



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

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INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS

ISSN

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MARITIME LAW AND NUCLEAR TEST EXPLOSIONS ON THE HIGH SEAS

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Abstract: -

This paper examines the relationship between maritime law and the controversial topic of nuclear test explosions that occur at sea. It explores the historical background of these occurrences and examines how international maritime law frameworks, treaties, and conventions may affect them legally. This paper seeks to clarify the nuances surrounding the legality, jurisdiction, and environmental impact of nuclear tests in international waters by looking at case studies and precedents. It also assesses the possible threats to global security and marine ecosystems, with the ultimate goal of making recommendations for changes to maritime law or regulatory frameworks to address and lessen these complex issues.

Keyword:- Maritime law, International law, High sea, Nuclear Test Explosions

INTRODUCTION:

“A World without nuclear weapons would be less stable and more dangerous for all of us”.

-Margaret Thatcher

A body of laws, treaties, and conventions known as maritime law, sometimes referred to as admiralty law, regulates trade and navigation on the oceans and other navigable waters. The Law of the Sea is a body of international legislation that regulates how people use the oceans and seas. Admiralty law, also referred to as maritime law, covers a wide range of subjects, such as the

drafting of national and international laws, regulations governing customs and excise, the fishing industry, human rights, and employment issues that usually affect the crew. Insurance disputes, issues involving containers, passenger liners, property damage, pollution, personal injuries, wreckage and salvage, and the effects of stowaways on vessel piracy, international legislation regulating the interactions between private parties that use or operate ocean-going vessels, etc. Although the term "Admiralty" is sometimes used interchangeably in English-speaking nations, its precise meaning is the jurisdiction and procedural law of courts whose roots can be found in the office of the admiral. Despite having the same etymology, "Law Of The Sea" and "Maritime Law" are used differently. The former refers to private shipping law, while the latter, which is typically preceded by "international," has come to represent the maritime area of public international law.

Both maritime law and international trade via maritime transportation have ancient roots. Thus, since no nation may arbitrarily assert jurisdiction over the seas, it became more and more important to broaden the law's application. In contrast, the Convention on the Law of the Sea is a UN accord pertaining to ocean resources, sea lanes, and territorial seas. 119 countries first signed the Convention on December 10, 1982¹. As time went on, international agreements became increasingly important in the face of conflicts, and the fundamentals of marine law were established and improved. Though general maritime law has evolved internationally, it must be remembered that each country bases its own maritime law on the general international regulations with the modifications and qualifications it deems necessary and appropriate to its specific needs. As such, national laws govern general maritime law even though it operates under international standards. The international nature of the subject and the need for uniformity have led to significant developments in international maritime law since 1900, including multiple multilateral treaties, even though each legal jurisdiction typically has its own legislation governing maritime matters. A ship's nationality is determined by its country of registration. The majority of ships have their national registry located in the nation where their owners reside and conduct business.

Owners of ships frequently register their vessels in nations that accept foreign registration. Known as "Flags of Convenience," the foreign registration allows one to take advantage of lax

¹<https://legal.un.org/avl/ha/uncls/uncls.html#:~:text=The%20United%20Nations%20Convention%20on,as%20of%2024%20July%202008> (last Visited on 07.12.2023 at 11:00).

local laws and plan taxes. Panama and Bermuda are a couple of "Flags of Convenience" nations. The Law of the sea is generally understood to refer to public international law, while maritime law typically covers private shipping matters. Stated differently, the latter establishes the appropriate conduct for states in maritime settings.

HISTORY OF MARITIME LAW

The history of maritime law dates back thousands of years to ancient Egypt. Back then, goods were transported by ships, and a well-defined set of regulations was required to guarantee both fair trade and safety as well as to resolve conflicts between various parties.

But the first written account of formal codes wasn't discovered until much later. Established between 900 and 300 B.C., the Rhodian Sea Laws established official regulations for the Mediterranean Sea. These regulations controlled the region's maritime trade, had an impact on the Romans, and were in place for a very long period of time².

