rather than relatively novel spheres of international collaborations such as sustainable development, human rights, and well-being which represent cooperative dimensions of contemporary international legal system. That is why the ICJ could not took an explicit position about illegality of use of nuclear weapons when survival of state matters. (ICJ Reports, 1996, para. 105)

The Republic of the Marshal Islands filed an Application against, among others, the United Kingdom in April 24, 2014 before the International Court of Justice (ICJ) based on the obligation to pursue negotiations in good faith and conclude them leading to nuclear disarmament. In an overall presumption, this claim relies on a threefold legal basis as follows: a) *pacta sunt servanda*, as one of the fundamental general principles of law, reflecting unilateral act of the member states to ratify the NPT, which was confirmed by positive law under Article 26 of the Convention on the Law of Treaties; b) explicit contractual obligations contained in Article VI of the NPT, namely "pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control"; and c) sustainable world order columns, *i.e.* the principles of sovereign equality and elementary considerations of humanity, which were founded on international customary law. For instance, equality of sovereignties originates from Article 2 of the Charter of the United Nations and elementary considerations of humanity refers to the Martens Clause as expressed in Article 1, paragraph 2 of Protocol I 1977 additional to the Geneva Conventions 1949.

It is good to know that Marshal Islands, when it was under the trusteeship of the United States, experienced repeated nuclear weapons testing from 1946 to 1958. Although the Applicant in the case submitted before the principal judicial organ of the United Nations may claim actual damages, the basilar raised arguments of the

Marshal Islands in the Application goes beyond a simple claim undoubtedly, exhuming detrimental frowzy conducts, while there was no established legal obligation to refrain states from nuclear weapon testing internationally. Indeed, Paragraphs 11 and 13 of the Application reinforces such a conclusion describing the NPT as "the key instrument of the international community for ridding the world of nuclear weapons" and refers to the decisive finding of the ICJ in its Advisory Opinion of 8 July 1996 holding "there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control." (Note 7) (ICJ Rep., (1996), para.105) Furthermore, the Applicant manifestly posits that obligations derived from the NPT "are not limited to the States Parties to the Treaty, but also apply to all states as a matter of customary international law." (The Republic of the Marshal Islands Application against the United Kingdom, dated April 24, 2014, para.17)

Consequently, Paragraph 82 of the Application stipulates that the NPT is standing on a "strategic bargain" which constitutes the core logic of the Treaty. The Non-nuclear-weapon states gave up their option to acquire nuclear weapons *vis a vis* nuclear-weapon states' obligation to negotiate their elimination. Most recently, such a deduction from drafting history of the Treaty was reaffirmed by the 2010 Review Conference. (2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Vol. I, Review of the Operation of the Treaty, p. 2, para. 2, available at: http://www.un.org/ga/search/view_docasp?symbol=NPT/CONF.2010/50 (VOL.I))

6. Conclusion

In spite of ongoing tension of the constituents of the current international community, international law is capable to impede misuse of international rules and regulations agreed under treaties in order to take unfair positions. Indeed, despite the prevalence of the voluntarism in international law, the international legal system which has embraced the international public order reflects collective legal conscience better than ever.

A significant obstacle such as requirements of international public order have been resulting in considerable efforts on behalf of the great powers to bypass it through concluding bilateral agreements, but adhesion to international conventions. This method will help the great powers to impose their expectations in the context of several mutual arrangements, rather than one multilateral institution or convention. (Note 8) (Guzmann, 1998) Readers may drive this direction on the one hand, by taking a look at what happened on the nuclear deal with Iran when the United States found itself benefit-less in comparison with particularly European partners of the deal; on the other hand, through exploring multiple motivations which fueled the U.S. Administration to meet Kim Jong-un, North Korean Supreme Leader. Additionally, the hegemon like the U.S., notwithstanding the progressive development of international public order, seeks to substitute soft law in the rules of international relations to find enough space for conducting in extreme liberal ways in favour of its national interest.

At the end of the day, the ultimate source of legal rules, whether in international or national law, would not be found in theories of law; however, pre-legal matters of fact are considered as the main part of international public order's foundation. As a result, international public order does not have to be comprised with patterns of domestic law. Of course, we are not going to deny the fact that while international public order is rooted in trends of pluralism, it is the production of permanent hostility of order and power.

Undoubtedly, the collapse of the NPT means resumption of nuclear arms race which in turn warns the increasing potential of use of force prohibited by Article 2(4) of the Charter of the United Nations as a contemporary *jus cogens* of international law. Thus, the NPT is a matter of international public order and we should interpret and apply it in the light of requirements of the international public order.

