

The Legal Requirements and Impacts of Unilateral Withdrawal from International Treaties: The Case of Treaty on Elimination of Intermediate-Range Nuclear Force (INF) between USA v. USSR

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ABSTRACT

Nowadays, unilateral termination of international treaties is repeatedly exercised and becomes normal and justified by states' strict sense of protection of sovereign interest. This article aims to assess the legal standards and impacts of unilateral termination of international treaties by analyzing the US unilateral termination of the Treaty on Elimination of Intermediate-Range Nuclear Force (INF treaty) signed by the US and the USSR in 1987. The finding shows that the US terminated the INF treaty in 2019 by alleging Russia violated the Treaty, and the justification considered 'an extraordinary event that jeopardizes supreme interest'. This paper argues that the termination negated the purpose of the Treaty and had different alternatives to avoid withdrawal, but options have been overlooked. The termination endangers normative principles of flexibility, good faith, and trust in international law of treaties that can lead parties into dangerous escalation in the intensifying global arms race to provoke a nuclear war.

Introduction

Consent is considered one of the principles of customary international law, and it has indispensable relevance to the development of international law (Shaw,

2008; and Vienna Convention on Law of Treaties, hereafter VCLT), 1969). Johnston Douglas (1989), in his interdisciplinary philosophical analysis of the relevance of consent in international law, analyzed that to enhance the uncertain foundation of

international law, the theory of consent has indispensable importance. Each state has to embrace commitment inferred from consensual agreements to hold responsibilities and acquire rights from international treaties. Therefore, State parties to the Treaty are required to confirm their free intention to be bound by an international treaty.

Like treaty-making processes, there are also rubrics to terminate consent and revoke the relationships between the states. The VCLT incorporates rules to manage the termination of consent (Art. 54-64). Regarding when the Treaty terminates, it provides two possible circumstances, and the first is when the Treaty's purpose or object is over_ some treaties are made to accomplish certain goals and seized soon after the completion of that aim. Some treaties have a fixed period to end their intended purpose; indeed that can be considered as the expiry date of certain relationships. The second circumstance of termination is any time before the end of the Treaty's object, which has been determined to lapse with a consensual agreement between parties (VCLT, Ar. 54(b)).

It is natural for a treaty to forecast circumstances about the end of its journey, and it is familiar to find provisions in the last part of every Treaty to govern how to end state parties' interactions (Shaw, 2008, pp.945). Some treaties are silent about the departure plan. In such circumstances, the international laws presumed that the Treaty would not be orchestrated for termination unless it impliedly inferred from the Treaty itself (VCLT, 1969 Ar. 56). However, most international treaties have safety valves inserted to provide an escape line from imminent danger that comes from the Treaty

itself against the supreme interest of members.

Laurence (2005) described that the treaty clauses are 'exiting provisions' arranged either to permit unilateral termination or denunciation of a treaty on parties' unanimous collective consent. Incorporating an exit plan is one of the state parties' safety preservation mechanisms that could include explicitly articulated reasons and processes of arrangements to terminate a treaty. In international treaties, such withdrawal clauses have the primary goal of foreseeing the protection of members from unpremeditated consequences that affect the supreme interest of each state party (Laurence, 2005). However, the international doctrine of withdrawal had been extremely influenced by the states' national diplomatic interests and political goals and abused international relations.

It is believed that every state is sovereign to make or withdraw from any international agreements, whereas such justification of the doctrine of the sovereign right to withdrawal from the international Treaty has faced continuous critics (Fry, et al 2021). Some writers alleged that a strict sense of sovereignty of a state would block the contemporary phenomena of international relations. Hathaway explained the problem by saying that 'at the international level, governments aim to maximize their ability to satisfy domestic pressures, while simultaneously seeking to avoid adverse foreign developments' (Oona, 2007). Quitting a treaty is disrespectful to states who believe in good faith in its performance. Unless such unilateral termination is managed safely, it can destroy universal relations and instigate states' isolationism. Particularly, in the existing

strong phenomena of globalization, the negligence termination of international treaties is disastrous. In this regard, there are historical examples, the League of Nations, which was the first platform to unify the world, established by the Covenant on its first provision incorporated the rule of unilateral withdrawal from the league (The Covenant of League of Nations (1920). Art. 1 para 3). After the end of World War II, some state parties to the League of Nations insisted on extinct their membership and intended to escape sanctions and punishment. The World War II winners (Allies) planned to prosecute and charge the perpetrators, such a move frustrated many states including Japan, Germany, Italy, and others started to withdraw from the League of Nations by referring the Article 1 of the League of Nations. The Covenant Article 1 reads: “Any Member of the League may, after two years’ notice of its intention so to do, withdraw from the League, provided that all its international obligations and all its obligations under this Covenant shall have been fulfilled at the time of its withdrawal.”

The provision was considered as a gap criticized by many, and such a withdrawal provision was excluded from the United Nations establishment charter. The other example is the North Korean unilateral withdrawal from the Non-proliferation of Nuclear Weapons Treaty (NPT) is also worth noting, which shows state parties can quit international treaties despite their relevance to protect the world from nuclear war. North Korea was a party to the NPT in 1985 as a non-nuclear-weapon state. However, by 2003 she withdrew with a justification that the US’s foreign policy was threatening its supreme interest. North Korea had alleged that the US could attack the republic anytime while it was not

materialized ‘threat’. Korea Republic applied Article 10 of NPT which read:

“Each party shall in exercising its national sovereignty, have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance.”