The Greek island of Rhodes is said to have produced the oldest known maritime laws. Over the ensuing centuries, European maritime law gradually changed. The Consulate of the Sea, The Rolls of Oléron, And the Early English Admiralty Laws—Which would later Influence the Laws of the Sea in the United States—Were important Developments that Shaped Current Laws.

NUCLEAR TESTING

Overview the different kinds of nuclear weapons that are currently in use or could be developed are discussed in this introductory section, along with specifics regarding their testing and application. The application of international law to their use in hostilities as well as acts that do not have the necessary connection to an armed conflict is then reviewed in Section A. Section B examines nuclear weapons-free zones, which encompass the majority of the southern hemisphere, as well as non-proliferation laws and regulations. In accordance with international environmental law, Section C evaluates nuclear weapon testing, production, and stockpiling. The ICJ's findings from its 1996 nuclear weapons advisory opinion are contained in Annex 1³. A comparative

²Nicholas Joseph Healy , <https://www.britannica.com/topic/maritime-law> (last Visited on 07.11.2023 at 11:17).

³ <https://www.icj-cij.org/case/95> (last Visited on 07.11.2023 at 11:20).

analysis of the treaties pertaining to nuclear weapons is included in Annex 2⁴. nuclear weapon types An explosive device that derives its destructive power from nuclear fission chain reactions or combined nuclear reactions of fusion and fission. Atomic bombs are nuclear weapons whose explosive power comes only from fission reactions; thermonuclear weapons, also known as hydrogen bombs, are nuclear weapons whose energy comes mostly or entirely from nuclear fusion reactions. A mass of fissile material, such as enriched uranium or plutonium, is transformed into a supercritical mass in fission weapons, yielding explosive yields that can range from one to five hundred kilotons of TNT. Radiation blasts accompany the detonation of any nuclear weapon. Fallout, or radioactive debris, is another by product of fission. A thermonuclear weapon compresses and ignites a nuclear fusion stage using the heat produced by a fission bomb. When compared to fission weapons, thermonuclear weapons usually have a much larger explosive yield—megatons as opposed to kilotons. Thermonuclear weapons can produce at least as much nuclear fallout as fission-only weapons, even though fusion reactions do not produce fission products because they all contain at least one fission stage. A thermonuclear weapon known as a "Neutron" bomb emits a lot of neutron radiation but produces a tiny explosion. Massive casualties could be caused by a neutron bomb that would largely preserve infrastructure and have few negative effects. On the other hand, a salted bomb—which surrounds a nuclear weapon with, say, gold 98 or cobalt-60—would create abnormally high levels of radioactive contamination. President Theodore Roosevelt of the United States (US) founded the Manhattan Project in 1941 due to the country's nuclear weapons testing and use history. As a result of the project's efforts, the first nuclear weapon explosion in history took place at a location in New Mexico on July 16, 1945, shortly before 5.30 a.m. On August 6, 1945, a nuclear bomb was dropped over the Japanese city of Hiroshima. The bomb, known as "Little Boy," detonated 580 metres above the ground, producing an explosive yield equivalent to about 16 kilotons of TNT. The precise number of tens of thousands of people killed in the attack is unknown. About 74,000 people were killed when the US detonated "Fat Man," a plutonium bomb with a larger 20-kiloton yield, 610 metres above a Nagasaki suburb, three days later. Russia, which used plutonium as its nuclear material, successfully tested an atomic bomb in 1949, becoming the second state to do so after the United States. The first nuclear fusion experiment was "Greenhouse George," a US test fire in Nevada in May 1951. Weapon that will be set off. It is thought that the largest nuclear

⁴<https://www.geneva-academy.ch/joomlatools-files/docman-files/Nuclear%20Weapons%20Under%20International%20Law.pdf> (Page no:-18)(last Visited on 07.11.2023 at 11:37).

explosion in history, with an explosive yield of 50 megatons, originated in Russia⁵. May 1954 saw the detonation of the largest US nuclear weapon, which weighed 15 megatons, on Bikini Atoll⁶.

