

International law and arms control: Soviet Union and Russia's stance on nuclear test ban treaties

Direito internacional e controle de armas: a União Soviética e a Rússia frente aos tratados para proibição de testes nucleares

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1. Introduction

At the national and international levels, law and politics are invariably intertwined. The law of arms control is no exception, as it is the product of political agreements between states that take the shape of international treaties. The norms and rules contained in these legal frameworks are intended to regulate the behaviour of individual states and guide the military dimension of inter-state interaction. In this sense, it is possible to see arms control accords as instruments that strengthen the general regime prohibiting the use of force in international relations and contribute to the maintenance of international peace and security (den Dekker, 2001).

Together with the nuclear non-proliferation regime, nuclear arms control were developed during the Cold War. Designed to regulate the arms race and curb nuclear proliferation, these agreements placed restrictions on state behaviour in a way that allowed states' expectations to converge on an equilibrium behaviour that, once achieved, no state would have incentives to violate (den Dekker, 2001, p.34). In that context, achieving the common denominator of the maximal amount of self-restraint between different states required strenuous political efforts.

Not surprisingly, extensive negotiations were conducted between the USSR and the US so that nuclear arms control treaties could be established. One emblematic case of these complex processes refers to the limitation and prohibition of nuclear tests. Talks about a comprehensive test ban among the nuclear states date back to the mid-1950s and, although important progress has been made and legal agreements have been put in place, the treaty prohibiting all nuclear explosions – the Comprehensive Nuclear-Test-Ban Treaty (CTBT) – is yet to enter into force.

The struggle against nuclear tests can be examined through different perspectives. In this paper, the focus will be on the part played by the USSR and, later, Russia in the international efforts aimed at establishing legal instruments to outlaw nuclear explosions in space, underground, under water and in the atmosphere. Thus, the first section of this study will present the law of arms control and discuss its relation to other international rules. This will be followed by an assessment of the Soviet and Russian positions regarding the establishment of legal agreements limiting and prohibiting nuclear tests. Finally, an attempt to draw conclusions will be made, articulating the Soviet Union and Russia's stance on the nuclear test ban as part of the law of arms control.

This exercise seems particularly well-timed, as fifty years have years passed since the USSR and the US signed and ratified the Partial Test-Ban Treaty (PTBT), in 1963. As it was the case then, banning nuclear explosions continues to be a contentious issue, interlocking technical matters with domestic and international politics.

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2. The law of arms control

The relation between national interests and international security is central to the law of arms control. This is evident in the text of the treaties, which often link regulation of national armaments to increased international security.¹ Composed by a number of systems of legal norms regulating national armaments, the law of arms control has been defined as

that part of public international law which deals both with the restrictions internationally placed upon the freedom of behaviour of States with regard to their national armaments, and with the applicable supervisory mechanisms (den Dekker, 2001, p. 37).

As such, the law of arms control is related to other rules of international law; like the ones regarding international legal relationships: the general law of treaties, as laid down in the Vienna Convention on the Law of Treaties, and the law of state responsibility, as laid down in the Draft Articles on State Responsibility of the ILC (den Dekker, 2001, p.43). The international law that regulates the use of force, as established in the laws of war *ius ad bellum* and *ius in bello*, are also of significant importance to the law of arms control (Idem).

Despite this legal framework, it must be noted that no state is forced to conclude arms control agreements (den Dekker, 2001, p. 39). States choose to limit their freedom of behaviour with regard to their national armament because they believe this will serve their interests best. Likewise, exercising their national sovereignty, states can withdraw from arms control treaties; which usually include a withdrawal clause to account for extraordinary events that might jeopardised the state's supreme interests.²

There are different incentives to join international regimes; the increase in the predictability of the pattern of relations among the states parties is one of them. Placing arms limitations can represent a balance in international military affairs that may benefit the security interests of the state. The more states are parties to a given regime, the bigger the chance that the regime will balance different national interests and contribute to international security (den Dekker, 2001, p.34).