Despite the state parties’ allegation, the NPT treaty has no detailed provision to provide the procedure to prove whether the alleged reason is true or not. Many events can be cited as the state’s unilateral withdrawal impacting the treaty relationships and even sometimes shadowed to create an anarchic environment in international law. The available narrow line between a state’s willingness to share responsibilities from international agreements and the spoiled justification of the sovereign right of the state to withdraw has continuously disputed the discourse of international law (Oona, 2007, pp.119). It is not as simple as such to draw the legitimate demarcation between consensual free intention to be bound by international treaty and state parties’ right to quit the Treaty to protect certain circumstances that affect the interests of party states. It is believed that international treaties are frameworks used to creation of legal responsibilities in conventional formality, trust, and good faith for the mutual benefit of all parties. However, the international law forum has been tested in many events of unilateral termination which would defeat the true objects or purposes of treaties.

In the recent global phenomena, unilateral withdrawal has become a trend for the USA. Under the era of the President Trump administration, for example, the US has unilaterally withdrawn from many binding and non-binding agreements. Trump, in his election campaign slogan of ‘America First,’ had the impression of US isolationism, and some labelled him as a ‘new sovereigntist’. His determination to the gross withdrawal of the US from many international agreements was described as an ‘assault against international law’ (Oona, 2020, Reengaging on Treaties).

The Treaty on Elimination of Intermediate-Range Nuclear Force (INF treaty) was a bilateral agreement between the United States of America and the Union of the Soviet Socialist Republic (USSR). INF had been considered pertinent and aimed at reducing and prohibition of testing, using, and deploying specifically listed short and intermediate-range land-based missiles (Anderson and Nelson, 2019). The Treaty was wondered as a success after a decade of negotiation between the US and USSR at least to some extent to reduce the intensity of the cold war. It has also seriously impacted the moderation of furious competition in the regional and global rivalry between the ‘West’ and the Soviet Union (Anderson and Nelson, 2019). It had been enforced for more than three decades, however, on October 20, 2018, the US announced the unilateral withdrawal by alleging violations of the Treaty by Russia (Oona, 2020, Reengaging on Treaties). Such a move was not anticipated and surprised the European countries that exposed them without protection from the Russian missiles. At the same time, other countries like China have also criticized that they could initialize the cold war (Spokesperson of China, Hua

Chunying, 2019, Regular Press Conference). After Trump’s announcement, the US, on February 2, 2019, submitted an official withdrawal notice and officially quit INF on August 2, 2019 (US Department of State, Michel R. Pompeo, Press statement, August 2, 2019).

This article does not seek to investigate the state parties’ causes of termination of INF, and rather, it is inspired to scrutinize whether the international laws and customs regarding unilateral withdrawal had been correctly exercised by the state parties. There are many pieces of research to deal with the unilateral withdrawal from international agreements in general nevertheless, this article focused on assessing the INF treaty as per the international laws and accepted customs. Besides, the article tries to implicate the impacts of the unilateral Treaty on international law and international relations. Therefore, this article evaluates the legal requirements and negative impacts of unilateral withdrawal from international treaties in general and specifically focuses on the case of the INF treaty in particular.

Methodology

The article applied a purely qualitative research approach by using both primary and secondary sources as references to analyze research findings, and the research tends to utilize a case analysis approach. International laws are used as a primary source; secondary sources include books, journal articles, investigation reports, news articles, ICJ court reports, online sources, and other documents utilized as references.

Regarding the organization of this research, it has seven parts; the first part is all about introducing the issue of unilateral

withdrawal and thermalizing the INF treaty. The second part is a brief discussion of the methods of the research article. The third part is allotted to discuss facts about the unilateral withdrawal of the INF treaty that are relevant to the analysis. The fourth part highlights the overview of international legal realms about aspects of termination of international treaties by focusing on VCLT. The fifth part stands for an analysis of the context of unilateral withdrawal from the INF treaty in comparison to legal requirements. The sixth part of the article discusses the impacts of unilateral withdrawal. The seventh part of the article is the conclusion and provides some recommendations.

Treaty on Elimination of Intermediate-Range Nuclear Force (INF)

Brief Historical Overview of the INF Treaty

The era of the Cold War had a multifaceted global competition between the US and USSR after the end of World War II. One of the spectrums of competition was the arms race between the West and the Soviet Union. The INF treaty was the fruit of the Cold War era and passed a decade of processes of negotiations (INF, Chronology). In 1977, to attain domination and control over Europe, the Soviet Union deployed the SS-20, which was a modern, mobile, nuclear-armed intermediate-range ballistic missile capable of reaching Western Europe (INF, Chronology). The Soviet's move threatened the European countries, and the Northern Atlantic Treaty Organization (NATO) was forced to plan a 'dual track' strategy in 1979. The first strategy was to negotiate with the Soviets to balance the arms race, and the second strategy was to

modernize the NATO military capabilities with the assistance of USA ground-launched cruise missiles (GLCM) (INF, Chronology).