USE OF NUCLEAR WEAPONS UNDER INTERNATIONAL LAW

In the event that a nuclear weapon is used in the future, it will probably be used to conduct hostilities in an international armed conflict. As a result, any such use of a nuclear weapon would be assessed in accordance with the relevant international laws, namely *jus in Bello* (International law applicable in armed conflict) and *jus ad bellum* (International law governing the interstate use of force). The law of armed conflict, often known as international humanitarian law (IHL), contains the main guidelines under *jus in Bello* for conducting hostilities. While states "do not have unlimited freedom of choice of means in the weapons they use," under International Humanitarian Law (IHL), the use of any particular weapon will only be illegal when, and to the extent that, it is prohibited by an applicable conventional or customary rule. This means that each weapon need not be specifically "Authorised" in order for its use to be lawful. Parties to a conflict may only launch attacks against legitimate military targets, such as military personnel or tangible military equipment, according to a basic principle of international humanitarian law (IHL). A standard of customary international law that applies to both international and non-international armed conflicts is the rule of distinction in attacks. As a result, any weapon that lacks the ability to discriminate between military targets and civilians or civilian objects is deemed intrinsically indiscriminate, and its use is always prohibited. An additional supporting rule, proportionality in attacks, states that an attack cannot be launched if it can reasonably be expected to be disproportionate in relation to the anticipated direct and tangible military advantage, even if it is effectively directed against civilian harm (deaths, injuries, damage to civilian property, or a combination of these). It could be argued that the proportionality rule requires an assessment of environmental damage as well. Judge Schwoebel made conjectures about the various uses of nuclear weapons and whether or not they could be legal in his separate opinion regarding the International Court of Justice's (ICJ) 1996 Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons (the Nuclear Weapons Advisory Opinion).

⁵ Amy Tikkanen, <https://www.britannica.com/topic/Tsar-Bomba> (last Visited on 07.12.2023 at 11:52).

⁶ <https://www.history.com/news/nuclear-bomb-tests-bikini-atoll-facts> (last Visited on 07.12.202 at 11:59).

THE RELEVANCE OF ENVIRONMENTAL LAW FOR NUCLEAR WEAPONS

Environmental protection and international humanitarian law IHL has been the most widely used framework for analysing how international law regulates nuclear weapons in terms of the environment. As a result, several bello instruments and regulations have had their environmental coverage thoroughly evaluated. The foundation of the International Criminal Law (IHL) approach is the prohibition of certain degrees of environmental damage during hostilities, as well as Articles 35(3) and 55 of the 1977 Additional Protocol I and Its Influence on Customary International Law"⁷. In its Nuclear Weapons Advisory Opinion, the ICJ rejected a challenge from some NWS regarding the continued application of general environmental law treaties during times of armed conflict. The ICJ stated that, in its opinion, the question is not whether or not environmental protection treaties apply during armed conflict, but rather whether or not the obligations arising from these treaties were intended to be ones of complete restraint during military conflict. The Court does not believe that the obligations a state has to protect the environment could have been used as a justification for the treaties in question to deny it the ability to exercise its right to self-defence under international law. Environmental treaties and nuclear weapons But using nuclear weapons requires first producing, testing, storing, transporting, and deploying them before they are really used in combat. Parts of this more complicated regulatory object are governed by international law in ways that have received less attention up to this point. Nine countries, or 47% of the world's population and 28% of its land area, are the only ones with nuclear weapons. For the time being, these nine countries are not covered by the comprehensive ban on NNWS producing or obtaining nuclear weapons under the NPT. These states include the five NWS recognised by the NPT as well as the non-NPT parties, DPR Korea, India, Israel, and Pakistan. The nuclear weapons states' obligations to disarm themselves are still debatable and difficult to implement.

