

The Efficacy of the Nuclear Non-Proliferation Regime

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ABSTRACT

The proliferation of nuclear weapons is a serious threat to international security and peace. Particularly, the case of Iran and recent processes including the Seoul Nuclear Security Summit are illustrating the importance of nuclear non-proliferation regime in international affairs. This regime, for more than forty years, aims to provide services for the prevention of proliferation and use of nuclear weapons. The IAEA and the Review Conferences - meetings held once every five years – are trying to be providers of the nuclear weapon-free world and barometers of the health of the non-proliferation regime.

The aim of this thesis is to assess the effectiveness of the NPT regime. The analysis of the regime in this thesis is guided by the regime theory, international law and politics, identifying and interpreting applicable rules and norms establishing the nuclear non-proliferation regime and assessing how well enforcement of the regime is carried out and what its future reform might be.

The observations which are developed in this thesis are that the states have to be very accurate in meeting the conditions of the NPT regime for its effectiveness. The main two principles which should be the priorities for the actors of NPT regime and the effectiveness of this regime are preventing of the acquisition and reducing of nuclear weapons by new states and peaceful use of nuclear energy by non-nuclear-weapon states. The present thesis strongly notes that only in the case of applying and using the nuclear materials, equipment and technologies obtained by non-nuclear states for

peaceful purposes and strengthening the efforts for the reducing of such weapons by all nuclear weapon states can reach the effective non-proliferation regime.

Keywords: nuclear weapons, Nuclear Non-Proliferation Regime, NPT, Iran case.

ÖZ

Nükleer silahların yayılması uluslararası güvenlik ve barış için ciddi bir tehdittir. Özellikle, İran durumu ve Seul Nükleer Güvenlik Zirvesi de dâhil olmak üzere uluslararası ilişkilerin son süreçleri, nükleer silahların yayılmasını önleme (NSYÖ) rejiminin önemini tarif etmektedirler. Kırk yıldır bu rejim nükleer silahların yayılması ve kullanımının önlenmesi için hizmet vermeyi amaçlamaktadır. UAEK ve toplantıları her beş yılda bir kez yapılan Gözden Geçirme Konferansları nükleer silahtan özgür dünyanın sağlayıcıları ve bu silahların yayılmasını önleme rejiminin sağlık barometreler olmaya çalışıyorlar.

Bu tezin amacı NSYÖ rejiminin etkinliğini değerlendirmektir. NSYÖ rejiminin kurulması yürürlükteki kurallar ve normları belirleme ve rejimin uygulanmasının ne kadar iyi yapılması ve gelecek reformunun ne olabileceğini değerlendirmek amacıyla tezde rejiminin analizi rejim teorisi, uluslararası hukuk ve siyaset tarafından yönlendirilir.

Bu tez çalışmasında geliştirilen gözlemler devletlerin NSYÖ rejiminin etkinliği için rejimin sunduğu koşulların gerçekleştirilmesinde çok hassas olmalarını gerektiriyor. NSYÖ rejiminin etkinliği için aktörlerin iki ana öncelikleri olmalıdır; nükleer silahların azaltılması, yeni devletler tarafından satın alınmasının önlenmesi ve nükleer silah sahibi olmayan devletler tarafından nükleer enerjinin barışçıl kullanımı. Tez güçlü bir şekilde nükleer silahı olmayan devletler tarafından elde edilen nükleer maddelerin, donanım ve teknolojinin barışçıl amaçlarla kullanılması durumunda ve tüm nükleer silah devletleri

tarafından bu silahların azaltılması için çabaların güçlendirilmesi halinde NSYÖ rejiminin etkili bir hale gelebileceğini belirtiyor.

Anahtar Kelimeler: nükleer silah, Nükleer Silahların Yayılmasını Önleme Rejimi, NSYÖ Antlaşması, İran durumu.

To My Family.

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LIST OF ABBREVIATIONS

| | |
|----------|---|
| CPPNM | Convention on the Physical Protection of Nuclear Material |
| CTBT | Comprehensive Nuclear-Test-Ban Treaty |
| EU | European Union |
| Euratom | The European Atomic Energy Community |
| HEU | Highly Enriched Uranium |
| IAEA | International Atomic Energy Agency |
| ICJ | International Court of Justice |
| INFCEP | International Nuclear Fuel Cycle Evaluation Program |
| INTERPOL | International Criminal Police Organization |
| LTBT | Limited Test Ban Treaty |
| NGO | Non-Governmental Organization |
| NNWS | Non-Nuclear Weapon States |
| NPT | Treaty on the Non-Proliferation of Nuclear Weapons |
| NSG | Nuclear Suppliers Group |
| NWS | Nuclear Weapon States |
| SALT | Strategic Arms Limitation Talks |
| START | Strategic Arms Reduction Treaty |
| UN | United Nations |
| UNSC | United Nations Security Council |
| US | United States |
| USSR | The Union of Soviet Socialist Republics |

WMD Weapon of Mass Destruction

Chapter 1

INTRODUCTION

The spread of nuclear weapons was one of the dominant elements of the Cold War and the eminence of nuclear power became the symbol of the East-West confrontation in this period. After the Cold War, the actuality of nuclear non-proliferation had taken over on disarmament and security strategy.¹ As mentioned by U.S. President John F. Kennedy in 1960, the regime which was based on the Nuclear Non-Proliferation Treaty (1968) has become a tool that allowed the international community to avoid the threat of “ten, fifteen, or twenty nations possessing a nuclear capacity”.² Today the number of nuclear weapons is less than it was in the 1970s and 1980s. This argument realizes that, the efforts over the non-proliferation of such weapons resulted with the reduction of more than half of the nuclear arsenals, since the end of the Cold War.

The proliferation of nuclear weapons has become a grave threat to global security and peace. Taking this into consideration, the majority of the members of the international society have decided to pursue the ideas of non-proliferation of nuclear weapons, massive reduction of these weapons and the establishment of new “nuclear weapon-free zones”. The expansion of ideas over the nuclear non-proliferation issue and at the same time the development of the efforts over the NPT regime became the indicators of the

¹ B. Schmitt, “Nuclear Weapons: a New Great Debate”, *Western European Union Institute for Security Studies, Chaillot Papers n° 48* (2001), 1.

² “The Third Kennedy-Nixon Presidential Debate, 13 October 1960”, *Commission on Presidential Debates*. (<http://www.debates.org/pages/trans60c.html> - January 5, 2012)

possible denuclearized world. The recent acquisition of nuclear weapons by several states (North Korea, India, and Pakistan) and the prospect of their acquisition by more states (Iran) and non-state actors, including terrorist organizations, have raised the question about the effectiveness of the NPT regime and the future of the NPT itself. The last decade was not “productive” for the NPT regime, which today has lost much of its capacity to impede proliferation. As warned in the Report of the UN Secretary-General's High-Level Panel on Threats, Challenges and Change: “the NPT regime is under the danger of the erosion and possible collapse of the whole Treaty regime”.³

The observation of contemporary international affairs shows that some states which desire to be a hegemonic power of their region are seeking to develop their nuclear weapon power. The effort for acquiring the nuclear, chemical and biological weapons by the terrorists is another risk for stability and peace, and it adds a new dimension to this threat.⁴

Simultaneously, many actors of international relations (states, international organizations etc.) are trying to remedy this threat. For instance, after the 2008 elections, new US administration initiated a new policy towards the spread of nuclear weapons called the “World without nuclear weapons”.⁵ In her speech, a member of the European Parliament

³ “Report of the Secretary-General’s High-Level Panel on Threats, Challenges and Change,” *55th session: United Nations* (2004), 39–40. (<http://www.cfr.org/un/report-secretary-generals-high-level-panel-threats-challenges-change-2004/p22331> - December 15, 2011)

⁴ “EU strategy against proliferation of Weapons of Mass Destruction,” *Council of the European Union*, (2003), 1, (www.consilium.europa.eu/uedocs/cmsUpload/st15708.en03.pdf - September 29, 2011)

⁵ Julian Borger, “Barack Obama: Administration willing to talk to Iran “without preconditions,” *The Guardian*, 21 January 2009. (<http://www.guardian.co.uk/world/2009/jan/21/barack-obama-iran-negotiations> - December 12, 2011)

Angelika Beer pointed out that "leaders around the world are calling for nuclear disarmament" and that, it is now time for a "real commitment of the EU" to show that it is "ready to take the lead in disarmament issues".⁶

The signing of the new Strategic Offensive Reductions Treaty (START-3) between Russia and US in 2010, the reorientation of the U.S. administration to the multilateral approach for solving the problems of nuclear proliferation, an international support for the initiative "Global Zero"⁷ and several other positive changes at the beginning of the XXI century give grounds to the international community for cautious optimism.⁸

Recently, the NPT regime warns the international community in an increasing nuclear danger. In January 2007, the editorial board of the "Bulletin of the Atomic Scientists," which includes 19 Nobel laureates claimed that, since the first nuclear weapons were used (Hiroshima and Nagasaki) the world has never been subjected to such hazards. Recent testing of nuclear weapons in North Korea, Iran's nuclear ambitions, a return to the assertion of U.S. military use of such weapons, the failure to ensure the safety of nuclear materials, the presence of more than 26,000 nuclear warheads in Russia and the

⁶ "A world without nuclear weapons?," *European Parliament* (2009) (<http://www.europarl.europa.eu/sides/getDoc.do?language=en&type=IM-PRESS&reference=20090422STO54148> - November 5, 2011)

⁷ *Global Zero*- the international movement for the elimination of all nuclear weapons, launched in Paris in December, 2008.

⁸ "It's 6 Minutes to Midnight", *Bulletin of the Atomic Scientists*, 14 January 2010. (<http://www.thebulletin.org/content/media-center/announcements/2010/01/14/it-6-minutes-tomidnight> - January 6, 2012)

United States - all are the symptoms of a global failure in solving the problems associated with the existing of the most destructive technologies in the world.⁹

It is impossible to doubt about the urgency of the international NPT regime problem – recently, this issue has taken a priority in the international agenda. One of the purposes of the NPT regime and the International Atomic Energy Agency is the efforts to realize the reduction of nuclear weapons. So, in the mid of 1960s nuclear arsenal was only in five states, but at present nine states are in possession of such weapons. It means that, the threat of nuclear weapons in regional and even global scale seems more likely than during the Cold War.

The debate over the nuclear non-proliferation was opened recently in March 2012, during the Seoul Nuclear Summit. This two days conference resulted with the signing of the joint Communiqué concerning “the safer world for all”. At the end of the Summit, on 29th of March 2012, US announced the temporary freezing of the food aid to the North Korea, which was granted in response to eliminate nuclear weapons. This step was not unexpected, and to wait for its meaningful results would be most optimistic. In this Summit, the main actors of NPT regime could not achieve an agreement on key issues.¹⁰ There were talks between the China, Japan, Russia, the United States and both Korea which were carried out for the first time in the last three years. In the March of 2012, the agreement between the US and North Korea about the food aid was accepted as a real

⁹ “It’s 6 Minutes to Midnight”, *Bulletin of the Atomic Scientists*.