The continuous arms race had reached its peak and then US President Ronald Reagan proposed a 'zero-option plan' that invoked the cancellation of US deployment of intermediate missiles if the Soviet Union had eliminated all ground-launched missile systems. However, the Soviets rejected the plan because they criticized it as an imbalanced proposal to settle the problem. Then, the Soviets proposed another offer to set the maximum amount of specific types of weaponry to be possessed by the two parties by counting European countries' deployed land-based INF missile systems and the US deployed systems in the area to make equivalent with the Soviet Union (INF Chronology). After many proposals and counter-proposals between the two superpowers, in 1987, President Reagan and General Secretary Gorbachev signed the INF treaty (US Department of State, Diplomacy in Action, INF treaty between US and USSR). Even though the pretext and the immediate concern of the Treaty was the dispute between European and the Soviet Union, however, ultimately the discussion and the final agreement excluded the involvement of European countries since the INF treaty emulated a bilateral agreement that restricted the US and USSR from possessing, producing, or testing ground-launched ballistic and cruise missiles with a range of 500 to 5,500 kilometers and their systems that were used in launching installations (INF treaty, 1987).

Even though the INF treaty was a bilateral agreement, the expected purposes were exclusive approach to frame the global border goals to the protection of all mankind

from nuclear war devastating consequences, strengthening strategic stability, reducing the risk of the outbreak of war, and strengthening international peace and security (INF treaty, 1987). Besides, the INF treaty was supposed to be one of the commitments of the two superpower states to fulfill the obligations under Art. 6 of the NPT. The preamble of the NPT also pinpointed the state parties' responsibility to negotiate in good faith about disarmament and reduction of nuclear weapons.

The two contracting parties have had specific procedural rules and regulations to administer the overall implementation progress of the INF treaty. The first is the Protocol on Procedures Governing the Elimination of Missile Systems, which has specific technical and comprehensive processes for the performance elimination of missile systems (Protocol on Procedures Governing the Elimination of Missile System, 1987). The second text was the Memorandum of Understanding Regarding the Establishment of Database – this memorandum is set to use as a reference to facilitate the transparent method of sharing data regarding the elimination of weapons that are agreed to reduction and elimination. (Memorandum of Understanding Regarding the Establishment Database, 1987). The third tool which was signed was the Protocol Regarding Inspection – this protocol agreed to prescribe detailed rules of inspection as per the INF treaty implementation procedure (Protocol Regarding Inspection, 1987). The fourth text was the Memorandum of Agreement Regarding the Implementations of the Verification Provision of the Treaty – and it was assumed to provide the specific regulations of verification processes of compliance of parties (Memorandum of Agreement Regarding the Implementations

the Verification Provision of the Treaty, 1987).

The INF Treaty was the first agreement of its kind between Russia and the US that prohibited entire categories of nuclear weapons at that time and performed accordingly. Thus, the two powers implemented and eliminated short and intermediate-range missiles and infrastructures. The USA eliminated 846 Pershing I & II BGM-109G missile systems and USSR also terminated 1846 SS-20, SS-4, and SS-5 missile systems (On-Site Inspection Agency and INF Treaty Chronology Appendix B).

The implementation of the Treaty had checked by each party's notifications and shared detail database system and managed with transparent notification processes. Besides, there was Special Verification Commission (SVC) was established to check compliance with the Treaty INF to authenticate each elimination process (INF treaty, Art.13 (1)). Even more, the INF treaty proposed a system of communication for the parties to use the Nuclear Risk Reduction Centers, which provide for continuous communication linkage (INF treaty, Art.13 (2)).

The INF treaty was relatively successful in achieving the elimination of short and intermediate-range nuclear missiles and it was functional and played a significant role for three decades. While the Treaty was aimed to serve such a role for an unlimited duration of time (INF treaty, Art. 15 (1)), however, the state parties, especially the US had complained about the non-compliance of the Russian government. Despite INF's intended objectives and achievements, President Trump declared to

quit the Treaty by referring to Art. 15 (2) of the provision of the Treaty. The basic question of this article is, would such termination be coherent with international laws and accepted principles? Was any possibility that would safeguard the Treaty? The second issue is what are the impacts of termination of the INF treaty? Therefore, this article aims to securitize the above issues and suggest solutions.

INF treaty after Dissolution of USSR and Succession of Treaty Responsibilities

From 1988 to 1991 the Soviet Union disintegrated and yielded the official dissolution of the Union and the formation of newly independent states. The question regarding how those new states acquired INF treaty responsibilities was an issue. The INF treaty has no provision to govern the succession of treaty responsibilities. Besides, neither the Soviet Union nor the United States was a party to the Vienna Convention on Succession of States in Respect of Treaties (VCSST, 1978). This Convention was enacted by the International Law Commission to fill the possible gaps which could arise in situations like the formation of new states or dissolutions of the predecessor responsible state or merger by forming a new union. USSR had already dissolved. Hence there was a legal lacuna to preserve the functional role of the INF treaty. Nevertheless, by perusing each independent state through bilateral negotiation, the US had contained a similar effect as the VCSST. Breakaway states negotiated to accept the Treaty as a bilateral treaty with the US. Such a strategy made the INF treaty avoid being a multilateral treaty (Paul, 1994). There were many diplomatic discussions between Russia, Belarus, Kazakhstan, Ukraine, and the USA to sustain the INF

treaty (INF Chronology). However, some other breakaway states were lesser interested and not in a position to deal with the INF due to their lack of capability of such weapons at that time (US Department of State, 2017, Diplomacy in Action).