Although international agreements can increase confidence in the international system, some degree of trust among the states parties is a prerequisite. When finalising an agreement, it should be expected that all the parties will comply with the established obligations. Yet, in order to avoid cheating, supervisory mechanisms are often put in place – fulfilling the maxim of “trust, but verify”. This way of thinking was especially evident in the Cold War, when doubts about verification and verifiability were capable of derailing arms control negotiations and preventing the agreements to come into force.

3. The Soviet Union and the test ban treaties

During the Cold War, different agreements pertaining nuclear weapons were primarily negotiated between the early nuclear weapon countries – the US, the USSR and the UK – and subsequently opened for signature by all other states.³ Nuclear tests and the so-called “peaceful nuclear explosions” (PNE) were the subject of three of such treaties:

1 See, for instance, the preambles of the NPT and the CTBT.

2 As Den Dekker (2001) has observed, “Art. X(l) of the 1968 NPT provided the model standard withdrawal clause, which has remained in general use in arms control treaties up to the present” (p.34).

3 Even though France carried out its first nuclear test in 1960 and China did the same in 1964, both states did not take part in the major nuclear arms control agreements during the Cold War. For instance, they never signed the PTBT and only acceded to the NPT in 1992.

the Partial Test-Ban Treaty (PTBT); the Threshold Test-Ban Treaty (TTBT) and the Peaceful Nuclear Explosions Treaty (PNET). Needless to say, the negotiations of these agreements were deeply embedded in Cold War politics and were subjected to the shifts in the US-Soviet relations.

The first limitation and disarmament talks were initiated in mid-1950s, after both the US and the Soviet Union had tested the unprecedentedly powerful hydrogen bomb. In its disarmament proposals of 1955, the USSR was the first nuclear power to put forward a proposal for test suspension (Jönsson, 1975, p. 37). In 1957, the test ban issue was debated for the first time in the United Nations Disarmament Commission, where the Soviet delegate worked incessantly to build consensus on this issue (Idem). Despite the topic being thoroughly discussed, no concrete progress was made and the US and the USSR increased the speed of their test programmes.

Following this intensification of the tests, the USSR unilaterally suspended its test programme on 31 March 1958 and called on the West to reciprocate. It was the first time a concrete step had been taken and it was a Soviet initiative. An international meeting of experts was then convened, in which the US, the UK and the USSR reached an agreement on an inspection system. While talks continued, the three countries decided to observe a test moratorium, starting in November 1958.

Similar to a ceasefire, the suspension of tests is of fundamental importance. As a confidence-building step, the moratorium can provide the preliminary setting needed to bring the parties to negotiate an agreement (Johnson, 2009, p. 40). In the years of the moratorium, progress was made as the states agreed on a preamble, seventeen articles, and one annex for the prospective treaty (Bonham, et al., 1997, p. 220). As the negotiations were nearly concluded, an American U-2 spy plane was shot down over the USSR in May 1960, which increased East-West tensions and spoiled the chance for agreement. In this context, the USSR was the first to resume nuclear testing and the Western powers followed it. As Bonham, et al. (1997) has noted, “from September 1961 through December 1962, a total of 170 tests were conducted by the nuclear powers, compared with 280 tests prior to the moratorium [1945-1958]” (p.221).⁴

What it followed was the heightening of the Cold War, with the Cuban Missile Crisis of October 1962. After this dramatic event, which was the closest that the US and the Soviet Union ever came to nuclear war, President Kennedy and First Secretary Khrushchev adopted more moderate positions towards each other and even agreed on improving their communication.⁵ Motivated by the peaceful solution of the October Crisis, Khrushchev decided to pursue more vigorously a solution for “the far simpler problem of the cessation of test explosions of nuclear weapons” (Khrushchev, 1962, quoted in Jönsson, 1990, p. 125).

In this cooperative context, the first major nuclear arms treaty became a reality: the PTBT was signed by the US, the USSR and the UK in Moscow, on 5 August 1963. This treaty, which came into force on 10 October 1963, prohibited nuclear explosions in the atmosphere, in outer space and under water. Underground tests were allowed under the PTBT, unless “such explosion causes radioactive debris to be present outside the territorial limits” of the state which conducted the test (PTBT, 1963).