¹⁰ Benjamin Ho, “Seoul Nuclear Summit: Back To the Drawing Board – Analysis,” *Eurasia Review*, 6 April 2012. (<http://www.eurasiareview.com/06042012-seoul-nuclear-summit-back-to-the-drawing-board-analysis/> - April 13, 2012)

progress in the nuclear non-proliferation process. But as mentioned above, this optimism was destroyed after the Pyongyang's announcement of the planned rocket launch.¹¹

The Nuclear Non-Proliferation Treaty is the core of the NPT Regime. The negotiations over the NPT were completed in 1968 and entered into force on March 5, 1970. This Treaty was based on three main principles, which were: the non-spreading of nuclear weapons; the cooperation over the use of the nuclear energy only for the peaceful purposes; and the reduction of the nuclear weapons.

The above mentioned principles constitute the bargain in the NPT, which means "the nuclear weapon states commit themselves to disarmament while the non-nuclear weapon states agreed not to acquire nuclear weapons, in return for which they get the access to nuclear technology and energy for peaceful purposes". In March 2010, 189 states were the parties of the NPT, and this indicates that NPT is an agreement of global disarmament and arms control. Just India, Israel and Pakistan have remained on the outside of NPT and each of these states is armed with nuclear weapons. The only state that was withdrawn from NPT is North Korea.¹²

Notwithstanding Iran is a signatory of the NPT, there was an announcement in the summer of 2002 claiming that, it has started to develop its nuclear weapons program.

Tom Sauer claimed that this information came from the Iranian opposition namely the

¹¹ "Japan May Mobilize Interceptors Prior to North Korean Rocket Launch", *Global Security Newswire*, 21 March 2012. (<http://www.nti.org/gsn/article/iran-north-korea-figure-highly-seoul-nuclear-summit/> - March 29, 2012)

¹²J. P. Zanders, "Nuclear weapons after the 2010 NPT Review Conference," *European Union Institute for Security Studies, Chaillot Papers n° 120*, April 2010, 5

National Council of Resistance, which is listed as a terrorist group in the US State Department's list.¹³ The Director General of IAEA has stated in his report (June 2003), that in February 2003 Iran admitted the existence of enrichment of nuclear plants for peaceful purposes, using at Natanz.¹⁴ Since then, the Iranian nuclear program is a regular global news item.

According to Christian Mölling, in that case Iran is, in some sense, only a harbinger of the future international relations. He predicted that the number of nuclear powers would increase in 2020-30. This nuclearization related to the idea of a “nuclear tipping point”, which means reaching the number of nuclear powers to critical mass that changes the nuclear order.¹⁵ The NPT is constantly a subject of academic investigation and that recent developments, especially concerning the case of Iran, generated new wave of academic interest about the non-proliferation of nuclear weapons.

1.1 Purpose and Significance of the Study

The aim of the present thesis is to build the theoretical foundation on regime theory, to explore the efficacy of the nuclear weapons non-proliferation regime, to identify and to critically interpret applicable rules, both legal and non-legal, establishing the NPT regime and to assess how well enforcement of the regime is carried out and what its

¹³Tom Sauer, “Coercive diplomacy by the EU. Case-study: the Iranian nuclear weapons crisis”, *Third Pan-European Conference on EU Politics* (2006), 6-7 (www.jhubc.it/ecpr-istanbul/virtualpaperroom/022.pdf - September 20, 2011)

¹⁴ “Implementation of the NPT safeguards agreement in the Islamic Republic of Iran”, *Report by the Director General of IAEA*, 19 June 2003. (<http://www.iaea.org/Publications/Documents/Board/2003/gov2003> - October 25, 2011)

¹⁵ C. Mölling, “The grand bargain in the NPT: challenges for the EU beyond 2010,” *European Union Institute for Security Studies, Chaillot Papers n° 120* (2010), 55.

future reform might be. The analysis will combine legal and political aspects of the regime.

The matter of the NPT regime in contemporary world is multi-dimensional and the core of these dimensions consists of the legal and political processes. Taking this into consideration, an analysis of the legal and political role and importance of NPT regime in the world today and the possibility of correct reforms on this regime are on the list of the purposes of this thesis.

The thesis also analyzes the efficacy and the responsibility of the international community on NPT regime, the impact of these responsibilities on the vitality of this regime from a legal perspective. Talking about the NPT, the thesis is focusing on two key themes. Firstly, it is the remarkably weak mechanism of the Non-Proliferation regime in a detecting of violations of the obligations giving by the treaties over this issue and secondly, it is the problem of imposing and implementing sanctions related to violations of the non-proliferation of nuclear weapons used by various actors.

Defining the actors and describing their role in the NPT regime is another important issue. One of the main points of the thesis is a detailed review and comprehensive analysis of factors affecting the functioning of current non-proliferation regime, the definition of measures to facilitate the removal or weakening of destabilizing factors, as well as finding ways to strengthen NPT.

1.1.1 Research Questions

The main research questions of thesis are:

- Is NPT regime effective?
- What are the future prospects of NPT regime?

This thesis is also trying to answer some more specific/subsidiary questions, like:

- What are the goals of the NPT regime?
- What is the role and importance of NPT regime in the contemporary world?
- Who are the key players/actors of the NPT regime?
- Is the mechanism for detecting the violations in NPT regime strong enough?
- What are the achievements of the NPT regime?
- Is the sanction mechanism of the NPT regime effective?
- Is the reform of the NPT regime desirable?

1.2 Methodology

The interpretation/content analysis of the NPT; the historical analysis of NPT Regime and putting the regime in the context of the contemporary international system are the main research methods that will be applied in this thesis.

Methodological basis of research relies on the use of a multidisciplinary approach. The analysis of such phenomenon as spread of nuclear weapons is impossible without the use of an integrative approach that involves the use of political, historical and international legal methods. These methods made it possible to compile a comprehensive understanding of the subject of research, as well as examine its components, and to come from general to specific and vice versa in constructing conclusions, organizing facts for the study of the dynamics, processes and events related to the NPT regime. They helped

to determine the effect of nuclear factor in the world political processes and formulate a feedback of the phenomenon of nuclear weapons in the content of the political and legal context.

For instance, the comparative historical method revealed sustainable regularities in the development of the military component of national nuclear programs for identifying new dimensions for producing nuclear weapons. Comparison of the histories of the nuclear non-proliferation efforts in different time periods revealed the general regularities that characterize the spread of nuclear weapons. These regularities are coming from the international environment in correlation with the new challenges to the nuclear non-proliferation.

As a primary source, this study uses the official documents of UN, IAEA, Nuclear Suppliers Group, the Missile Control Regime, international treaties and agreements on nuclear and missile proliferation, the Russian-American treaties and agreements, the statements and speeches, memoirs of statesmen and official representatives of official materials and documents (statements, news releases, the "white book", etc.) governments, foreign policy, defense and intelligence agencies of the nuclear states, materials of the parliamentary hearings. The Nuclear Non-Proliferation Treaty is considered as the most important primary source in this study. In addition, secondary sources were used in this study which is reflected in the literature review.

The present thesis will include information and analytical resources of the official websites of international organizations, national foreign ministries, and specialize analytical and research centers, parties and political organizations.

1.3 Structure

This thesis will be divided into five chapters dealing with different aspects of the NPT regime and its efficacy in international relations.

Chapter 1, Introduction, explains the significance of the topic identifies the research questions and provides basic information about the condition and development of the NPT regime. It includes the basic aspects of NPT as a core of the NPT regime and proposed the significance of the topic by the setting of the key elements of regime and identifies the links between them.

Chapter 2, Regime Theory and the NPT, provides the theoretical bases for the whole thesis and explains the NPT as a regime, making reference to the regime theory. The theoretical definition of the regime and the explaining NPT as a regime are the main aims of this chapter.

Chapter 3, The NPT Regime and International Law, explains the NPT regime through the view of international law. It identifies and analyzes the rights and duties of the parties of NPT regime. This Chapter examines the international legal parts of NPT regime and analysis the relation and interaction norms of the NPT regime.

In Chapter 4, The Implementation of the NPT Regime: Factors and Policies - is discussed the work of the regime in reality with particular reference to the case of Iran. The Chapter also examines the main actors of NPT regime and states EU as a new potential actor for the efficacy of regime. This chapter also demonstrates the place of international trade on nuclear materials in NPT regime and the sanctions mechanism of the regime dealing with the past and the last developments, and defining the future prospects. Stating some main options the chapter defines the effectiveness or ineffectiveness of NPT regime.

The fifth Chapter presents a series of general conclusions. This chapter is the last one and it combines main points from the thesis and formulates the conclusion about the efficacy of the NPT regime, according to the research conducted.

1.4 Literature Review

One of the main ideas in this thesis is to build the theoretical foundation on regime theory. The aim of explaining the regime theory is to determine whether NPT can be seen as a regime in international relations. In modern literature the international regime is treated as a set of agreed rules, regulations and procedures for the regulation of a sphere or as a way to control supranational and intergovernmental relations through the adoption of rules and procedures, as well as the creation of certain institutions.¹⁶

But the conceptual apparatus of the theory of international regimes has not yet been formed. In accordance with the most common interpretation, the international regime

¹⁶ S. D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," *Journal of International Organization* 36/2 (1982), 186

does not involve the creation of an international organization or an institution and fixed rules of relations between participants. Stephen Krasner clearly describes and develops this idea. An article “Structural Causes and Regime Consequences: Regimes as Intervening. Variables” and the book “International Regimes” edited by Stephen D. Krasner mentioned that the international organizations and regimes opposed to each other on the basis of formal/informal rules and regulations under which they operate modes are included in the broader category of institutions, or on the contrary, the institution is equated to the organization and is covered by the concept of regime.¹⁷ As examined by J. Ruggie, international organizations are the most advanced forms of international regimes. International regimes are less focused on the implementation of joint decisions and more - to establish and maintain an atmosphere of transparency and predictability of international actors.¹⁸ Due to the international regimes the states are in the process of convergence, expressed in economic and political integration of the international community, which contributes to the further development of cooperation and promotion of national interests with the interests of other participants in international relations.¹⁹

According to J Ruggie, the emergence and transformation of international regimes occurs through the internationalization of the political power. By joining a specific regime, the state sacrifices its particular national interests in order to create conditions

¹⁷ S. D. Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening. Variables,” 186

¹⁸ J. G. Ruggie: “International Responses to Technology: Concepts and Trends”, *Journal of International Organization* 29 (1975), 570-571

¹⁹ A. Hasenclever, P.Mayer, V.Rittberger, *Theories of International Regimes* (Cambridge University Press, 1997), 116

for longer term cooperation. Thus, the international regime establishes a regulatory framework and standards of conduct in the global or regional level and provides a discussion platform to discuss issues and promote information exchange among the participants.²⁰

Based on above demonstrated explanation of international regimes, the works of authors like Roger K. Smith (“Explaining the Non-Proliferation Regime: Anomalies for Contemporary International Relations Theory”), Joseph S. Nye, Jr. (“Maintaining the Non-Proliferation Regime”), Trevor McMorris Tate (“Regime-Building in the Non-Proliferation System”), Michael Brzoska (“Is the Nuclear Non-Proliferation System a Regime?”), Duncan Snidal (“The Limits of Hegemonic Stability”) examine the NPT regime as a regime with its weaknesses and strengths.

So it means that the NPT regime is a system set forth or implied by the principles, norms, rules and procedures, as well as domestic legislation, international agreements and institutions involving nuclear and non-nuclear states and non-state actors, whose goal is to prevent the proliferation of nuclear weapons, as well as facilitate the exchange of peaceful nuclear technologies that will reduce the risk of nuclear weapons proliferation.