Practically, up until the date of termination, the INF treaty was considered a bilateral treaty between negotiated states. The question is ‘What is the effect of the withdrawal of the US on the USSR breakaway states? Are there any legal responsibilities for newly established independent states? Though, all negotiated states were not parties, Art. 26 (2) of the Vienna Convention on the succession of treaties noted that termination of the Treaty between predecessor states parties would not affect the enforcement of the Treaty on newly successor states (VCSST, Ar.26). However, practically the INF treaty was terminated by a single predecessor state (the US) and a single successor state (Russia), and there is no other successor state who claims to sustain or approve the termination of treaty responsibilities.

Unilateral Withdrawal from INF Treaty and Connection with Other Treaties

The US had alleged that Russia violated the INF treaty by developing prohibited short and intermediate-range ground-based missile launching systems; on the reverse, the Russian counterpart denied the US claim as a false allegation (Hurd and Chachko, 2018). Russia had also repeatedly invoked non-compliance with the US on the treaty responsibilities (INF News, Moscow says US Rocket Test Violates INF). Such finger-pointing altercation had developed to blame each other’s responsibilities for the confrontation and instigated at its peak in

2014 the event that happened in Ukraine – the pro-west opposition party rebel orchestrated different movements and finally won the presidency then after the coming of new administration there was war in Ukraine in the Donbas region (Global Conflict Tracker, Conflict in Ukraine, 2022). The Russian Federation intervened in the so-called ‘special mission’ and attempted to manage the situation by recognizing the independence of the Donbas region and the annexation of Crimea. The US and Western allies have used rounds of economic sanctions against the Russian Federation in response to what they called ‘Russia intervention in Ukraine invasion of Donbas’. This scenario has changed the relationship between the INF treaty parties in a specific sense and frustrated the global diplomatic relation of states in general. After such an event there were many reactions from all over the world; some European countries criticized the US’s unilateral withdrawal which asserted diplomatic failure of the US that could grant diplomatic superiority to the Russian Federation to justify the deployment and test of missiles (Fihn, 2019). Some NATO members blamed the US for unilateral withdrawal. They believed there were other options to force Russia to comply with the INF treaty (Fihn, 2019). Other countries, including China, have blamed such an act of withdrawal by the US can initiate the Cold War scenario (Hua Chunying’s, Regular Press Conference, 2019).

In addition to INF, there are other relevant treaties in which the US and Russia have played a fundamental role in disarmament and nuclear arm control agreements. Hence, the loss of mutual trust and the development of bad faith would have a precarious impression on other

similar treaties. For example, the NPT is one of the pillars of prevention and prohibition of the use of Nuclear weapons. The preamble of the INF treaty also included the responsibility to state parties to negotiate in good faith regarding the purpose of the Treaty by referring to Article 6 of NPT.

The other relevant Treaty related to the disarmament of nuclear weapons is the bilateral Treaty called Strategic Arms Reduction Treaty (START I) that was established between Russia and US in 1991. Its basic objective was the reduction and limitation of strategic offensive arms which was enforced from 1994 to 2001. In 2001 the START II treaty parties agreed upon the same goals and it was enforced from 2001 to 2009. At the end of START II, the two parties agreed to the NEW START which was entered into force in 2011 and was supposed to continue to apply until 2026. However, Russian President Putin announced the suspension of NEW START which was the last major nuclear arms treaty.

The above discussion is intended to show the INF treaty’s relation with some treaties that have interconnected objects. The INF treaty members (US and Russia) are the two basic nuclear states in possession of the majority number of nuclear warheads. So, the unilateral termination of the INF treaty by either of these two states would have a substantial effect because the trend can endanger the above interrelated basic treaties’ sustainability, and that can create a boomerang effect of the unintended result.

Unilateral Withdrawal in International Laws

The 1969 Vienna Convention on Law of Treaties (VCLT) is relevant international law that is used to discuss the issue of withdrawal. The USSR ratified the VCLT in 1986. However, the USA is not a party to it (Ratification Status of VCLT, UN Treaty Collection). Yet, most of the parts of the Convention have gained the status of customary international law, which can bind non-state parties (Zemanek, 2009).

The VCLT contains a section on the termination and suspension of the task of treaties. The Convention identified two ways to terminate. The first is termination by using the treaty provision (Ar. 54(a)). This approach is applicable when the contracting parties incorporate the termination clauses in the treaty body. The termination clauses alone can be used to rule out the processes of the termination. However, there are customary law doctrines that are inferred from international law principles that would assist interpretations of treaty provisions. The second way is in situations in which a treaty can be terminated when it lacks relevant provisions and when the parties cannot be brought to an agreement (Ar. 54(b)). The second scenario is supposed to apply the VCLT rules of the interpretation of termination.

Potential Reasons for Withdrawal under the Vienna Convention

The Vienna Convention provides general possible reasons for withdrawal from an international treaty. These are;

Reasons Emanated from the Treaty and Consent

One of the reasons is withdrawal by treaty provision or consent _ in this regard, the state parties could agree to provide

specific grounds and procedures for the termination of a treaty. Besides, without such treaty provision, if the state parties consented termination of a treaty, they can quit or end the operation of the Treaty. Incorporation of treaty clauses has been the trend for most international agreements, and there were many cases of termination using grounds under the Treaty itself. The discretion is for the parties to mention specific reasons for withdrawal. Most of the time, such treaty clauses grant permission in a scenario related to a violation of the basic interest of the state. Such termination clauses are composed of certain rules of notification to other states. Practical experience shows that termination clauses are not exclusive to providing detailed processes of withdrawal, due to such facts, most of the time, the alleged terminator can simply submit a notification about 'non-compliance' of the other party.

