

A Study on the Need for a New International Treaty Prohibiting Military Attacks by States on Nuclear Facilities

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1. Introduction

Amidst the Russia-Ukraine war, the Zaporizhzhia Nuclear Power Plant has been targeted, prompting the IAEA to take measures to ensure the safety and security of the nuclear facility. This has led to discussions about whether attacks on nuclear facilities by states are encompassed within the scope of nuclear security.

2. Limitation of the current regime

The ICSANT states, "the activities of military forces of States are governed by rules of international law outside of the framework of this Convention," clearly indicating that military attacks by states are not covered by this convention.[1] Additionally, within the scope of CPPNM, military attacks by states on nuclear facilities are not covered either. Therefore, within the current international nuclear security regime, there are limitations in preventing military attacks by states on nuclear power plants.[2]

3. Related international law

Article 56 of Protocol 1 to the Geneva Conventions, nuclear electrical generating stations shall not be made the object of attack. But this verse adds a condition. Attack against nuclear facility is forbidden when such attack may cause the release of dangerous force and consequent severe losses among the civilian population. And there is no criteria for 'severe'.[3] In the case of biological and chemical weapons are banned regardless of the severity of the consequences. The same goes for attacks on nuclear facilities. It should be banned simply because there is a risk of causing serious damage to the private sector, and for the effectiveness of the ban, it is appropriate to ban it unconditionally.

IAEA general conference made resolutions in 1987 about the protection of nuclear installations against armed attacks. In that resolution, IAEA was convinced of the need to prohibit armed attack on nuclear installations from which such release could occur and of the urgency of concluding an international agreement in this regard.[4]

4. New International Treaty

There is an initiative to amend the existing Geneva Convention and delete the word 'severe', but it is difficult to reach an agreement because this convention applies not only to nuclear facilities but also to various facilities such as dams and dykes. Therefore, creating new treaty would be effective.

In the new treaty, it is most important to define the scope of facilities subject to a ban on attacks. The Geneva Convention stipulates that only nuclear electrical generating stations among nuclear facilities are prohibited from attack. How about other nuclear facilities?

CPPNM defines it as follows: "nuclear facility" means a facility (including associated buildings and equipment) in which nuclear material is produced, processed, used, handled, stored or disposed of, if damage to or interference with such facility could lead to the release of significant amounts of radiation or radioactive material.

It is unclear why the Geneva Convention only includes cases of generating electricity and excludes places where nuclear materials are produced, stored. However, if attacks on these facilities have a significant impact on the civilian population, there is no reason to exclude these facilities. And such facilities are subject to protection only if they do not violate international laws such as the NPT.

5. Conclusion

Nuclear security is premised on attacks by non-state actors, so there is a lack of basis for international organizations such as the IAEA to intervene in the case of military attacks. As seen in the Chernobyl and Fukushima accidents, if radioactivity is leaked due to an attack on a nuclear power plant, the impact goes beyond national borders, so the international community needs to get involved, and for this, a norm prohibiting military attacks is needed. Even if international norms are violated, their effectiveness may be reduced, especially if the violator is a powerful country. However, as a preventive norm in advance, such norms are necessary to issue diplomatic criticism and impose economic sanctions after the fact.

REFERENCES

- [1] Preamble of the ICSANT
- [2] Preamble of the CPPNM
- [3] Article 56 of Protocol 1 to the Geneva Convention
- [4] IAEA GC(XXXI)/RESOLUTIONS(1987)