Another point of this thesis, as mentioned above, is the legal analysis of NPT regime, using the international law-based literature. The main idea in this research is to examine the set of agreements building the NPT regime, to show their weaknesses and strengths.

²⁰ J. G. Ruggie, 571

The articles written by C. J. Moxley Jr., J. Burroughs and J. Granoff (“Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty”), J. Salmon (“Who are the addressees of the opinions? International Law, the International Court of Justice and Nuclear Weapons”), and C. Greenwood (“The Advisory Opinion on nuclear weapons and the contribution of the International Court to international humanitarian law”), the books “Understanding International Law” written by C. W Henderson and “International Law, the International Court of Justice and Nuclear Weapons” edited by L. B. de Chazournes and P.Sands are in the list of the international law-based literature using in this thesis.

It is important to mention that recent developments in the field of non-proliferations are widely commented upon in the literature. For instance, in May, 2010 NPT Review Conference was held which actively discussed the issue of nuclear disarmament. The conference recognized an important step in strengthening the nuclear nonproliferation regime signed April 8, 2010 Agreement between Russia and the United States on measures for the reduction of strategic offensive weapons, but noted the need to engage in this process and other nuclear weapons states, including those not parties to the NPT. Particular attention has been focused on the fact that existing initiatives in the field of nuclear disarmament remained on paper, but transformed into real practice of legally-binding agreement. J. P. Zanders mentioned the details of this conference in his article “Nuclear weapons after the 2010 NPT Review Conference”. According to Zanders, only consistent and steady adoption of effective, systematic legal action in the field of

disarmament on the basis of the principle of parity in terms of strengthening security for all, without exception, the states will move toward a world without nuclear weapons.²¹

The debate about the weaknesses and strengths of NPT regime is discussed as well. An analysis of the interaction of legal norms of non-proliferation of nuclear weapons concludes that these rules must comply with all nations of the world, regardless of their participation or nonparticipation in the NPT. T. Rauf ("Successes of the NPT regime"), Ch. J. Moxley Jr., J. Burroughs, J. Granoff ("Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty"), and Y. Amano ("Time to Strengthen NPT regime") are widely describing the legal weaknesses of NPT regime.

Another section of relevant literature is dealing with the Advisory Opinion of International Court of Justice. It is trying to analyze this opinion and to determine its real consequences. As mentioned by L. B. de Chazournes and P. Sands ("International Law, the International Court of Justice and Nuclear Weapons"), J. Salmon ("Who are the addressees of the opinions? International Law, the International Court of Justice and Nuclear Weapons"), C. Greenwood ("The Advisory Opinion on nuclear weapons and the contribution of the International Court to international humanitarian law"), and E. David ("The Opinion of the International Court of Justice on the legality of the use of nuclear weapons") this opinion is very important for the efforts aiming at non-proliferation of nuclear weapons. The conclusion they reach is that, the risk of using nuclear weapons will exist still the principle of self-protection is continuing.

²¹ J. P. Zanders, 7.

So, both books and articles referred above are used in the following chapters.

Chapter 2

REGIME THEORY AND THE NPT

The regime theory has its roots in the liberal tradition of research in international relations. Followers of this theory, giving examples of international regimes and institutions, demonstrate the possibility of cooperation among states, guided by selfish national interests. While the school of political realism asserts that, conflict of interests is the norm in international relations, the regime theory proves the priority of cooperation and compromise between the players on the world stage, despite the absence of a supra-national regulatory power.²² This Chapter begins with the explanation of the regime theory based on the writings of S. Krasner and investigates whether it is possible to apply this theory to the NPT and NPT related rules, norms and institutions.

2.1 International Relations and International Regimes

Introduced by John Ruggie (1975), the notion of international regimes, in terms of international relations theory, was defined as "a set of mutual expectations, rules and regulations, plans, organizational energies and financial commitments which have been accepted by a group of states".²³ Stephen D. Krasner (1983) proposed the following definition for regimes: "sets of implicit or explicit principles, norms, rules and decision making procedures around which actors expectations converge in a given area of

²² T. Anichkina: "International NPT regime: Theory and Methodology," *Russia and America in XXI Century 2* (2011) (<http://www.rusus.ru/?act=read&id=262> - May 11, 2012)

²³ J. G. Ruggie, 570-571

international relations.”²⁴ In his understanding, principles are representing the “belief of facts, causation, and morality”. On the other hand, norms refer to principles of behavior which include rights and requirements while rules speak of certain instructions or exclusions for action. The decision-making procedures are ultimate techniques used to make and implement choice on a cooperative basis.²⁵

Generally, perception of regimes should be linked to something which is beyond temporary provisions that undergoes change with every modification in power or interests. According to Krasner, regimes and agreements should be looked at from a basic analytic distinction point of view. That is, agreements, to the point, are generally “one-shot arrangements,” but, the regimes aim to assist agreements. Likewise, Jervis claims that the notion of regimes involves norms and beliefs that facilitate cooperation, as well as cooperation based on self-interest in a short period of time.²⁶

As the hegemonic stability theory claims, the existence of a particular, powerfully governing actor in international politics brings communal appropriate results for all states in the international system.²⁷ In this case, coercion can be used by states to force loyalty to rules; positive agreements can be made providing benefits to cooperating parties. Consequently, big states as well as the smaller ones possibly will have motivations to cooperate with each other in upholding a regime, the hegemony obtains

²⁴ S. D. Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening. Variables”, 186

²⁵ S. D. Krasner, *International Regimes* (Cornell University Press, 1983), 2

²⁶ S. D. Krasner, “Structural Causes and Regime Consequences: Regimes as Intervening. Variables,” 186-187

²⁷ D. Snidal, “The Limits of Hegemonic Stability,” *International Organization* 39/ 4 (1985), 579

the skill to create and direct its international condition, at the same time providing realistic reasons other states to encourage them to act in accordance with given standards.²⁸ Hegemonic stability implies that sufficient incentive is required from the hegemony to make a public good accessible. Obviously, states may appreciate the cooperative goods given by the hegemonic power irrespective of the contribution given to the preservation of the good, also known as the “free rider” problem. The hegemony necessitates avoidance of free riding, through imposing regime rules and reassures others to share the costs of upholding system.²⁹

Hasenclever claims that, attaining cooperation seems to be more problematic in the case when states are in agreement towards “relative-gains logic”, rather than “absolute-gains logic”. The reason for this is that the logic of the state considers absolute gains want simply to ensure that “the pie” is growing and that there is some kind of a growth, whereas states which focus on relative gains should consider the fact of how the pie is distributed. In this case, such relative gains concerns help the states stay away from embarking on, or keep on maintaining projects with others in collaboration, although when free riding is not a problem.³⁰

Furthermore, refining one's short- or long-term views for endurance is not the only reason that keeps states focused on how well their partners are compared to themselves. States may have a disaster on the fact that their partners might change their relative

²⁸ D. Garst: “Thucydides and Neorealism,” *International Studies Quarterly* 33/ 1 (1989), 19

²⁹ D. Snidal, 581

³⁰ Andreas Hasenclever, Peter Mayer and Volker Rittberger, 116

advantage into superior trading power in the related issue which is in question and further than that. Therefore, this would empower initiative for enhanced bargains to a degree where the relatively underprivileged partner's ability for independent choice, at least in the issue-area at hand, may be seriously in a weak position.

Consequently, states look for avoiding relative losses, for the fact that survival is not only their central aim, but for the reason that they give importance to their independence as well³¹. Relative gains concerns lean towards being intimidated when the states in question share a mutual opponent or when the power variance concerning them is great enough that no possible gap in pay-offs from cooperation is possible to influence their relative situation in a visible manner. When the power base of states is decreasing there is a tendency to be more delicate to some fatalities than rising hegemonic powers.³² Relying on such practical examination of the cooperation problem does not only advocate the assumptions regarding the possibility of states cooperating for common advantage, but also the possibility about the form that any collaboration that might be accomplished to take place: electing “defensive positional aims” generate a tendency for states to work together according to rules that guarantee a stable circulation of gains, that is, one that “roughly maintains pre-cooperation balances of capabilities.”³³

³¹ Andreas Hasenclever, Peter Mayer and Volker Rittberger, 117

³² Ibid., 119

³³ H. Milner, “International theories of cooperation among nations: strengths and weaknesses,” *World Politics* 44 (1992), 471

S. Krasner argues that international regimes do not embrace the model or standard case for the realist perspective. Restrictive state of affairs generates regimes regarded as individual's inability to make decisions for safe and preferred results. Power and interest bring a situation in which regimes should exist. The basic actors are states.³⁴

Regimes, being a basis of power are used by actors with incomplete national capabilities. Fundamental resources of the actors stay unchanged, however, the ability to affect behavior is greater, or limited, by the "principles, norms, rules, and decision-making procedures" of a regime. Such situation arising doubtfully when a regime is first created. In this case, features of the regime are expected to correspond closely to the choices of the most powerful actors in the system. On the other hand, weaker actors are not expected to be capable to use the regime to enhance their own national power resources. As a result, such incompatibilities make it possible for weaker states to boost their influence.³⁵

Another observation by Hasenclever, Mayer and Rittberger claiming that, states are often willing to provide "side-payments" or other discounts to drive away any underprivileged partners' worries regarding relative losses because this supply of profits from collaboration does not end spontaneously a lot. On the other hand, in the case when gains are powerless and efforts to redress this concern are not made or fail to have influence, continuing cooperative endeavors are expected to be under pressure or even

³⁴ S.D. Krasner, "Structural Causes and Regime Consequences: Regimes as Intervening Variables," 205

³⁵ S. D. Krasner "Regimes and the Limits of Realism: Regimes as Autonomous Variables," *International Organization* 36/ 2 (1982), 506

get destroyed completely.³⁶ When the “unipolar power structure” that triggers a particular regime softens, the regime itself is assured to have a breakdown or become an unsuccessful collection of norms and rules which are disturbed every time states assume that this is for the best. According to D. Snidal hegemonic failure may come either from a complete weakening of the leading actor or from affirmative but “differential growth rates” by which secondary powers faster reach to a former leader.³⁷ Additional reason causing the dissolution of the regime is when other states initiate to view the movements of the hegemony as egotistic and different to their particular political and economic benefits.³⁸

S. Krasner mentions that, the role of regimes in relation to sovereign states is to manage state behavior to succeed and reach desired results in specific areas. This kind of direction is capturing in a number of conditions. Krasner notes that regimes can influence when Pareto-optimal results were not achieved by inappropriate individual controls of self-centeredness.³⁹

Again Krasner points out that, regimes may separately influence outcomes in the case of purely independent behavior which might result in unsuccessful fallouts for both parties. This implies the game-theoretic similarity. Krasner additionally argues that other authors in this capacity propose that regimes may possibly have substantial effect in a very

³⁶ Andreas Hasenclever, Peter Mayer and Volker Rittberger, 120

³⁷ D. Snidal, 585

³⁸ R. Gilpin, *The Political Economy of International Relations* (Princeton University Press, 1987), 73

³⁹ S. D. Krasner: *Structural Causes and Regime Consequences: Regimes as Intervening Variables,* 191

multifaceted world in which “ad hoc”, distinctive calculation concern could not feasibly offer the needed amount of management. Commonly argued, there is a broad trend in the direction of a complex interdependence which will in turn increase some of the areas in which regimes are substantial.⁴⁰