THE QUESTION OF LEGALITY

The legality of nuclear or thermonuclear test explosions at sea emerged twenty years ago in the wake of American hydrogen bomb test explosions at the "Pacific Proving Grounds"⁸. There were

⁷ Protocol Additional To The Geneva Conventions Of 12 August 1949, And Relating To The Protection Of Victims Of International Armed Conflicts (Protocol I), Of 8 June 1977.

⁸ The **Pacific Proving Grounds** Was The Name Given By The [United States](#) Government To A Number of sites in the [Marshall Islands](#) and a few other sites in the [Pacific Ocean](#) at which it conducted [nuclear testing](#) between 1946

two schools of thought. Some contended that the test explosions violated both international law and human rights. Some, on the other hand, attempted to defend the tests as essential measures in the defence of the "Free World".⁹ Due to a complaint lodged by Australia, New Zealand, and the Republic of Fiji against France for the latter's nuclear testing over the Pacific Ocean, the controversy has been brought up again before the International Court of Justice.

A. THE FREEDOM OF THE HIGH SEAS

At first, not everyone agreed with the theory that the oceans are part of humanity's shared heritage. However, it established the standard that no state could possess the high seas because they are shared by all people. The United Nations Codificatory Conference on the Law of the Sea acknowledged the implications of this customary law doctrine in 1958¹⁰. The entirety of the sea that is not a part of a country's internal waters or territorial sea is referred to as the "High Seas" in Article 1 of the Convention on the High Seas. No state may lawfully claim to subject any portion of them to its sovereignty, according to Article 2, which also declares that "The High seas open to all Nations". The freedoms enjoyed by nations on the high seas are among the following: freedom of fishing, freedom of navigation, freedom to install submarine cables and pipelines, and freedom of over flight. These freedoms are specifically subject to conventional and other rules of international law. Nuclear test explosions on the high seas are against the concept of the freedom of the high seas because they obstruct two of its most important aspects: fishing and navigation. Regardless of whether the high seas are considered *res communis* or *res nullius*, no state has the authority to monopolise something that either legally belongs to everyone or can't belong to anyone at all for its own exclusive use. Naturally, as implied by the wording of Article 2, the list of explicitly mentioned constituent freedoms does not exhaust the doctrine's reach; these are merely "others which are recognised by the general principles of international law."

B. INTERNATIONAL ANTI-POLLUTION LAW

The risks associated with pollution have been sufficiently documented in other places." States have passed anti-pollution laws, taken enforcement jurisdiction over high seas areas adjacent to their territorial seas, and ratified anti-pollution conventions with differing degrees of reach and impact in response to these hazards. However, declarations by international forums have started

and 1962. The U.S. tested a nuclear weapon (codenamed [Able](#)) on [Bikini Atoll](#) on June 30, 1946. This was followed by [Baker](#) on July 24, 1946 (dates are [Universal Time](#), local dates were July 1 and 25, respectively).

⁹ The **Free World** is a [propaganda](#) term,^{[1][2]} primarily used during the [Cold War](#) from 1945 to 1991, to refer to the [Western Bloc](#) and aligned countries.

¹⁰ <https://legal.un.org/avl/ha/gclos/gclos.html> (last Visited on 07.12.2023 at 12:10).

to articulate individual state concerns in terms of international law, acknowledging that only a uniform legal standard of general applicability can stop further degradation of the marine environment while taking into account the diverse needs and interests of all states. The International Law Association, for instance, met in Dubrovnik in 1956 and adopted a resolution on the use of international rivers that has implications for similar uses of the high seas¹¹. The resolution's directive, which denounced "all alterations injurious to water, [and] the emptying therein of injurious matter," has been reiterated in declarations by other regional organisations, leading to similar conclusions being reached by the Sixth Session of the Asia-African Legal Consultative Committee with particular reference to nuclear testing¹². The four Geneva Conventions of 1958 partially consolidated these regional declarations and contain several important provisions regarding maritime pollution.