Termination clauses needed to consider the extent of flexibility to a party to quit the Treaty in a case when such party is significantly affected by the non-performance of the other counterpart (Shaw, 2008 pp.947). More importantly, the clause should also foresee the consequences of making a treaty terminate with a silly justification that could cost the reliability of the Treaty. Generally, even though, the termination clauses drafting process is decided by negotiation of state parties, it shall also manage the balance of saving the supreme interest of a party and safeguarding the true object of the Treaty.

Implied Consent from the Treaty

There are circumstances when there is no clear provision of termination; however, in a different part of the Treaty, it could

express the implied assumption of the end of the Treaty (VCLT, Ar. 54 (b)). In some circumstances, treaties can be concluded to achieve a certain result or something that is inferred from the nature of the Treaty. However, such interpretation shall be used in limited circumstances; it is not simple to find implied consent of termination from the Treaty and it can endanger the principle of *pacta sunt servanda* (Report of International Law Commission Draft and commentaries VCLT, 1966). In such a situation a state can unilaterally terminate a treaty either by showing the parties' intention to allow termination or by referring to the right to terminate can be implied by the nature of the Treaty (VCLT, 1969, Ar. 54 (b)).

End of the Purpose and Fixed Date of a Treaty

When the Treaty's ultimate goal is completed, it is believed terminated by default because after accomplishing its object and purpose the Treaty will end its operation. So that, state parties can invoke termination of the Treaty after the Treaty's purpose is over (Report of International Law Commission on Draft VCLT, 1966. pp.251). Some treaties have a specified timeframe to complete the object of the Treaty. The last date of the Treaty will be considered the expiry period of treaty operation; after the end of the treaty timeframe, the Treaty has terminated by default.

Material Breach

The most frequently disputed ground of termination is a circumstance when state parties invoke material breach of the other state. The theory of 'protection from material breach' has a profound understanding of national laws its basic objective is to protect the contracting parties

from the unintended effect of violations of the treaty performance. However, to preserve the object and purpose of the Treaty every simple breach would not amount to justify termination. The Vienna Convention stipulates two basic grounds to claim material breach for unilateral withdrawal. The first is when a state repudiation of a treaty not sanctioned by the present Convention and the second is a state violates an important provision and the other state 'retaliates' by regarding the whole agreement ended (VCLT, 1969, Art. 60 (3) (a) & (b)).

Regarding identifying the type and extent of a breach there is customary law that emanated from a famous case between Chile v. Peru (Reports of International Arbitral Awards, 1925) and the Arbitration decision which determine the material breach. Chile and Peru had a 'Treaty of Ancon' and Art.3 authorized the conduct referendum to decide areas of Tacna and Arica's fate to be part of Chile or Peru. However, Peru denounced the Treaty due to the Chilean administrative abuse which affect the referendum. However, the US Arbitrator Calvin Coolidge decided the case by arguing that 'it would be necessary to establish such serious conditions as the consequence of administrative wrongs as would operate to frustrate the purpose of the agreement' (Report of International Arbitral Award, Tacna –Arica Case, 1925).

The other case is the Rainbow Warrior Case New Zealand v. France (Reports of International Arbitral Award, Rainbow Warriors Case) _ the French military attacked the New Zealand Rainbow Warriors and killed them by sinking a ship, then the New Zealand government sentenced the two French officers to ten

years, however, the French claimed immediate release. Then the UN Secretary-General hand the case by arbitrating between the two states to put the two officers on an independent island. However, the French had violated the agreement by unilaterally releasing the two agents considers a fundamental breach of the Treaty. The arbitrators declare that ‘the French Republic committed a material breach of its obligations to New Zealand by not endeavoring in good faith to obtain on May 5 1988 New Zealand’s consent to Captain Prieur’s leaving the island of Hao’ (Reports of International Arbitral Awards, Case concerning the difference between New Zealand and France concerning the interpretation or application of two agreements, 1990). This confirms that every petty violation would not amount to a material breach to justify termination.

Fundamental Change of Circumstances

Another contested ground of unilateral termination is the fundamental change of circumstance which has been incorporated under Art. 62 of VCLT. Commentaries on the draft VCLT show that the doctrine of *rebus sic stantibus* is contentious and demands careful interpretation (Report International Commission on Draft VCLT, Vol. II, (1966), pp.257). The doctrine is applied when there has been a fundamental change of circumstances since an agreement was concluded, a party to that agreement may unilaterally withdraw from or terminate it.

The drafters of VCLT have recommended the doctrine’s application must be ‘carefully delimited and regulated’ unless it can be abused in its application (Report International Commission VCLT,

Vol. II, 1966), pp.258). The question related to what circumstance of a treaty is supposed to be considered as a relevant change to terminate a treaty is important. In this situation, every change of phenomena about a treaty can be invoked, and other basic concerns complicate its utility. Nevertheless, no one shall forget the very basic objective of such a doctrine is to protect the party in unprecedented changing situations encountered that imposes serious strain.