After the PTBT had set a precedent, two other treaties regarding nuclear tests were negotiated and signed by the Soviet Union in the 1970s: the TTBT (1974) and the PNET (1976). The two treaties prohibited nuclear explosions with a yield exceeding 150 kilotons, but the PNET covered the nuclear explosions carried out at locations outside the weapons test sites specified by the TTBT. Both agreements were signed immediately after concluded, but the verification provisions they established were weak, which prevented the treaties from being ratified.

With the two treaties kept in limbo, both parties declared their intention to abide by the 150-kiloton limit. From 1976 to 1990, the US continually claimed that the Soviet tests were exceeding this limit (Roberts, 2005, p. 379). Nuclear

4 Actually, on 31 October 1961, the USSR carried out the largest nuclear explosion in history. The yield of the “Tsar bomba”, tested on the Soviet archipelago of Novaya Zemlya, is estimated in 58 megatons (Denmark, 2005, p. 163).

5 On June 20, 1963, the two countries signed the so-called “Hot Line agreement”; which set up practical measures to establish prompt, direct communication between the two heads of state.

Testing Talks between the two countries took place in 1987, with the purpose of negotiating a stronger verification protocol to the TTBT. After several rounds of negotiations and a joint verification experiment, the parties reached agreement in May 1990 and the treaties finally entered into force on 11 December 1990.

In the 1980s, a popular movement was developing, as anti-nuclear and environmental groups were strongly demanding an international test ban. Inside the USSR, nationalist movements were emerging in different configurations; some of which presented itself in terms of environmental concerns. For instance, in Kazakhstan, claims of radioactive contamination coming from nuclear test venting mobilised popular demonstrations that had a strong nationalist character. In this context, Gorbachev declared a test moratorium, in August 1985. As the other nuclear powers failed to follow suit, the USSR resumed testing in March 1987.

The nationalist and environmentalist movement in Kazakhstan, however, was growing bigger. So in 1991, the Soviet cabinet minister responsible for the environment, Nikolai Vorontsov, announced that due to popular pressure the test site at Semipalatinsk, in Kazakhstan, was “for all practical purposes not working any more” (Wittner, 2003, p. 438). Without Semipalatinsk, the USSR would have to test in its other test site, in the Arctic archipelago of Novaya Zemlya. As Johnson (2009) has noted, even though the Soviet nuclear establishment intended to carry on testing,

Novaya Zemlya was increasingly expensive to use, a relevant factor at a time when the Soviet economy was being exposed as on the brink of collapse, in part due to the crippling costs of the nuclear arms race (p. 192).

Over seven hundred nuclear explosions had been conducted by the USSR (Fedchenko and Ferm Hellgren, 2007, p. 556), when Gorbachev announced another test moratorium, starting from January 1991. At that time, the Soviet stockpile was estimated in more than 30,000 nuclear weapons and Gorbachev concluded that a moratorium on further testing would not harm Soviet interests (Johnson, 2009, p. 192). In 1992, President Mitterrand announced the halting of French tests and, in June of that same year, President Yeltsin reiterated the Russian commitment to the test moratorium. In the US, the test moratorium came with a piece of legislation that was finally approved by the Congress in October 1992, the Hatfield-Exon-Mitchell Amendment.

4. Russia and the CTBT negotiations

It has been noted that these three testing moratoria were, mostly, the consequence of domestic decision-making; which was influenced by different concerns, such as economic restrictions, civil society demands and international public opinion. Temporarily halting tests was a way of showing support for the test ban and the non-proliferation regime, without making concrete commitments to disarmament. As Johnson (2009) has showed, there is little evidence that the Soviet testing moratoria was undertaken with a CTBT strategy in mind (p. 192).