According to article 24(1) of the Convention on the Territorial Sea and Contiguous Zone, a coastal state may exercise the control necessary to:

- a) Prevent the infringement of its sanitary regulations within its territory or [1]territorial sea; and
- b) Punished infringement of the above regulations committed within its territory or territorial sea. Any coastal state may adopt unilateral conservation measures appropriate to any fish stock or other marine resources in any area of the high seas adjacent to its territorial sea under Article 7 of the Convention on Fishing and Conservation of the Living Resources of the High Seas, provided that such measures are not determined through negotiations with other interested states within six months. This clause states that its goal is "the maintenance of the productivity of the living resources of the high seas."

C. NUCLEAR DISARMAMENT

A treaty on the non-proliferation of nuclear weapons was signed in 1963 by three of the five nuclear powers. The goal of this treaty was to outlaw any atmospheric nuclear test explosions. The outer space and the "Underwater", the contracting parties agree "to prohibit, to prevent, and not to carry out" nuclear weapons tests or other nuclear explosions in the defined spheres at any location under their jurisdiction, as stated in article I(I), which outlines the parties' principal obligations. In an effort to achieve a comprehensive and verifiable prohibition on all nuclear tests,

¹¹ https://www.internationalwaterlaw.org/documents/intldocs/ILA/ILA-Resolution_of_Dubrovnik1956.pdf (last visited on 07.12.2023 at 12:15).

¹² <https://core.ac.uk/download/pdf/80563466.pdf> (last visited on 07.12.2023 at 12:20).

the term "any nuclear weapon test explosion" is associated with "any other nuclear explosion," thereby preventing any circumvention based on the argument that a specific detonation was not a weapon test but rather the explosion of a device that had already been tested. Moreover, there is no distinction made in favour of peaceful nuclear test explosions.

THE QUESTION OF LIABILITY

It has been established through reference to established customary and conventional international law pertaining to the freedom of the high seas, the preservation and protection of the marine environment, and nuclear disarmament that nuclear testing on the high seas is illegal. What is more important to consider, though, are the legal ramifications of this kind of illegality. Is "responsibility" or "liability" inherent to a state that violates international law, or does the injured state have to prove a particular harm in order to claim responsibility?

The answer to the aforementioned and similar queries largely depends on the characteristics of the unlawful act. In particular, there may be at least two ways in which nuclear test explosions on the high seas could be harmful. First, the test explosion could seriously endanger the lives or property of citizens of a state other than the one conducting the experiment, or it could in some other way violate the sovereignty of that other state. In this scenario, the testing state bears responsibility for the illegal act due to its direct violation of national rights, and it can be argued as such. However, harm to interests other than national ones, such as harm to the global community's interest in a marine environment free of pollution, may constitute damage on a second level. The latter case involves much more complex considerations, such as standing to invoke the judicial process, when imposing responsibility upon the testing state. Each of the aforementioned legal bases for liability will be examined individually in Part II of this article.

A.VIOLATION OF NATIONAL RIGHTS

The issue of whether the testing state is liable for international delictual liability arises when a nuclear test explosion results in harm to the lives or property of citizens of another state. After the United States detonated a thermonuclear bomb over the Marshall Islands in 1954, the question became apparent. Were the Marshallese and the crew of a Japanese fishing vessel exposed to radiation as a result of the explosion, and was the United States held accountable for their injuries? If so, was this liability lessened or mitigated because the high seas served as the locus delicti commission, or the place where it was committed? When a state exercises its right to enjoy the high seas, what minimal level of compatibility with the rights of other states is necessary? The

fundamental idea that edictal liability attaches to any act attributable to a state that injures the citizens of another state is abundantly demonstrated by customary international law. The Hague Codification Conference's Third Committee stated in 1930 that a state is deemed to have international responsibility if a foreign person suffers harm as a result of an executive branch action or inaction that is inconsistent with the state's obligations abroad.