The Vienna Convention incorporated the doctrine with extra care and narrow interpretation. It provides termination of the Treaty possible; first when it proves the existence of those changed circumstances constituted an essential basis of the consent of the parties to be bound by the Treaty (VCLT, Art. 62(1) (a)); second, the change must be unforeseen by the parties, and the effect of the change must be to transform radically the extent of obligations still to be performed under the Treaty (Ibid Art. 62(1) (b)). However, the VCLT forbids claiming termination in two circumstances first, when if the Treaty establishes clear restrictions that are not ground for termination; and second if the invoking party violates the Treaty it shall not take advantage of its wrongful act (Art. 62 (3) (a) & (b)). The VCLT tries to draw a line between allocations of the correct fundamental change, and protection of termination of the Treaty by motive of a party’s bad intention referring to irrelevant changes as a ground of unilateral termination.

Unilateral Withdrawal & INF Treaty

The above parts of the article discuss the grounds and legal requirements of the unilateral termination of the international Treaty. This part explores the grounds used

for the unilateral termination of the INF treaty. Therefore, this part of the article attempt to analyze the legal requirements and experience of the case of the INF treaty by evaluating whether the parties to the Treaty abode by the international rules and sought thoughtfully or not.

Article 15 (1) of the INF Treaty

The US complained about the non-compliance of the Russian counterpart by asserting that Russia tested new weapons that violated INF, and Russia also countered the violation of the Treaty by the US. On August 2, 2019, the US declared the termination of INF because ‘Russia failed to return to full and verified compliance through the destruction of its non-compliant missile system the SSC-8 or 9M729 ground-launched, intermediate-range cruise missile’ (Michael Pompeo, Press Statement, 2019). The US invoked the INF treaty clauses of Art.15 (2). The clause reads;

Each Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests. It shall give notice of its decision to withdraw to the other Party six months before withdrawal from this Treaty. Such notice shall include a statement of the extraordinary events the notifying Party regards as having jeopardized its supreme interests. (INF Treaty, 1987)

According to this paragraph, termination is a sovereign right for both the US and Russia. However, it provides the following three preconditions.

First, the materialization of extraordinary events related to the subject matter of the INF treaty_ the paragraph constructed to show unilateral termination should be permitted in a situation of unique events. But, the Treaty has no provision to define what events should be considered ‘extraordinary’. It is also impossible to find standards to call some happenings to be called extraordinary. Laterally, the terminological selection of ‘extraordinary event’ shows that events should be very exceptional to invoke unilateral termination. To deduce the scope, the paragraph tries to attach event should be in ‘relation to the subject matter of treaty’. What is the subject matter of the Treaty? Here also, INF faced the same problem of clarity. There is no definition of the subject matter of INF. While we can assert that the ‘subject matter of the treaty’ is analogically similar to the purpose and object of the Treaty it can infer from the preamble. Even though there is a lack of clarity, unilateral termination can be invoked as a sovereign right in the rarest circumstance that is directly related to the purpose of the INF treaty.

The VCLT standard of ‘material breach’ is a violation of a provision essential to the accomplishment of the object or purpose of the Treaty. Comparatively, the standard of extraordinary events related to the subject matter of the Treaty _ has a similar impression to material breach linked with fundamental breach of relevant provisions of the Treaty.

The question is whether the allegation of the US is an extraordinary event or not. The US has alleged that Russia’s violation of the prohibition of testing and producing weapons banned by the INF treaty. In circumstances in which the alleged violation

was not proven true by the independent verification commission. It is difficult to conclude an alleged fact is an extraordinary event. The Treaty incorporated an extra verification commission to check the parties' compliance. So, despite the lack of clarity regarding the extraordinary event, it should be a special circumstance in the sense that demands urgent protection of chief interest. While the shreds of evidence show that the US allegation were begun a long time ago. Under Obama's administration, the US complained about Russia's non-compliance with the INF treaty; in addition, there were many circumstances that which the two parties were blaming each other (Gordon, 2018). If that is so, why has 2018 become extraordinary? The subsequent allegations were similar in context, and it is difficult to prove the extraordinary event occurred. If the allegation justifies an extraordinary event, the US would terminate the INF by 2014.

The other issue is, was the allegation of 'testing and producing prohibited weapons' has a relation to the subject matter of the Treaty. It is obvious the basic object of the Treaty is the protection of the world from nuclear war, so any development of weapons prohibited by INF amounts to a violation of the subject matter of the Treaty. However, the ascertainment of such an allegation is left to the discretion of a party.

Second, Jeopardized the Supreme interest of the party _ is another criterion of the INF treaty termination clause. The unique event related to the subject matter of the Treaty should affect the supreme interest of the state. To invoke unilateral termination, the violation must affect the highest interest. The problem is the INF failed to provide requirements to assert 'supreme interest'.

Could the alleged violation jeopardize the supreme interest of the US? According to the press statement of the US State Department, 'Russia's non-compliance under the treaty jeopardizes US supreme interests' which is a 'direct threat to the United States and her allies and partners' (Michael Pompeo, Press Statement, 2019). The State Department defined 'supreme interest' by including the US interest to protect European allies.

Third, the Notice period _ state parties should grant an official notice period of six months. The official notification should deliver the full message of the reasons for withdrawal. The US withdrawal has been performed with six month notice period.