According to Krasner, in general, conservative structural point of view does not consider the regime completely: if there is a modification in basic causal variables, as a result, regimes will change too. Regimes tend to possess no separate influence on behavior. According to changes in basic opinions illustrated here by several advocates of a realist view of international relations, regimes are perceived as significant merely when autonomous decision making brings unwanted consequences.⁴¹

2.2 Nuclear Non-Proliferation Treaty

NPT is a multilateral international instrument developed by the Committee on Disarmament of the UN. The purpose of the Treaty is to restrict the number of countries possessing nuclear weapons to establish international control over the fulfillment of the commitments made by States, to limit the potential for armed conflict with the use of such weapons, and to create opportunities for the peaceful use of nuclear energy.⁴²

The Treaty stipulates that the state possessing nuclear weapons is that which has manufactured and exploded a weapon or device before January 1, 1967 (USSR, USA,

⁴⁰ S. D. Krasner: Structural Causes and Regime Consequences: Regimes as Intervening Variables,” 192

⁴¹ Ibid, 194

⁴² C. Harvey, “Major Proposals to Strengthen the Nuclear Nonproliferation Treaty”, *Arms Control Association* (2010) (http://www.armscontrol.org/pdf/NPTRevConf2005_MajorProposals.pdf 23 February, 2012)

UK, France, and China). It orders to the nuclear powers not to transfer to anyone nuclear weapons and control over them, not to help the non-nuclear weapon states in production or acquisition of such weapons.⁴³ Below describes the obligations of non-nuclear-weapon states in NPT:

“Each non-nuclear-weapon State Party to the Treaty undertakes not to receive the transfer from any transferor whatsoever of nuclear weapons or other nuclear explosive devices or of control over such weapons or explosive devices directly, or indirectly; not to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices; and not to seek or receive any assistance in the manufacture of nuclear weapons or other nuclear explosive devices.”⁴⁴

In practice, the functioning of the NPT is monitored by the International Atomic Energy Agency (IAEA). It was founded in the late 1950s in Vienna to assist developing countries in acquiring access to nuclear energy and ensuring its safe use. After entry into force of the NPT, the IAEA has signed agreement with the non-nuclear states, after which the Agency’s international inspectors got the right to visit and inspect the facilities of the states declared as a nuclear developing state.⁴⁵

It’s time to identify, what I have described above whether can be seen as a regime or not. Brzoska and Tate are analyzing the nuclear weapons non-proliferation efforts and trying to identify that, the efforts and processes describing above are formulating an

⁴³ C. Harvey

⁴⁴ Article II, The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (1970), (<http://www.un.org/en/conf/npt/2005/npttreaty.html> - 30 September, 2012)

⁴⁵ Александр Пикаев:”Международный режим нераспространения ядерного оружия” (Alexander Pikaev, “International Nuclear Weapons Non-Proliferation Regime”), October 2005, (http://www.perspektivy.info/rus/desk/mezhdunarodnyj_rezhim_nerasprostraneniya_jadernogo_oruzhija_2_007-10-25.htm, 12 May, 2012)

international regime. Brzoska considers NPT as a regime, but, I presume he identifies problems about the absence of the mutual managerial principles and norms in this regime.⁴⁶ However, there are two competing sets of principles and norms in the non-proliferation system, and these formulate different types of actors in the system.⁴⁷ Practically, regarding the different parts of the nonproliferation system, it is a troublesome mixture of these two sets of principles and norms.

As there is the non-proliferation, which with its managerial norm towards the distribution of nuclear arms to more states, may cause a severe threat to international security which should not be allowed, even while more is done to exploit the peaceful components to nuclear energy.⁴⁸ This refers to the comprehension of the norm of non-proliferation in the nuclear-weapons states. Developed states in East and West that have advanced nuclear industries have implemented and unilaterally rejected the ownership of nuclear weapons prior to entering international arrangements like the NPT.⁴⁹ In a way, this non-proliferation regime also serves as a provider of the nuclear materials and technology and provides conditions for the states in the sphere of development of peaceful nuclear energy. Essentially, inhibition of the distribution of nuclear weapons shows what is required to be done: the suppliers should get together. In fact, many of them were in the Nuclear Supplier Group (NSG), which was viewed as the core of the

⁴⁶ M. Brzoska, "Is the Nuclear Non-Proliferation System a Regime? A Comment on Trevor McMorris Tate," *Journal of Peace Research* 29/ 2 (1992), 217

⁴⁷ J. F. Keeley, "Toward a Foucauldian Analysis of International Regimes," *International Organization* 44/1 (1990), 90

⁴⁸ T. M. Tate, "Regime-building in the Non-Proliferation System," *Journal of Peace Research* 27/ 4 (1990), 403

⁴⁹ M. Brzoska, 217

nuclear non-proliferation system, viz. the significance often linked to the NSG and the US Nuclear Non-Proliferation Act of 1978.⁵⁰

Specifically, the principle implies the elimination of nuclear weapons by all states. Some states do not possess nuclear weapons and this is viewed as a “confidence-building measure” intended to encourage the nuclear weapon states to give up the nuclear weapons. According to debates at the NPT review conferences, have brought the question of nuclear reduction among the nuclear weapon states, while non-NPT members mention the absence of development as their main protest to joining the treaty as non-members. James Keeley considered the unification of this understanding when the NPT was concluded⁵¹, however the negotiation record does not support this argument. In fact, several of the states that pushed for this understanding in those negotiations chose not to be members of the NPT, specifically for the reason that it was not preserved in the NPT.

In its place, the NPT holds both sets of principles and norms, although not at the same level of concentration. The ban of the first-time acquirement of nuclear weapons is very different; though the signatory nuclear weapon states simply assured to do something

⁵⁰ M. Brzoska, 217

⁵¹ J. F. Keeley, “Toward a Foucauldian Analysis of International Regimes”, *International Organization*, 44/1 (1990), 97

about their weapons as soon as possible.⁵² Several non-nuclear weapon states have acknowledged this “unfairness” as the norm of the NPT.

Compromise position posits big complications for diplomats at NPT-review conferences as well as for international regime analysts. The following questions rise in this case: is there actually one regime having somewhat contradictory principles and norms? Or are there three sub-regimes- nuclear suppliers, support of civilian nuclear activities, abolition of nuclear weapons - loosely connected via IAEA safeguards and NPT review conferences?⁵³

This issue grows into a more complicated matter when regime participation is considered. The regime with the one nuclear provider would have relatively limited number of participants. In fact, those non-suppliers who have signed up the NPT assist the functioning of the suppliers' regime, however they do not contribute in the creations of rules and procedures.⁵⁴

In the case of regime with non-possession of nuclear weapons as the main principle, involvement would consist of all states that have approved one of the above-mentioned partial “nuclear arms control treaties”, for the most part the “Partial Test Ban Treaty”. Regarding the negotiation circumstances, membership in the NPT is vital as it protects

⁵²VI Article, The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (1970), (<http://www.un.org/en/conf/npt/2005/npttreaty.html> , 30 September, 2011)

⁵³ M. Brzoska, 218

⁵⁴ Ibid.

that horizontal distribution of nuclear weapons is classified higher than non-possession. Certainly, the IAEA is an essential forum for members as well.⁵⁵

The fact regarding the distribution of nuclear weapons has stayed properly incomplete even between non-participants in these regimes “puzzle analysts”⁵⁶ who use both of these approaches. Among all states that are not partners in articulating the rules and procedures of regimes in non-proliferation - and who have the technical resources to do so only few- have acquired nuclear weapons. On the contrary, there are some new nuclear states and a small number of states more similar to those statuses, who are also the members in the second and - perhaps – third regimes, like India and Pakistan.⁵⁷

2.2.1 Nuclear Non-Proliferation Treaty as a Core of the NPT regime

The main institution of the International NPT regime is the NPT. It clearly defines the principles related to the "nuclear bargain" of the nuclear "haves" and "have not's" in six functioning sections.⁵⁸ The first three articles forbid the participants to transmit nuclear weapons to non- nuclear weapon states, create nuclear weapons except the case when it has been already done, and distribute nuclear materials without international safety measure. The following three articles launch the "inalienable right" of all parties to progress in nuclear energy for peaceful purposes. In addition, it provides that all parties must enable, and have right to take part in the potential interchange of “equipment,

⁵⁵ M. Brzoska, 218

⁵⁶ T. M. Tate, 411

⁵⁷ M. Brzoska, 218

⁵⁸ R. K. Smith, "Explaining the Non-Proliferation Regime: Anomalies for Contemporary International Relations," *International Organization* 41/ 2 (1987), 257

materials, and scientific and technological information for the peaceful practices of nuclear energy”. Lastly, the NPT directs all parties 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"; that is, the nuclear weapon states had to terminate their "vertical proliferation in exchange for an end to horizontal proliferation".⁵⁹

The "basic bargain"⁶⁰ introduced by the NPT describes the reoccurrence of the previous acquirement of the nuclear weapons, the NNWS removed from the nuclear states an obligation to offer them nuclear technology appropriate for the expansion “of nuclear energy industries and to restrain the vertical spiral in nuclear weapon inventories”. Emphasis on the open trade was an implicit treaty: NNWS will not be willing to strive for getting nuclear weapons for extended time like the nuclear states (states which are leading in economic and military areas) continued a strong and growing international economy and a system of qualified free trade in straight weaponry.⁶¹

As Nye explained in his paper, the safety measure system is vital in relation to primary trade of the regime on an international basis that helps other countries in terms of “peaceful nuclear energy” requirements in exchange for their agreement of the interruption of safety measure and examination. Such safety measures are essential for the reason that an agreed mechanism is provided for representative and validating

⁵⁹ The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) (1970), (<http://www.un.org/en/conf/npt/2005/npttreaty.html> , 30 September , 2011)

⁶⁰ R. K. Smith, 258

⁶¹ Ibid.

agreement with commitments so that safeguarded material will not be diverted to military practice; but also deliver general information of “the location, status, and use of safeguarded materials and equipment”. Providing this kind of knowledge ensures additional trust.⁶²

According to the Smith’s view, on the whole, the safeguard system known as a “NPT regime” embodies improved and ultimate approval of the direct postwar “status quo”. According to the “status quo”, only small minority of states had nuclear weapons. Primary “nuclear science and technology” have to be common and widely held as the modification implies. As a final point, in today's world, nuclear war requires a remarkable expense in terms of its effects as well as in its preparation.⁶³

The above analysis confirms that the NPT must be seen as a cornerstone of the non-proliferation regime, and serves as the foundation of nuclear disarmament. As follows from the foregoing, each of the above core elements of the international NPT regime makes its own regime on the basis of agreements more narrowly focused than the NPT. The structure of the NPT regime includes additional elements that support the regime, but does not make up its foundation. In addition, all components of the NPT-the legal framework, rules, regulations and procedures, including a certain range of actors (participants) identify the NPT as a regime. The identifying of the legal framework - rules and rights of the NPT in the next Chapter will present more clearly the NPT as a regime.