B. VIOLATION OF OTHER THAN NATIONAL INTERESTS

International law has historically determined liability based on evidence of harm to specific national interests. This was the outcome of a technical legal conception that connected the substantive law of liability to the procedural law governing its assertion, rather than any logical necessity. This idea considered legal personality to be synonymous with statehood, meaning that only "States as Actors" could effectively participate in international processes such as decision-making, law enforcement, and remedy recovery. According to one authority, proving that the claimant is entitled to the protection of the state whose assistance is requested is therefore a necessary component of an international claim. Apart from the unique circumstances surrounding foreign military personnel and sailors, which are still up for debate, it is established that only citizens of the state providing protection are entitled to protection. Generally speaking, a claim is defeated if there is a disruption in the national ownership of the claim, such as through assignment or a change in the claimant's nationality. There is no reason to examine the case's facts and legal framework to decide whether the claimant has a legitimate grievance against a foreign state until the claimant's right to the protection of the state whose assistance is requested has been established. "These requirements became even more stringent after the notion of nationality was developed in the *Nott Bohm* case¹³, at least in order to provide diplomatic protection. Additionally, they reaffirmed the more general rule that states cannot maintain an action before an international tribunal in the absence of evidence of specific harm to themselves. To grant the required *jus standi*, proof of harm to a community of interests that the complaining state identifies with would not be sufficient. Therefore, in the *South-West Africa Cases*, the International Court of Justice rejected Ethiopia's and Liberia's claim that they lacked standing to request a ruling on the issue of whether South Africa had violated its mandate by exporting its apartheid laws to Namibia.

¹³ *Nottebohm (Liechtenstein v. Guatemala)*

CONCLUSION

We can find at least three related areas of international law where nuclear test explosions on the high seas are illegal, providing decisive evidence of this fact. First, nuclear testing is against customary law and conventional law doctrines pertaining to the freedom of the high seas because it completely obstructs and prejudices others' ability to exercise their rights to free and reasonable navigation and fishing. Second, because nuclear testing has been shown to have detrimental ecological effects, it also violates traditional and customary anti-pollution laws. Lastly, the widely-ratified Nuclear Test Ban Treaty's provisions expressly forbid nuclear testing. The issue of the legal ramifications of such illegality is less clear. International edictal liability for nuclear testing is contingent upon the location of interests that are directly impacted by the illicit act¹⁴. Under conventional and customary law, the testing state is ineludibly liable in cases of extraterritorial nuclear damage or other violations of the rights and interests of other states and/or their citizens. However, liability turns into intricate questions of the law of standing when interests other than national ones are in danger. While the traditional view forbade a state from using the legal system to defend the common interest of all states absent proof of direct injury, the urgency of the global situation and progressive state practices point to the need for and provide a model for a more expansive understanding of jus standi. The unique rights and interests of the international community, distinct from those of its member states, have only lately been acknowledged as deserving of separate legal protection in response to new and challenging demands. These same demands demand that international law reject the idea that "restrictions upon the independence of States cannot be presumed," as was stated, for example, in the Lotus case, in order to preserve international law as a law of cooperation. It is now necessary for restrictions to be assumed rather than the exception. Specifically, where The international plane, or the area where state actions have an impact on it, is the sphere of action, and this assumption becomes nearly unquestionable. If there is a passive "law of peaceful coexistence," it might be adequate to limit standing to those who are direct victims of illegal activity. However, the survival of an accepted "law of cooperation" depends on each member state upholding the obligations of brotherhood. Alternatively, by creating irreversibly unenforceable obligations, the international legal system runs the risk of causing its own collapse.

¹⁴ <https://core.ac.uk/download/pdf/80563466.pdf> (last visited on 07.12.2023 at 12:40).