

Disarmament Under the NPT: Article VI in the 21st Century

Paul M. Kiernan

LL.M. Candidate, Energy & Environmental Law

George Washington University Law School

Art. VI

“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.”

Context

- Objectives:
 - Prevent new states from acquiring
 - Cap and diminish existing arsenals
- Obstacle:
 - Perception of U.S. noncompliance saps nonproliferation efforts
- Question:
 - Can a more nuanced understanding of Article VI narrow the basis for this perception?

Answer

- Art. VI can offer *legal scope* for recognition of partial disarmament steps as compliance in the short/medium term.
- Assumptions...
 - Significance of legal theory
 - Utility of diplomacy itself
- Strategic implications:
 - Style of disarmament & conditionality
 - Global Zero?

Structure

“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.”

Crux: 'Nuclear Disarmament'

- Susceptible to at least two meanings:
 - (1) act of disarming (partial disarmament)
 - (2) end state of total disarmament
- Art. VI allows for the former; therefore, good faith negotiation of partial disarmament steps constitutes compliance.

Legal – Treaty Interpretation

- Vienna Rules:
 - Ordinary meaning (Article 31)
 - In context
 - In light of object and purpose
 - Subsequent agreement of the parties
 - Supplementary means (Article 32)
 - Travaux préparatoires
 - Circumstances of conclusion

Ordinary Meaning

(Art. 31)

- Principle of textuality
 - “Effective measures relating to ... nuclear disarmament”
- Context *moderates* that meaning
 - Effective measures “in the direction of” nuclear disarmament
 - “Liquidation”
- Object and purpose
 - Cap and reduce existing arsenals; prohibit spread
 - Diminish risk of nuclear war
- Subsequent agreements (RevCons)
 - Progression of disarmament steps

Supplementary Means (Art. 32)

- To *confirm* meaning; or,
- To *determine* meaning, if Art. 31 results in ambiguity
- Travaux préparatoires
 - Parties initially proposed an entire spectrum of disarmament obligations
 - Mexico's effort to add concrete disarmament obligations
- Circumstances of conclusion
 - China
 - NIEs

Conclusion

- Partial disarmament steps bring the U.S. into accepted compliance with Art. VI.
- *So what?*
 - Deflect pressure onto other states
 - Shield criticism on force/stockpile management