⁶² J. S. Nye, “Maintaining the Non-Proliferation Regime”, *International Organization* 35 (1981), 17

⁶³ R. K. Smith, 261

Chapter 3

THE NPT REGIME AND INTERNATIONAL LAW

Under present conditions, the priority of the international community is to provide flexibility and stability in the international NPT regime. This requires a better understanding of the international legal regime of nuclear non-proliferation as well as the formulation of evidence-based proposals and recommendations aimed at maintaining and strengthening it. Based on that, this Chapter considers the significance of the legality of the international “NPT regime”. The subject of the study of this Chapter is based on the “implicit or explicit principles, norms, and rules”⁶⁴ of international legal regime for the “Non-Proliferation of nuclear weapons” since its inception to the present day. The analysis also includes the Advisory Opinion concerning “The Legality of the Threat or Use of Nuclear Weapons” given by the International Court of Justice in July 8, 1996. The aim of this Chapter is to identify and critically interpret the NPT regime, identify its legal implications, and precisely analyse the obligations of the parties’ stemming from the regime.

3.1 The Overview of International Documents

As mentioned in previous Chapters, the normative core of the “NPT regime” consists of a number of international documents. In order to clearly understand the content of the NPT regime, a brief analysis of those documents is required. It will focus on constituent documents of Euratom, the Antarctic Treaty, the Outer Space Treaty, The Treaty of

⁶⁴ S. D. Krasner: “Structural Causes and Regime Consequences: Regimes as Intervening Variables”, 186

Tlatelolco The Partial Test Ban Treaty, The Seabed Arms Control Treaty, SALT, The INFCE Technical Exercises, START, IAEA Safeguard Agreement, CTBT and of course, the NPT respectively.

3.1.1 Euratom

European Atomic Energy Community was formed as a result of one of the “Treaties of Rome” in 1958. This community established with the aim to create a mutual market for the peaceful uses of atomic energy.⁶⁵ Euratom is developing the contacts with other countries and international organizations that can contribute to progress in the global peaceful uses of nuclear energy or control of nuclear materials creating problem for NPT regime.

3.1.2 The Antarctic Treaty

The Washington Conference holding on December, 1959 was finished with the signing of The Antarctic Treaty. The Treaty entered into force after accepting all points of Treaty by the parties in June, 1961. The Treaty declares that Antarctica is intended to be used for merely peaceful purposes. Precisely, it disallows “any measures of a military nature, such as the establishment of military bases and fortifications, the carrying out of military maneuvers, as well as the testing of any type of weapons”. On the other hand, military staffs or equipment can be exploited in accordance with peaceful agreements or for scientific research. There are outlaws in terms of nuclear explosions and any kind of exposal of radioactive waste material in Antarctica.⁶⁶ This Treaty was a framework

⁶⁵ "European Atomic Energy Community (EURATOM)", (<http://www.britannica.com/EBchecked/topic/195957/European-Atomic-Energy-Community> , 7 March , 2012)

⁶⁶ Antarctic Treaty, *Bureau of International Security and Non-Proliferation*, (<http://www.state.gov/t/isn/4700.htm> , 21 March 2012)

agreement and generated a number of other agreements known as the Antarctic Treaty System.⁶⁷

3.1.3 The Outer Space Treaty

The Outer Space Treaty was signed on 27 January 1967. This Treaty is concerned with the “principles of governing the activities of states in the exploration and use of outer space”. According to this Treaty, the use of nuclear weapons or any other “weapons of mass destruction” in outer space is banned, requiring the use of this environment only for peaceful purposes. This Treaty served for prohibition of the installation or exploitation of any objects carrying nuclear weapons or other weapons of mass destruction.⁶⁸

3.1.4 The Treaty of Tlatelolco

The Treaty of Tlatelolco forbidding the testing, practice, manufacture, delivery, installation, distribution, of any kind of nuclear weapons in Latin America was signed on 14 February 1967, in Tlatelolco, which is a unit of Mexico City. Regarding the basic requirements of the Treaty, it claims that the contracting parties agree to use the nuclear equipment and services under their authority entirely for peaceful purposes.⁶⁹ This treaty is serving for the organization of development of the NPT regime, because an agreement in each region is serving for constructing of this regime.

⁶⁷ C. Henderson, *Understanding International Law* (Wiley-Blackwell, 2010), 131

⁶⁸ Outer Space Treaty of 1967,(<http://history.nasa.gov/1967treaty.html> , 5 March 2012)

⁶⁹ Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco), *Bureau of Western Hemisphere Affairs*, (<http://www.state.gov/p/wha/rls/70658.htm> , 5 March 2012)

3.1.5 The Partial Test Ban Treaty

The Partial Test Ban Treaty (“Limited Test Ban Treaty (LTBT)”) was signed by the United States, the Soviet Union, and the United Kingdom in Moscow on 5 August, 1963. According to the Treaty, Parties shall exclude, stop, and refrain from conducting any nuclear weapons experiments and any kind of “nuclear explosions in the atmosphere, in outer space, under water, or in any other environment”.⁷⁰

3.1.6 The Seabed Arms Control Treaty

The Seabed Arms Control Treaty signed, in 1972, bans its parties to use “nuclear weapons or weapons of mass destruction in the area of seabed and the ocean floor beyond a 12-mile coastal zone”. The Seabed Treaty requires impeding the introduction of the disputes and nuclear weapons into the area which was previously “free of them”.⁷¹

3.1.7 SALT

The set of agreements aiming to stop the arms race and also the development of nuclear weapons between the US and Soviet Union was signed on 26 May, 1972. These agreements were the “Treaty on the Limitation of Anti-Ballistic Missile Systems” and “the Interim Agreement on Certain Measures” in relation to the “Limitation of Strategic Offensive Arms”. They are also called “SALT I”. Then, on 18 June 1979 “the Treaty on the Limitation of Strategic Offensive Arms” was signed by the same actors (US, USSR).

⁷⁰ Treaty Banning Nuclear Tests in the Atmosphere, in Outer Space and Under Water (Partial Test Ban Treaty) (PTBT), (<http://www.nti.org/treaties-and-regimes/treaty-banning-nuclear-test-atmosphere-outer-space-and-under-water-partial-test-ban-treaty-ptbt/> , 13 March , 2012)

⁷¹ Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof, *Bureau of International Security and Nonproliferation*,(<http://www.state.gov/t/isn/5187.htm> , 2 February, 2012)

It is called SALT II.⁷² The signing of these agreements demonstrated the parties' recognition of their mutual interests on international security and strengthening of strategic stability.⁷³

3.1.8 The INFCE Technical Exercises

There were the representatives of forty nations and four international organizations which came together in Washington in October 1977 to be presented at INFCEP'S organizational gathering. The US President Carter engaged overseas governments to join the United States in creating what was initially called "the International Nuclear Fuel Cycle Evaluation Program (INFCEP)" to achieve a new agreement on the organization of the "fuel cycle" and applicable safety measure.⁷⁴

3.1.9 START

The Treaty called "the Reduction and Limitation of Strategic Offensive Arms" (the START I Treaty) was signed on July, 1991 by US and Soviet Union for the achieving the results on eliminating the number of their nuclear weapons from 10,000-11,000 to 8,000-9,000 weapons.

⁷² 2000 NPT Review Conference, *United Nations Department for Disarmament Affairs* (2000) (<http://www.un.org/Depts/dda/DDAHome.htm> , 12 December, 2011)

⁷³ Treaty on Reduction and Limitation of Strategic Offensive Arms, (http://www.un.org/ru/documents/decl_conv/conventions/russia_usa.shtml , 31 March, 2012)

⁷⁴ S. J. Warnecke, "Non-proliferation and INFCE: An interim assessment", *Survival: Global Politics and Strategy* 21/3 (1979), 116-124 (<http://dx.doi.org/10.1080/00396337908441816> , 22 March 2012)

Later on 3 January 1993 the US and the Russian Federation signed “the Treaty on Further Reduction and Limitation of Strategic Offensive Arms (the START II Treaty)”, in which they accept additional major drop in their nuclear collection.⁷⁵

3.1.10 CTBT

1994-1996 was the period of preparations for the "Comprehensive Nuclear Test-Ban Treaty" to be adopted by the UN General Assembly.⁷⁶ The Treaty was adopted and declared open for the signing in September 1996. Still, the Comprehensive Nuclear Test-Ban Treaty has not entered to force. This Treaty might be an international legal instrument, greatly hindering the improvement of the quality of nuclear weapons by nuclear weapons states. At the same time the banning of nuclear testing, the possessing a barrier to the spread of nuclear weapons and the prohibition of building the nuclear arsenals by non-nuclear states are the main points of unsigned CTBT.⁷⁷

3.1.11 IAEA Safeguard Agreement

IAEA is considered as a body of inspection for the “Nuclear Non-Proliferation Treaty” and other treaties which don’t favor the distribution of nuclear weapons. Currently, the IAEA safety measures for nuclear equipment and activities are includes more than 140 states. In accordance with this Agreement states undertake to apply IAEA safeguards to all source and special fissionable material in peaceful nuclear activities within its

⁷⁵ 2000 NPT Review Conference, *United Nations Department for Disarmament Affairs* (2000) (<http://www.un.org/Depts/dda/DDAHome.htm>, 12 December, 2011)

⁷⁶ Comprehensive Nuclear-Test-Ban Treaty (CTBT) (<http://www.un.org/disarmament/WMD/Nuclear/CTBT.shtml> , 25 March, 2012)

⁷⁷ The Comprehensive Nuclear Test-Ban Treaty, Article I

jurisdiction in order to verify that such material will not be used to make nuclear weapons.⁷⁸

This brief analysis of the international treaties and agreements in the field of non-proliferation of nuclear weapons can be concluded by pointing out the criteria of "international cooperation" which reflects a process of interaction between two or more subjects of international relations, which excludes the use of force, and dominated by the joint realization of common interests. From a legal point of view, the basis of an international NPT regime is special principles, accumulated in legally-binding rules of non-proliferation of nuclear weapons. These principles are also referred to the Nuclear Non-Proliferation Treaty (NPT), the basic and the most general of all documents describing above.

3.2 The Overview of the NPT

The Nuclear Non-Proliferation Treaty (NPT) is the main normative foundation of the International NPT regime. An analysis of this document will identify the international legal principles of the NPT regime, as well as its constituent elements. This paragraph focuses on the normative analysis of the NPT Treaty and identification of the rights and obligations of the parties from the Treaty.

Nuclear proliferation is a problem that has to be dealt by the international community today. On March 5, 2012 the international community celebrated the 42nd anniversary of the "Nuclear Non-Proliferation Treaty" that laid the legal foundation of the

⁷⁸ IAEA Safeguards Overview: Comprehensive Safeguards Agreements and Additional Protocols, (http://www.iaea.org/Publications/Factsheets/English/sg_overview.html ,16 March, 2012)

international “NPT regime”. Today, the NPT is the most important agreement in the field of international security, joined by almost all nations of the world. The negotiations over the Treaty were completed in 1968 and the Treaty entered in force in 5 March 1970. This Treaty is based on principles; “nuclear non-proliferation”, “cooperation in peaceful uses of nuclear energy”, and “nuclear disarmament”. The core of the NPT is the assurance of the nuclear-states (the US, UK, Russia France and China) for arms reduction of nuclear weapons, and for the getting the right of entry to “nuclear technology and energy for peaceful purposes”. In March 2010, 189 states were parties of the NPT and this makes the Treaty a global agreement. Only three states, India, Israel and Pakistan have not joined the NPT. All of them are armed with nuclear weapons. The only state that has withdrawn from the NPT is North Korea.⁷⁹

The NPT was building up at five-year intervals meetings (1975, 1980, 1985 and 1990) with its members since 1970. These meetings review the progress of the Treaty.⁸⁰ Just two of these conferences (1975, 1985) resulted with adopting of the Final Declarations. The Conference held in 1995 had the double duty to examine the execution of the Treaty’s provisions and to decide on Treaty extension.⁸¹ Besides, the NPT signatories

⁷⁹J. P. Zanders, “Nuclear weapons after the 2010 NPT Review Conference”, *European Union Institute for Security Studies, in Chaillot Papers n° 120* (2010), 5

⁸⁰ Ibid.