The interpretation and application of the NPT, nowadays, entail to consider the new conditions of the international community which shape international decision-making processes. A mere sovereignty-oriented approach to such a worldwide martial agreement would not be sufficient; likewise, the interest of individuals should not be ignored. As a conclusion, global governance dictates human-based approaches to the NPT binds to respect the right to development in the course of access to peaceful benefits of nuclear energy for all without any discrimination; furthermore, humanity-oriented theory to the NPT requires that nuclear disarmament, in the terms of the Treaty, should remain one of the top global demands.

In effect, the Geneva Action plan on Iranian nuclear program dated in 2013 in addition to the JCPOA dated in 2015, to some extent, reflects the realities of international public order. The 2013 gentlemen's agreement and the JCPOA have laid considerable structural and conceptual messages in its heart. Structurally, the great powers of the world as the representatives of the international community collectively rallied in front of Iran to confirm, *a fortiori*, the objectives of the NPT tied toughly to requirements of the international public order. On the other hand, apart from the JCPOA clauses, the very obligatory literature and nature of the deed are mirroring the

special status of the contents of the deal which originate from international public order. Thus, when President Trump announced that the U.S. withdrew from the JCPOA, his unilateral movement invited tons of doubts and concerns about the legality as well as legitimacy of the act.

The nuclear deal can be resembled as the fruit of the NPT which holds considerable traits in practice: First, the reciprocity plays as the foundation of all contained obligations; thus, the guarantee of respect to each obligation is vested to observance of the opposite party's obligations. Here, readers can remember the grand bargain which directed the objectives of the NPT besides the motivations; Second, the process of entry into force of the JCPOA, similar to the NPT, was progressive, but not immediately. It means the deal would not be simply calculated as a mere political commitment; Third, the JCPOA is substantially relied on the principle of good faith. Hence, any violation of the deal might be accompanied with political and legal sanctions alternatively. International public order still due to the role of supra-legal matters is based on the principle of the good faith. Thereafter, what the U.S. Administration took against the JCPOA will be a grave violation of Article VI of the NPT which was raised in Marshal Islands case before the International Court of Justice. Similarly, the contents of the JCPOA and the UN Security Council resolution 2231 on non-proliferation reflects reasonable expectations of the international community of states for a category of well-established obligations *erga omnes*. How the United States may be allowed to refuse its duties under the JCPOA creating obligations *erga omnes*? To summarize the response, it seems that non-proliferation regime works as a tool for America which has a good appetite for unilateralism. This way gradually ruins all legal achievements of the international system of norms as well as architecture of global governance.

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Notes

Note 1. Interestingly enough, there are some views that the basic norms themselves create beyond any sources as outcome of formless agreements of states.

Note 2. "… An essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature the former are the concern of all States. In view of the importance of the rights involved, al1 States can be held to have a legal interest in their protection; they are obligations *erga omnes*." Although the Court in *Barcelona Traction* judgment made the line between obligations in the context of protection of foreign investor in the territory of a host country, such the division is applied in international law generally.

Note 3. "…Article 5 of the Vienna Convention of 1963 expressly providing that consular functions include the functions of protecting, assisting and safeguarding the interests of nationals; and whereas the purpose of these functions is precisely to enable the sending State, through its consulates, to ensure that its nationals are accorded the treatment due to them under the general rules of international law as aliens within the territory of the foreign State."

Note 4. A realistic approach indicates that states will respect international obligations as long as they can satisfy their interests in this way. Although the Treaty of Westphalia terminated the Thirty Years War, gradually the traditional international law which is relied on principles of sovereignty and territoriality is converting by multilateral, bilateral, and unilateral acts in the domain of international legal relations between states, international organizations, and individuals.

Note 5. The task of international legal system was to keep its subjects peacefully apart, but not gathering actively. Such the system requires that all the subjects should be treated equally, regardless of their size, power, ideology, religion, etc.

Note 6. They argue that there are some ways such as institutional power in which compulsory power shapes productive power, and vice-versa. International organizations, particularly universal political organizations such as the United Nations may institutionalize the interests of the powers.

Note 7. The Court in the Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons* acknowledged that rendered negotiations on nuclear weapon have not been resulting to general prohibition as for chemical weapons, while Article IV of the NPT requires that: "Each 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, and on a treaty on general and complete disarmament under strict and effective international control." The Court emphasized that the obligation goes beyond a mere obligation of conduct, but it demands to achieve a precise result, *i.e.*, nuclear disarmament in all its aspects by pursuit of negotiations on the matter in good faith by the vast majority of the international community which are [parties to the NPT. This obligation was reaffirmed by the Security Council in its resolution 984 (1995) dated 11 April 1995. (paras. 99-100).

Note 8. The last sentence of the article should be quoted here: "of customary law. Developing countries sign these treaties to gain an advantage in the competition for investment rather than from a sense of legal obligation, as is required to establish a rule of customary international law."