Generally, even though the withdrawal clause is incorporated there is a lack of clarity to prove the happening of an extraordinary event. Besides, the INF treaty not only provides grounds for termination it also provides other alternatives to be considered before unilateral termination. For example, parties can use Nuclear Risk Reduction Center or Special Verification Commission (SVC) that would assist them in solving the problem. Even more, the US could bring the case to the ICJ to claim compliance. It would be possible to use another alternative to save the continuous application of the Treaty, including diplomatic negotiation in good faith.

To preserve the INF treaty, a notable attempt was made by the Russian delegate to the UN submitted to make the INF treaty a multilateral treaty or Convention; however, it was rejected by a majority vote (UN General Assembly Rejects Resolution GA/12116). Despite all, US unilateral declaration has overruled the primary object

of the INF treaty and amplified the premeditated assertion of the US not to continue bond by the Treaty.

Fundamental Change of Circumstance in the INF Treaty

On October 22, 2018, former US President Trump publicly addressed the reasons for US withdrawal by saying that ‘China is not included in the agreement they should be included in the agreement (The Guardian, 2019)’. Such a public declaration was not supported by the official application of the US unilateral withdrawal. Nevertheless, it was a public announcement from the head of the government, so can such a US claim be legal for justifying withdrawal? The probable legal justification might be the fundamental change of circumstance. However, it is not easy for the US to justify withdrawal, because the doctrine of *rebus sic stantibus* shall be applied in strict interpretation. In this regard, after the conclusion of the INF treaty, there are many countries developed different military capabilities including short, intermediate, and long-range missile systems that could not compatible with the INF treaty. The question is, would such a change can be taken as a fundamental circumstance related to the INF treaty? The VCLT has provided legal requirements to invoke such grounds of termination.

First, the changed circumstance should be ‘an essential basis of the consent of parties’_ at the time of INF treaty formulation, did other countries’ military capabilities the basis for consent US? During the negotiation stage of INF, other European countries possessed weapons that were prohibited by the Treaty, such as UK and French. So, this shows that in the

processes of negotiation between the US and the USSR, other countries have military capabilities but that did not change their consent. Even today the US blame was selective from those nations, and much concern was given to China’s military development. Why China? Not once but many times rehearsed by the former President and State Secretary of the US tried to justify the unilateral withdrawal, but the Chinese or other countries’ development in military technologies was not on the agenda when the INF treaty was made.

The second criterion is the fundamental change is unforeseen _ would the developments of the military in technologies in different countries be considered as unforeseen fundamental change? It is a fact, that many nations deployed nuclear warheads to NATO members before the INF treaty; and military technology is a science that can be developed through time and the state parties so that other countries’ military development is predictable. Therefore, the US’s blame for other countries’ progress in military potential could not be taken as unforeseen fundamental change.

Impacts of Unilateral Withdrawal of INF

Legal Impacts

The Vienna Convention stipulated unless a treaty was provided or parties agreed to the contrary the effect of withdrawal or termination releases the parties from any obligation further to perform the Treaty (Art. 70 (1) (a) & (2). Therefore, US and Russia have been released from the treaty responsibilities; so that, they can test, use, and deploy those intermediate and short-range missiles. Both parties started the Cold War phenomenon to

develop missiles of different types and capabilities.

The unilateral termination of INF and the issue regarding USSR successor states are in a stagnant stage. They had negotiated in diplomatic discussions with predecessor states to take responsibility as bilateral treaty members. The Vienna Convention on Succession of Treaties grants the authority to successor states can continue to abide by the INF treaty (VCSST, 1978, Art. 26 (1) (a)). However, after termination, no state claims officially to sustain or terminate the INF treaty. Practically, it is believed that the unilateral termination of the INF treaty ended the relationship between the predecessor and successor or between the successors. Therefore, the US unilateral withdrawal from INF has created significant legal uncertainty in the successor states and most of them are stagnant to express their stand.

Impact on Limit Flexibility and Certainty

The Treaty should be balances the two divergent principles; the first is the Treaty needs to be flexible which provide a state party to increase its confidence to retreat from the malicious impact of the Treaty. The second principle is certainty _ this rule is also an assurance of state parties' exercisability of the Treaty. Therefore, extra emphasis to include provisions that can easily be invoked to terminate a treaty can create uncertainty or make the treaty floppy that free ride option to a party. On the reverse, rigid treaties could limit the rights of parties to revoke their consent. Since there is a tiny line between flexibility and certainty, the withdrawal clause should incorporate technically by specifying the

grounds of withdrawal and the procedural ascertainment.

INF treaty provides a flexibility clause that is considered not a rigid treaty _but it failed to explicitly define the requirements. The provision provides conditions for unilateral withdrawal, while there is a clear lacuna in the definition of standards. Besides this withdrawal clause, some provisions can supplement the procedure of termination, for example, the state parties' non-compliance can be verified by a special verification commission.

The INF tried to balance the two interests of flexibility and certainty however the US withdraw without necessary consideration of the rule of certainty.

The Damage to Parties' Good Faith

The international law of treaties has consensus about the core and indispensable relevance of good faith. The VCLT also described 'every Treaty in force is binding upon the parties to it and must be performed by them in good faith (Ar.26). *Pacta sunt servanda* is a fundamental principle that parties should abide by the term of the agreement; so that, they can act or interpret the Treaty with good faith. (Report International Law Commission Draft VCL, 1966, pp. 211).