⁸¹ Ibid., 6

agreed to meet 25 years after the entry into force of the Treaty and resolve the issue regarding the extension of the Treaty.⁸²

The NPT initiated one of the most central international security goods agreements ever more than forty years ago and as a result, the nuclear-states agreed to desist from their weapons. Similarly, this Treaty legalized the peaceful practice of nuclear technology by non-nuclear states under the control of IAEA. Taking all these elements into account, NPT is considered as a good agreement which builds ability for establishment of this regime.⁸³

The NPT, as a heart of the NPT regime, stands for a transaction among two groups of states: the nuclear states (China, France, Russia, the United Kingdom, and the United States) which had produced nuclear weapons before January 1, 1967 and non-nuclear states which had not produced and used such weapons by that date. This Treaty tried to reach three main goals like the nonproliferation, “the development of nuclear energy technology for peaceful purposes and disarmament”.⁸⁴

As mentioned above, the NNWS are the states which are using the nuclear materials only for civilian activities. The implementing body for NPT is IAEA and this Agency

⁸² J. P. Zanders, 6

⁸³ C. Harvey.

⁸⁴ The Treaty on the Non-Proliferation of Nuclear Weapons (NPT) , Article IX

looks at agreement with the Treaty and assists non-nuclear states in developing the nuclear facilities for peaceful purposes.⁸⁵

NPT is not dealing with the nuclear proliferation by the non-state actors in terms of design. After the 9/11 the UN Security Council implemented Resolution 1540 about the officially requisite mechanism necessitating all UN member states to apply measures in stopping the non-state actors from obtaining WMD.⁸⁶ Never before was there such an influence of two elements of the nonproliferation regime due to the conflict of the nuclear weapons states. In 1996, the “Comprehensive Nuclear Test Ban Treaty” was signed by 182 countries, however, only with the approval of all states this treaty is able to be empowered. The states like China, India, Israel, Pakistan and the US are not ratified it yet.⁸⁷

The NPT is an essential requirement for “fighting” against the nuclear weapons production. In Article I of NPT, each NWS undertakes not to allocate nuclear weapons “to any recipient and not to encourage”, or tempt any NNWS to produce nuclear weapons. In Article II, each NNWS undertakes not to manufacture the nuclear weapons and not to search for any “help in the production of such weapons”.⁸⁸ In Article III, each

⁸⁵ “The Global Nuclear Nonproliferation Regime”, *Council on Foreign Relations’ Report*, March 23, 2012, (<http://www.cfr.org/proliferation/global-nuclear-nonproliferation-regime/p18984>, 14 April,2012)

⁸⁶ Ibid.

⁸⁷ “The Global Nuclear Nonproliferation Regime”, *Council on Foreign Relations’ Report*, March 23, 2012

⁸⁸ The Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Article II

NNWS undertakes to conclude a safeguards agreement with the IAEA “for the exclusive purpose of verification of the fulfillment of its obligations” under the NPT.⁸⁹

Article IV regulates the principal commitments related to the development and sharing of nuclear technology “for peaceful purposes”. According to this Article “all the Parties to the Treaty undertake to facilitate and cooperate to the further development of the applications of nuclear energy for peaceful purposes”.⁹⁰

Article VI contains the key commitments related to disarmament, provides that, every party to the Treaty agree to follow negotiations with trust on effective measures in terms of termination of the “nuclear arms race” and to complete arms reduction “under strict and effective international control”.⁹¹

Article X specifies that each party is allowed to depart from the Treaty. Accordingly, the notice must be given to the other parties and to the Security Council three months before the withdrawal. This notice should include statement about the “extraordinary events”.⁹²

Special role in the NPT regime is played by the principle of “nuclear disarmament”, affecting the obligation of the NNWS to respect and implement the already signed

⁸⁹ The Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Article III

⁹⁰ Ibid., Article IV

⁹¹ Ibid., Article VI

⁹² Ibid., Article X

agreements on nuclear disarmament in good faith, to achieve the new treaties aiming to limit, reduction and subsequent removal of nuclear weapons.

3.3 The Strengths and Weaknesses of the NPT

With regard to the current challenges, international organizations cooperate with “*ad hoc*” forums of involved parties, like the “Six Party Talks on North Korea” and the “P5+1” grouping on Iran. It can be said that forums as such have frequently demonstrated insufficiency to stop the proliferation of nuclear technology, and states like Iran and North Korea carry on to develop their nuclear competency. Considering this, the uncertainties regarding the sustainability of the prevention regime is increasing.⁹³

The weaknesses of the global NPT regime include “incomplete coverage of NPT regime; inadequate monitoring and enforcement mechanisms; the gaps in the legal regime; inadequate regulation of dual-use technologies; the failure of the NWS to meet disarmament commitments, the lack of legitimacy and acceptance of the key elements of NPT regime by the non-nuclear states”⁹⁴. These suggestions can be continued with “the overlaps between military and civilian nuclear technology and the tensions between the non-proliferation and peaceful use provisions of the NPT”⁹⁵.

⁹³ “The Global Nuclear Nonproliferation Regime” *Council on Foreign Relations’ Report*, March 23, 2012

⁹⁴ *Ibid.*

⁹⁵ C. J. Moxley, J. Burroughs, J. Granoff, “Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty,” *Fordham International Law Journal* 34 (2011), 350

Recently, there is a nuclear weapons proliferation risk, because of the developed (1960s and 1970s) safeguards agreement of NPT. At that times technology for building nuclear weapons did not widely exist.⁹⁶ Despite the fact that international community is trying to fight against the proliferation of nuclear weapons, even today it is possible to find through the Internet true explanation of creating such weapon.⁹⁷

The connection between civilian and military nuclear technologies positions a great challenge standing along with the NPT regime which simplifies acquisition of weapons-grade fissile material or the technologies necessary for its production for a state.

Talking about the IAEA, we can say that there is a limit to what the Agency alone can do with addressing international issues regarding the possible spread of nuclear weapons. The IAEA is not a power in its own right and it is not a global nuclear police force that can force its way into countries or nuclear facilities. That is not the way which works international law.⁹⁸

3.4 The International Court of Justice and the Legality of the Use of Nuclear Weapons

The prospect of the use of nuclear weapons is one of the global challenges of our time because such weapons are the potential tool for destruction of all humankind. International legal documents on weapons of mass destruction were concentrated partiality on its exploitation. A number of international documents, starting with the “St.

⁹⁶ C. J. Moxley, J. Burroughs, J. Granoff, 350

⁹⁷ Ibid., 351

⁹⁸ Y. Amano, “Time to Strengthen NPT regime”, *La Nación*, 25 March 2010, (<http://www.iaea.org/newscenter/transcripts/2010/ln250310.html> - December 11, 2011)

Petersburg Declaration” (1868) and “the Hague Convention” (1907) adopted on the initiative of Russia insist that the fighting should involve only the combatants, while the civilian population should be protected from the influences of military action. Accordingly, in particular, from these considerations, the International Court of Justice adopted in 1996 an “advisory opinion” that the threat of nuclear weapons or use nuclear weapons in general, is in opposition to the “rules of international law” applicable in armed conflict, and specifically “the principles and rules of humanitarian law”.⁹⁹

International Court of Justice issued a decision on the request of the World Health Organization¹⁰⁰ and an advisory opinion on the legality of using nuclear weapons for the General Assembly of UN in 1996¹⁰¹. The ICJ refused to give an advisory opinion upon the request of the World Health Organization. However, the Court agreed to reply to the request from the UN General Assembly, concluding that “the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict subject to one apparent exception”.¹⁰²

⁹⁹ В. А. Орлов, Ядерное нераспространение (ПИР-Центр, 2002), 18, (V.A. Orlov, Nuclear Non-Proliferation (Pir-Center, 2002), 18)

¹⁰⁰ Legality of the Use by a State of Nuclear Weapons in Armed Conflict, *Advisory Opinion*, *ICJ Reports* (1996), 66

¹⁰¹ *Ibid.*, 26

¹⁰² Laurence B. de Chazournes, Philippe Sands et al, *International Law, the International Court of Justice and Nuclear Weapons* (Cambridge University Press, 1999), 1

As provided in the Statute of the International Court of Justice, the judgments of the Court are addressed to the states and Advisory Opinions are addressed to the institutions which have requested it.¹⁰³

The Court is based on peace and security, focusing on controversial issues of international law. In addition to the essential issues raised by the Court on legitimacy of the exploitation of nuclear weapons, some additional issues were also raised by the ICJ. There were “institutional” as well as “substantive” issues: the appropriate position of the ICJ and international court structure, the ICJ’s “advisory function”, the capability of international organizations, the review of IO’s acts by the Court, the relations of a number of “branches of international law”, “the normative value and effect” of the rules set up based on those branches, and other sources of international legal commitment and their relations. Furthermore, the actions related to the likelihood of “non liquet”¹⁰⁴ and the position of the “Lotus approach” today.¹⁰⁵ Additionally, strategic questions like the legitimacy of the nuclear prevention exercises or the implication of “Article VI of the 1968 Treaty on the Non- Proliferation of Nuclear Weapons” were also raised.¹⁰⁶

There are three institutional matters dealing with the Court: the World Health Organization and the UN General Assembly had the capability to request an Advisory

¹⁰³ J. Salmon, Who are the addressees of the opinions? International Law, the International Court of Justice and Nuclear Weapons (Cambridge University Press, 1999), 27

¹⁰⁴ Non *Liquet*- expressing the view that there exists a gap or lacuna in the law

¹⁰⁵ *Lotus approach*- traditionally treated as expressing the view that that which is not explicitly prohibited by international law should be permitted

¹⁰⁶ J. Salmon, 2

Opinion regarding this issue whether the ICJ should use its discretion in order to respond only to one or both of them. What was the position of the “principal judicial organ” of the UN? The essential subjects raised by several states in the course of argument involved the status and influence of a number of standards of “international humanitarian law” (“*jus in bello*”¹⁰⁷) in the case of the practice or endangered exploitation of nuclear weapons, the significance of the rights leading “the use of power” (“*jus ad bellum*”¹⁰⁸), and the connection concerning these two divisions of international law. Ever since certain states had also exposed other branches of overall “international law – the law on human rights (especially the right to life and the prevention on genocide) and international environmental law” – the ICJ was required to be concerned with the connection of these “norms and rules” ruling armed conflict. As a result, the Court took into account, the relationship among the norms of international law and some of areas of disagreement regarding the views from the perspective of the facts and evidence.¹⁰⁹

Consequently, the Court decided that a way to address the issue concerning the “legality of the threat or use of nuclear weapons”, posed by the UN General Assembly was mainly to look into the core of “*jus ad bellum*” and “*jus in bello*”, both aimed at dealing with the exploitation of weapons - including nuclear weapons - in armed conflict. There are several reasons why the ICJ’s Opinion is essential. First, it clearly confirms that “the use of nuclear weapons is the subject to international humanitarian law”. Second,