However, as the Cold War came to an end and more cooperative patterns of inter-state interaction emerged, civil society and states demanded that negotiations on a comprehensive test ban be commenced. As a result, the Conference on Disarmament (CD) formally began to work on the CTBT in 1993. Although this was the first nuclear-weapons-related multilateral treaty to be negotiated in the post-Cold War era, it became clear that Cold War habits die hard: the CD rules of procedure still followed the division of the Cold War and Russia and the US were regarded as the major players. In fact, the CD mandate was based on a bilateral draft that had been previously endorsed by the two former enemies (Johnson, 2009, p. 299, fn. 55).

It is important to note that the early 1990s constituted a complex period of Russian foreign policy. Under President Yeltsin and Foreign Minister Andrey Kozyrev, a wide debate regarding identity and foreign policy took place among Russian diplomats and political figures (Light, 1996). Inside Russia, it was imperative to rethink the

domestic configuration and the role it would play in international affairs. Despite the internal problems, Russia, as well as the other nuclear weapon states (NWS), agreed to negotiate a CTBT.

Achieving such a treaty could bring some advantages to the NWS, mostly related to maintaining the nuclear balance and strengthening the non-proliferation regime. In this respect, Johnson (2009) listed four main reasons why a CTBT could be in the interest of the NWS:

to cap the nuclear capabilities of India and Pakistan before they became weaponized to any significant degree, to induce the D-3 [India, Israel and Pakistan — the *de facto* nuclear-weapon states] to take this first step toward formal engagement in the established arms control and non-proliferation regimes, to place a further barrier in the way of any nuclear aspirants and to reinforce the credibility of the NPT so that it would be indefinitely extended in 1995 (p. 179).

The CTBT negotiations ran from January 1994 to September 1996. In the CD, the first major debate concerned the scope of the treaty. While the non-nuclear weapon states (NNWS) were pushing for a zero-yield scope, which would prohibit any nuclear explosion, the NWS were arguing for threshold levels that would still allow them to conduct “minor” explosions. However, asymmetrical technological capabilities, political distrust and rivalries impeded the NWS to come to an agreement on a threshold or maximum yield for their hydronuclear experiments (Johnson, 2009, p. 194). Divided, the NWS were unable to sustain a strong position and the zero-yield prevailed.

Another problematic subject was the entry-into force clause. A stringent entry-into-force provision was seen as a way to strengthen the treaty and better curb proliferation. Together with China and the UK, Russia succeeded in forcing a rigid entry into force clause (Johnson, 2009, p. 200). Therefore, to ensure the effective implementation of the CTBT, the entry-into force clause determines that the Treaty must be ratified by forty-four states named in Annex 2. These are states that participated in the CTBT’s negotiations and possessed nuclear power reactors or research reactors at that time.

After more than two years of talks, the consensual decision-making process of the CD prevented the finalised agreement from being adopted. To overcome the deadlock, Australia brought the treaty directly to the UN General Assembly for endorsement. The resolution sponsored by Australia was approved by a margin of 158 to 3, with 5 abstentions (UNGA, 1996). As a consequence, the CTBT was opened for signature in New York on 24 September 1996. Russia signed the treaty on that same day and the Russian Duma ratified it on 21 April 2000.

5. Conclusions

Even though the CTBT is yet to enter into force, Russia has abided by its rules and abstained from conducting nuclear tests since the moratorium of 1991. Dating back to the first nuclear test agreement, the PTBT, the Soviet Union and then Russia have showed political will to achieve test limitations and even a comprehensive ban on nuclear testing. Regarding the test treaties that make up the law of arms, the USSR and Russia have followed their legal obligations. The law of arms control, however, is composed by other sorts of agreements regulating national armaments and it is widely known that the Soviet Union did not always comply with all of them.⁶

In the process of discussing, drafting, establishing and implementing test-ban accords, the USSR and then Russia showed willingness to engage in international regimes and even take the lead, being the first country to suspend nuclear tests in 1958 and 1985. Together with the US, the USSR underwent a learning process, which allowed these two rivals to increase communication and craft common understandings in international relations.

⁶ For instance, even after signing the Biological Weapons Convention, the USSR maintained a large, clandestine bio-weapons programme – which the Russian Federation has terminated (Henderson, et al., 1999).