Regarding INF unilateral termination, both the US and Russia are supposed to resolve each other's allegation of non-compliance and they can negotiate in good faith. The INF with its protocols had provisions that authorize other alternatives to the parties to an assessment of the non-compliance of the parties. The notification and verification processes would apply in good faith before rushing to the declaration

of withdrawal. Both USA and Russian Federation would try to safeguard the application of the Treaty. But, both especially the US has rejected the principle of good faith.

The basic object of the Treaty was to protect humankind from nuclear war and there are other treaties linked with INF that might encounter the same fate. This unilateral withdrawal has serious implications on the rule of good faith which also re-generates the bad experience in other related treaties. The international law basic frameworks are established by treaties. Thus, such a framework might face dangerous scrutiny when many treaties are terminated by the unilateral withdrawal of parties which affected mutual trust in future relations.

Impact on Peaceful Dispute Resolution

The UN charter was enthused to settle disputes and believed in keeping the peace and security of each nation. The charter incorporates disputes arising from the treaties shall be solved through pacific dispute settlement mechanisms (Poorhashemi, A. (2022) & UN Charter Art. 33 (1)). However, unilateral withdrawal from the INF treaty could instigate parties to the conflict and lead to the use of force. If the US or Russia want to continue the application of the Treaty they would bring the matter to ICJ which is supposed to solve the issue. Even more, they can solve the problem by using peaceful diplomatic means. However, now the two basic parties to INF in the existing scenario of war in Ukraine galvanized the problem.

Despite the UN 's ambition, the present circumstance shows that the US and Russia after the termination INF treaty are not near a peaceful solution; even to the worst,

recently Russian President Putin suspended the NEW START bilateral agreement on the restriction of nuclear weapons.

Escalation of War

The INF treaty had a fruitful impact on the reduction of the arms race, especially between the two basic nuclear states. It was supposed to protect the US and its allies and European countries from the Russian missile attack that prohibit the test and deployment of short and intermediate missiles. Termination of such a treaty escalated tension between Russia and NATO and it has incited the cold war phenomena of the arms race which can drive toward the escalation of dangerous nuclear war Armageddon.

The INF treaty used a type of protection frontier for both European countries and Russia. However, the termination of the INF treaty exposed the threat of expansion of NATO towards Russia and also the reverse. The root cause of the war between Russia v. Ukraine is the move of Ukraine to be a NATO member, as described as a redline by Russia. Russian President Putin asserted NATO should not be near Moscow to target using Intermediate-range missiles (Wolfgang Richter, SWP, 2022). Therefore, this shows the INF treaty was relevant to ease such escalation.

Conclusion and Suggestions

This article explores the INF treaty as one of the treaties terminated by the US unilateral withdrawal by referring to a treaty withdrawal clause (Article 15) which is related to fundamental changes. Despite the lack of a clear definition, the INF includes the party which faced 'an extraordinary

event which jeopardized the supreme interest' and could withdraw from the Treaty. Those conditions have analogical similarities to a material breach against the purpose and object of the Treaty enshrined in the international law of treaties. However, the finding shows that the US unilateral termination of the INF treaty is not in line with the termination clause, and the Treaty's verification processes are against the Treaty's purpose or object. International treaties are believed to be flexible so that state parties can relieve themselves from responsibilities in serious distress. Unilateral withdrawal is an alternative to ending the whole or part of the Treaty. However, such flexibility has to be ruled by strict legal preconditions to safeguard the certainty of the Treaty. There is international customary law which is recognized by the Vienna Convention, that parties to international treaties can terminate by the treaty clause or by their full consent. While the INF treaty had prerequisites before termination, and any of the parties could claim verification of non-compliance. If states had goodwill, it would be possible to save the INF treaty by using other peaceful methods to safeguard its continuity.

The article identifies some of the impacts of unilateral withdrawal from international the Treaty. It has serious impacts on state parties' certainty on the feature relation on other treaties that can start the boomerang effect. Unilateral nullification of the INF treaty might push two states (the US and Russia) towards the Cold War era of the arms race.

The world is becoming more and more interconnected with the platform of international agreements; however, uncontrolled unilateral withdrawal has

fundamental damage on the international forum; it deteriorates parties' 'good faith' and instigates a non-peaceful dispute solution that ultimately, such escalation might lead to nuclear war.

Suggestions

Unilateral withdrawal shall be implemented by legal requirements that would avoid the floppiness and rigidity of the Treaty.

The termination clause should be drafted in a way that balances the right of withdrawal and the certainty of the Treaty. Besides, it must be clear enough to avoid unnecessary wider interpretation.

State Parties to the Treaty should behave in good faith before arriving at the termination of the Treaty.

The INF treaty has contributed a lot, and it would be relevant to consider its revitalization in a multilateral form by comprising other nations.

The UN established responsibilities to keep peace and security in the world; it could make it possible to reframe the possible alternative solutions to reduce and eliminations of Intermediate and short-range nuclear-capable missiles.

The protection of peace and security of the world should be granted priority over other rivalry contexts between states. So, all countries of the world, including the US and Russia, shall act responsibly to save the world from Armageddon

CONFLICT OF INTEREST

The author (s) declares that there is no conflict of interest regarding the publication of this manuscript. In addition, the ethical

issues, including plagiarism, informed consent, misconduct, data fabrication and/or falsification, double publication and/or submission, and redundancy, have been completely observed by the authors.

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