¹⁰⁷ *jus in bello*- laws of war

¹⁰⁸ *jus ad bellum*- right to war

¹⁰⁹ Laurence B. de Chazournes, Philippe Sands, 3

according to the ICJ's analysis of the effect of the UN Charter current *jus ad bellum* does not take into account only whether the preliminary alternative to force is legalized; in addition there are allegations for the consequent behavior of hostilities (an issue which is additionally reflected below). Lastly, although other parts of international law “may have a bearing on armed conflict”, the Opinion insistently discards opinions that the thorough “*lex specialis*”¹¹⁰ which was established years ago for dealing with the behavior of animosities can be avoided oriented towards broad requirements of environmental or human rights law.¹¹¹

As well as, the Court described the lawfulness of the resolutions of UN General Assembly, stating the "substantial numbers of negative votes and abstentions".¹¹² Therefore, despite the fact that they "are a clear sign of deep concern regarding the problem of nuclear weapons, they still fall short of establishing the existence of an *opinio juris*"¹¹³ on the illegality of the use of such weapons".¹¹⁴

According to the E. David, on the whole, the findings appear to be “equally debatable”. First, it neglects the agreements that General Assembly resolutions presented for States which elect them and which therefore recognize an “*opinio juris*”, at least to the extent

¹¹⁰ *Lex specialis*- law governing a specific subject matter

¹¹¹ Christopher Greenwood, “The Advisory Opinion on nuclear weapons and the contribution of the International Court to international humanitarian law,” *International Review of the Red Cross* 316, February 1997 (<http://www.icrc.org/eng/resources/documents/misc/57jnfp.htm> - 13 May, 2012)

¹¹² Legality of the Threat or Use of Nuclear Weapons, *International Court Of Justice* (1996), 255

¹¹³ *opinio juris*- an opinion of law

¹¹⁴ Eric David, “The Opinion of the International Court of Justice on the legality of the use of nuclear weapons”, *International Review of the Red Cross* 316, February 1997

that those States are concerned. Second, it looks like underestimating the “traditional rules of international humanitarian law” established in those resolutions do not ban the use of nuclear weapons for the reason that some States compete against such a prohibition: that is, nevertheless, most of the States accepting an argument, the Court infers from the minority that argument is not real, due to the *inter alia* for the ongoing pressures concerning the emerging “*opinio juris*” on the one hand, and the static strong obedience to the practice of prevention on the other.¹¹⁵

On the basis of present position of international law, and on the basis of fact when they are removed, the Court finds it challenging to determine finally if the danger or practice of nuclear weapons would be legalized or prohibited in the case of risky condition of self-protection, which can cause risky continued existence of a State. That is, the risk or practice of nuclear weapons is viewed as mismatched in relation to the law of armed conflict; however, the Court cannot tell if that opinion would still be true given that it is the case of self-protection when the existence of the State is at risk.¹¹⁶

The purpose of this Chapter was to describe, from the juridical point of view, the basis of the international NPT regime is special rules and principles, accumulated in legally-binding of Non-Proliferation Treaty and other international treaties concerning different aspects of nuclear weapons. Based on their content analysis it may be concluded that the elements of the international legal regime for the Non-Proliferation of nuclear weapons

¹¹⁵ Eric David.

¹¹⁶ Ibid.

are: the obligation of nuclear states not to transfer in any form of nuclear weapons to non-nuclear states, and do not encourage or induce its production and acquisition; the obligations of non-nuclear states not to adopt nuclear weapons, control over it, not to acquire such weapons by any means, and not to make them; the obligation of non-nuclear states to use nuclear materials, technologies and equipment for peaceful purposes only; the obligations of states possessing nuclear weapons, to respect the goal of nuclear disarmament.

International legal norms of non-proliferation of nuclear weapons should have the same legal force, and all of them should be *jus cogens* norms. The derogations from the norms of NPT regime which are accepted and recognized by the international community are unacceptable. Their peculiarity is caused by the object of relations, for the regulation of which they are installed. Next Chapter will describe the regulation process in the NPT regime, the implementation of norms, and the auxiliary or preventive elements in this regulation process.

Chapter 4

THE IMPLEMENTATION OF THE NPT REGIME: FACTORS AND POLICIES

The International NPT regime is a set of international agreements and organizations, with the participation of nuclear and non-nuclear states, and also the domestic laws of participating countries, aiming to prevent the acquisition of nuclear status of states which have not had it in 1967.¹¹⁷ The international organizations, nuclear and non-nuclear states are the main actors and elements of the NPT regime, which make the regime an object of their convergence.

The political “role of nuclear weapons” (power of state in international affairs) is a crucial factor in the motivation for the spread of nuclear weapons. From the time when the Republic of China became a permanent member of the UN Security Council in 1971, the states being permanent members and the states that hold nuclear weapons are the same. This means that those who possess nuclear weapons have the right of veto in the UN Security Council. This fact extremely increases political significance of the possession of nuclear weapon. India’s acquisition of the “peaceful nuclear devices” in 1974 made it a regional power, which had influenced the China for the nuclear development because of the protection matters. Today, India is one of the states aspiring to permanent membership in the UN Security Council. If the UN is finally reformed, India is a strong contender for the permanent seat. The nuclear-weapon-state status is

¹¹⁷ B. A. Орлов (V.A. Orlov),16

increasing India's chance for this position. In Kurosawa's view, the race between Argentina and Brazil over the nuclear development had aimed at the hegemony in the region too.¹¹⁸

It is necessary to mention the roles of nuclear weapons in the Cold War era: military and political. Militarily role - meant that the western countries thought about the nuclear weapons as a power for striking and deterring attacks by enemies due to the real threat. One of the main strategies of those days was the "*flexible response strategy*"¹¹⁹, which referred flexibility in accordance with an enemy's attack. In the Cold War era all western countries were ready to escalate their strategy from defense by conventional weapons to the "use of strategic nuclear weapons". The strategy supported the principle of "no-first-use of nuclear weapons", and offered the usage of nuclear weapons against an attack by conventional weapons only.¹²⁰

The need for preventing of proliferation of nuclear weapons appeared on the basis of the consequences of nuclear bombing on Hiroshima and Nagasaki in 1945. USA, Canada and Great Britain proposed to establish "a committee of nuclear energy" under the umbrella of the United Nations for completely excluding the use of atomic energy for "destructive purposes". Accordingly, the Resolution adopted by the UN General Assembly in January 1946 mentioned the abolition of nuclear weapons. US also

¹¹⁸ M. Kurosawa, "Nuclear Disarmament In The New World Order", *Osaka University Law Review* (1994), 11

¹¹⁹ *flexible response* was realistic in that nuclear weapons couldn't be used. It tried to provide credible means to match non-nuclear escalation.

¹²⁰ Mitsuru Kurosawa, 9-10

proposed the protection of nuclear materials and activities related to the “potentially danger for the peace and security” by the United Nations. This proposal, called the Baruch Plan, was not adopted because of the opposition from the Soviet Union, related with the fear of the US nuclear monopoly of arms.¹²¹

A result of desire to demonstrate its power in the Cold War era the permanent members of the UN Security Council (Soviet Union, United Kingdom, France, and China) officially started to obtain nuclear weapons. There was a broad understanding predicting the spread of nuclear weapons as “a serious threat to international peace and security”, by multiplying “the areas of conflict, violation of orders, and accidents”. These problems led to vote for the Nuclear Non-Proliferation Treaty (NPT) in 1968.¹²² Despite the signing of the NPT and the establishment of “Nuclear Suppliers Group” (1975), Israel, India, and Pakistan became nuclear states in 1974-1978.¹²³

The acquisition of nuclear weapons by a number of states including North Korea and Iran will disrupt the power balance in international relations. One of the barriers on fully implementation of international treaties in the non-proliferation of nuclear weapons is the power desire of the states trying to “identify themselves” in their regions. However, a more important issue during the Cold War, which open the way for signing of NPT was

¹²¹ The Manhattan Project: Making the Atomic Bomb, Part VI: The Manhattan District in Peacetime, *The Baruch Plan*, January, 1999 (<http://www.atomicarchive.com/History/mp/p6s5.shtml> - 28 January, 2012)

¹²² George Bunn, “The Nuclear Non-proliferation Treaty: History and Current Problems”, *Arms Control Association*, December 2003 (http://www.armscontrol.org/act/2003_12/Bunn - 24 December, 2011)

¹²³ “Safeguards to Prevent Nuclear Proliferation”, *World Nuclear Association*, September 2011 (<http://www.world-nuclear.org/info/inf12.html> - 14 March, 2012)

not to have nuclear weapons, but to prevent possible “nuclear war” among the US and USSR.

Besides the power issue, there is one more issue which interfering the effectiveness of NPT regime. The legal or illegal trade on nuclear materials, means a sphere that brings a lot of profit to its owners is the second major issue that should be solved for achieving an effective “world without nuclear” result.

The practice of the implementation of the NPT regime, are not without flaws and shortcomings. The need to note these problems is dictated by the importance of improving non-proliferation policy, which is a strategic goal. This chapter describes the decision-making procedures and their efficacy. The points of convergence and divergence in decision-making procedure and behaviour of actors of the NPT regime are clearly identified in this chapter. Taking into account that the NPT regime was the Cold War institution, it is important to examine the place of this regime in the new security order and to define the factors and policies impeding or supporting of this regime.

In order to determine the efficacy of the regime, I need to identify the main indicators for effective implementation of the NPT regime. As such indicators, Chapter describes the built-in enforcement mechanism of the NPT regime, favourable context of the international security order and support of international institutions such as UN and EU. Besides, the Chapter also identifies the trade in nuclear materials and the sanction mechanism of the NPT regime as indicators of the effective implementation of the regime.

4.1 A New International Security Order and the NPT Regime

After the Cold War the problem of spreading nuclear weapons became globalized. Accordingly, US as “a new hegemony” has begun the efforts in its foreign policy against the main threat to the international security order (the proliferation of nuclear weapons). The aim of this policy was to maintain the US as a leader in the “new world order“, and to eliminate the possibility of the “nuclear war” in the world. US believe that obtaining nuclear weapons by the Third World countries will increase the threat to the new order. In 1993, US Secretary of Defense Aspin warned about the possible nuclear threat, by the rogue states which have got the nuclear devices, and turning this to the potential new dangers for nuclear proliferation.¹²⁴

According to the Dean’s observation, it is very urgent to go toward a world without nuclear weapons by reduction of nuclear weapons and prevention of its spread. Nevertheless, a world without nuclear weapons cannot be achieved through disarmament efforts alone. Improvement in international security depends not only on progress in disarmament, but progress has been made in other areas.¹²⁵

For achieving this aim Kurosawa outlines two conditions which must be met. First, the international norm of non-use of force should be strengthened and better enforced. The armed conflicts in the post-Cold War era have occurred in many parts of the world and unlawful use of force is common in these circumstances. Secondly, we need a system

¹²⁴ Counter proliferation Initiative Presidential Decision Directive (PDD), December 18, 1993 (<http://www.fas.org/irp/offdocs/pdd18.htm> - 16 May, 2012)

¹²⁵ J. Dean, “Comprehensive Control over Nuclear Weapons,” *Arras Control* 14/1 (1993), 250-251

which will prevent the conversion of a dispute to the conflict, and then a mechanism for peaceful settlement of international disputes seeking the actors with liberal view, because the occurrence of disputes cannot be avoided in the international community. Finally, it is necessary to improve the UN collective security functions, adapting it to a new international order.¹²⁶

The settlement of the problem with proliferation of nuclear weapons needs a new view to the problem for the different consequences. If to pay attention to the actors of international relations, more unusual actor with different (more liberal) set of thoughts is European Union. This unique economic and political partnership of European states has established itself as one of the main actors in international affairs.