In spite of these efforts, eight of the forty-four states named in Annex 2 of the CTBT still need to ratify it so as to bring the agreement into effect.⁷ Currently in limbo, the CTBT and the norms contained in it are largely accepted in the international system. Due to the very limitations of this paper, it is not possible to investigate here whether or not the norm against nuclear tests has enough adherence to qualify as a customary rule of international law. However, it is important to remember that the recent nuclear explosions conducted by North Korea in 2006, 2009 and 2013 were met with strong criticisms and did not lead to the resumption of tests by any of the nuclear powers.

The American failure to ratify the CTBT, however, can have a disrupting impact in the international moratorium. In Russia, this is seen as another broken promise of the Americans since they had previously asserted their commitment to bringing the treaty into force. Moreover, during the CTBT negotiations, President Clinton offered President Yeltsin American scientific and technical assistance in return for Russia's adherence to the CTBT.⁸ Even after the US Senate had rejected the treaty, the Russian Duma ratified it; but the promise of expanded collaboration never materialised (Lindemuth, 2009).

In 2012, Russia conducted military drills with all three components of the nuclear "triad" – land and sea-launched long-range nuclear missiles and strategic bombers. According to the Kremlin, this was the most comprehensive exercise related to Russia's strategic nuclear arsenal since the 1991 Soviet collapse (Reuters, 2012). Although there were no nuclear explosions involved, top Russian officials have already stated that the country remains prepared to resume nuclear testing at any time (Associated Press, 2006).

Restarting tests would allow Russia to assess the safety, security, and reliability of its nuclear arsenal, but it would certainly go against customary international law. This is so because signatories of a treaty are obliged not to do anything that might undermine the "object and purpose" of the agreement that is yet to enter into force (Kartchner, 2005, p.120). But then again, law and politics are always intertwined: above all, resuming tests would constitute a political statement of national strength and international preeminence – a message that seems to be in line with President Putin's foreign policy goals.

6. Annex: List of Acronyms

CD: Conference on Disarmament

CTBT: Comprehensive Nuclear-Test-Ban Treaty

PNE: Peaceful Nuclear Explosions

PNET: Peaceful Nuclear Explosions Treaty

PTBT: Partial Test-Ban Treaty

NPT: Nuclear Non-Proliferation Treaty

NWS: Nuclear Weapon States, as stated in the NPT (China, France, Russia, the United Kingdom and the United States)

NNWS: Non-Nuclear Weapon States

TTBT: Threshold Test-Ban Treaty

UN: United Nations

⁷ The remaining eight are: China, the Democratic People's Republic of Korea, Egypt, India, Iran, Israel, Pakistan and the United States. As Casebeer (2005) has noted, "the ratification process highlights the potential for domestic political concerns to influence international attempts to regulate weapons of mass destruction" (p. 307).

⁸ According to Lindemuth (2009), President Clinton, during his October 1995 summit with President Yeltsin, offered scientific and technical assistance to Russia in return for Russia's adherence to the CTBT. President Clinton also issued a Presidential Decision Directive (PDD) regarding "extending existing lab-to-lab scientific collaborations and addressing scientific issues related to Russia's national security" (p. 484). In June 1996, the Moscow Protocol, formally known as "Implementation of Scientific and Technical Projects to Help Ensure the Safety and Security of Their Nuclear Stockpiles under a CTBT", was signed between the two countries (p. 490).

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Abstract

The long-lasting struggle against nuclear tests can be examined through different perspectives. In this paper, the focus will be on the part played by the USSR and Russia in the international efforts aimed at establishing legal instruments to outlaw nuclear explosions in space, underground, under water and in the atmosphere.

Resumo

A luta contra os testes nucleares pode ser examinada sob diferentes perspectivas. Aqui, o foco recairá sobre o papel desempenhado pela União Soviética e Rússia na criação de instrumentos legais para proibir explosões nucleares no espaço, no subsolo, debaixo da água e na atmosfera.

Key words: international law; arms control; USSR; Russia

Palavras-chave: direito internacional; controle de armas; URSS; Rússia

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