4.1.1 The Role of European Union in the NPT Regime

The European Union is the unity which is using the soft power in the solution of the disputes and threats to the international and regional security. The EU calls upon all States which are not party to the NPT to join this Treaty, as a nuclear-free countries. The question is; what can EU change with the carrying of its soft power (liberalism) to the NPT regime?

The EC played a significant role in nuclear energy issue and this was the basic for the developing of the European practice in nuclear weapons non-proliferation policy. The European Atomic Energy Community (Euratom) was one of the communities established by the Rome Treaties in 1957. The purpose of this community was to develop and control the civilian nuclear industry of the Member States. Euratom had a

¹²⁶ Mitsuru Kurosawa, 21-22

clear non-proliferation function, too. But this function of Euratom was restricted to the civilian field by the Treaty.¹²⁷

The EU demonstrates the desire to non-proliferation in its interrelations with other international organizations. For instance, the EU is one of the major contributors to the IAEA Nuclear Security Fund.¹²⁸

According to the results of the 2010 NPT Review Conference the rebalancing of the NPT objectives will be decisive in preventing of the worst-case developments in nuclear non-proliferation and prepare long-term conditions for the concrete actions during the next decade. The 2010-2020 periods is often indicated as the time in which the EU can influence the longer-term changes in the world nuclear order.¹²⁹

As suggested by Camille Grand, in the non-proliferation process the EU should focus on the broad common interests of the Europeans:

- To promote strengthened safeguards and address the issue of withdrawal in the field of non-proliferation.
- The entry into force of the CTBT (“Comprehensive Test Ban Treaty”), negotiation of a FMCT (“Fissile Materials Cut-off Treaty”), nuclear

¹²⁷ Clara Portela, “The Role of the EU in the Non-Proliferation of Nuclear Weapons: The Way to Thessaloniki and Beyond”, Thessaloniki Summit Report 65, June 2003, 2 (www.hsfk.de/downloads/prifrep65.pdf - 18 October, 2011)

¹²⁸ “The EU and Nuclear Non-Proliferation: Managing a Global Security Threat”, EUINSIGHT, January, 2011, (www.eurunion.org/eu/images/stories/euinsight-nucnon-prolif-jan2011.pdf - 2 December, 2011)

¹²⁹ C. Mölling, 50.

transparency, addressing the specific issue of tactical nuclear weapons stockpiles, irreversibility of disarmament steps, deeper cuts of nuclear stockpiles are the common interests of the Europeans in the field of arms control and disarmament.

- The common interest in the field of peaceful uses of nuclear energy is the establishment of norms for making easier the nuclear cooperation without the creating proliferation or security risks.¹³⁰

The document of the Council of the European Union “EU strategy against proliferation of Weapons of Mass Destruction”, accepted on December 2003 described the EU’s strategy over the non-proliferation issue. According to this document, the Treaty on the Non-Proliferation of Nuclear Weapons must be preserved in its integrity, because, it helped to slow down and in some cases reverse the spread of military nuclear capability, even though it has not been able to prevent it completely. As described in this document, the non-NPT states acquiring the nuclear weapons and the NPT states not confirming the Treaty’s risk to undermine non-proliferation and disarmament efforts.¹³¹

Talking about the strategy of the EU on the non-proliferation of nuclear weapons, David Fischer and Harald Muller discussed the EU’s relations with the other countries. In their view, the EU has a good non-proliferation relation with “nuclear and non-nuclear weapon states, allied and neutral countries, nuclear exporters and non-exporters, nuclear energy producers and anti-nuclearists” and this may well serve as a basis for the future

¹³⁰ Camille Grand, “The Non-Proliferation Treaty in an era of proliferation crises,” *European Union Institute for Security Studies*, Chaillot Papers n° 120, April 2010, 24

¹³¹ “EU strategy against proliferation of Weapons of Mass Destruction”, *Council of the European Union* (2003)

agreements. The observations of the recent efforts show the lack of a permanent effort and it means that the “European laboratory” has not yet produced this miracle consensus.¹³²

In the short run, the achievement of the political solutions to all of the different problems, fears and ambitions of countries in the most dangerous regions for proliferation will not be so easy. The policy of the EU is to prevent, deter, halt and, where possible, eliminate proliferation programs. Today security in Europe is closely linked to security and stability in the Mediterranean, and the issue of the nuclear proliferation in the Mediterranean demand to pay particular attention from Europe.¹³³

As pointed out by E. Oezbek, only an approach incorporating a smart mixture of sticks and carrots comprising economic and political measures will create successful conditions for the EU to become a major player within the realm of nuclear policy in the long term. According to Oezbek, the EU should measure the principles of cooperation with their outcomes in the field of disarmament, nonproliferation, and peaceful uses of nuclear energy.¹³⁴

The EU’s agreements with its partners around the globe provide a framework for discussing political issues, including the commitment to the non-proliferation of

¹³² Camille Grand, 48-49

¹³³ “EU strategy against proliferation of Weapons of Mass Destruction”, *Council of the European Union* (2003), 98

¹³⁴ E. Oezbek, “The EU’s Nonproliferation Strategy: Iran as a Test Case,” *Strategic Assessment* 13(2010), 79-80

weapons of mass destruction.¹³⁵ Cooperation and the common approach with key partners in the non-proliferation is the effective way for solution. As stated in the document of the Council of European Union, cooperation with the other key partners such as the US, Russian Federation, Japan and Canada is necessary for the successful outcome of the global fight against proliferation. Besides, it is also believed that cooperation with the UN and other international organizations will create successful conditions for the fighting against the proliferation. The information exchange between the EU and the NATO is very important step in such issues like non-proliferation of nuclear weapons.¹³⁶

I think the recent developments over the nuclear non-proliferation issue demonstrated EU's main role as a holder of soft power once again. At the Seoul Nuclear Security Summit (2012) the leaders of many states expressed their deepening concerns over the Iranian nuclear program including their serious concerns on possible military dimensions. As a consequence, the participants expressed support for a diplomatic solution to the Iranian nuclear issue through negotiations and welcomed efforts by the EU High Representative, on behalf of the "E3+3"¹³⁷, in this regard.¹³⁸

¹³⁵ "The EU in the world, The foreign policy of the European Union", *European Commission Directorate-General for Communication Publications* (2007), 6-7
(http://www.delago.ec.europa.eu/ao/ue_global/en.pdf - 27 November, 2011)

¹³⁶ "EU strategy against proliferation of Weapons of Mass Destruction", *Council of the European Union* (2003), 8

¹³⁷ The E3+3 countries are: UK, France, Germany, US, China, and Russia. They are offer assistance in the development of civil nuclear power, and extending cooperation from political to economic development in Iran.

¹³⁸ Republic of Korea-EU Summit Joint Press Statement, *Seoul Nuclear Security Summit*, 28 March 2012
(<http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/12/140&format=HTML&aged=0&language=EN&guiLanguage=en> – 1 May, 2012)

4.1.2 Recent Developments in the NPT Regime

The latest Nuclear Security Summit (March 26-27, 2012) in Seoul again demonstrated the international significance of the NPT regime. It was the second summit on nuclear security, attended by the leaders of more than 50 countries from around the world, as well as leaders of international organizations such as UN, EU, IAEA and INTERPOL. The summit summarized the activities of the international community on nuclear safety and highlighted the progress made since the first summit (Washington Nuclear Security Summit in 2010). The main focal point was the discussion about the national strategy and global partnership in the sphere of nuclear security.¹³⁹

Scholars have different views regarding the consequential influence of the numbers of nuclear states on existing situation of international affairs. Arithmetic argument is one types used when the number of nuclear states rises, which therefore increases the likelihood of nuclear war. On the other hand, logic argument refers to a case when all states have nuclear weapons, with little possibility to intimidate enemy states which may confine war as a result.¹⁴⁰ Recent processes on non-proliferation of nuclear weapons serve as evidence for the second opinion (logic argument) of scholars. The Seoul Summit confirms and builds up the obligation to stop nuclear materials from passing to extremists. There were two central elements in this Summit. The first element is based on agreement of all contributors which included many precise target areas which require

¹³⁹ 2012 Seoul Nuclear Security Summit - beyond security towards peace, European Union External Action, March, 2012 (http://eas.europa.eu/top_stories/2012/260312_nuclearsecurity_en.htm - 19 April, 2012)

¹⁴⁰ J. Han, "The Impact of the North Korean Nuclear Crisis on Northeast Asia," Naval Postgraduate School (2007) (<http://www.dtic.mil/dtic/tr/fulltext/u2/a475875.pdf> - 22 April, 2012)

attention. The second one was comprised of a set of particular commitments made by states to develop the security of their nuclear materials and systems.¹⁴¹

Seoul Summit is additionally interested in reinforcement of the safety of delicate information, nuclear forensics, nuclear culture and transportation of nuclear material. Specifically, forensic consideration of trace nuclear material is believed to be helpful in regulating the material's origin and other vital fine points in the case of an attack.¹⁴²

The Communiqué adopted in Seoul is based on the goals and methods established in the Washington Communiqué (2010) and recognize 11 central areas and significance in nuclear security and introduce particular actions in each area.¹⁴³

The Seoul Communiqué confirms its aim to reduce unused uranium (HEU) and decrease its use. Besides, international efforts are being involved in order to develop low contained uranium for substituting HEU fuels in research purposes.

The 2005 amended “Convention on the Physical Protection of Nuclear Materials” (CPPNM) is planned to take turn by 2014. Organize activities for nuclear security

¹⁴¹ Mark Hibbs, “The Legacy of the Nuclear Security Summit,” March 29, 2012, (<http://carnegieendowment.org/2012/03/29/seoul-nuclear-security-summit/a5kk> - 10 April 2012)

¹⁴² Sung-Hwan Kim, “Seoul’s Turn: The Second Nuclear Security Summit,” *Journal of East Asian Foundation* 7 (March, 2012) (http://www.globalasia.org/V7N1_Spring_2012/Sung-Hwan_Kim.html - 10 April, 2012)

¹⁴³ Key Facts on the 2012 Seoul Nuclear Security Summit, March 28, 2012, (http://www.thenuclearsecuritysummit.org/eng_media/press_view.jsp?oCmd=6&b_code=1&idx=304&rnum=1&f_gubun=0 – 11 April, 2012)

through international conference in 2013 by the IAEA. Increase volunteer participation in the IAEA Nuclear Security Fund. Based on the framework of the IAEA, create alternatives for national policies on HEU. Radiological terrorism is to be prevented with the help of international cooperation and national measures.¹⁴⁴ In addition, physical protection is reinforced for emergency cases or any accidents of radiological kind and controlling nuclear fuels and radioactive wastes. In order to protect nuclear materials and radioactive sources in transport provide adequate security. With the help of INTERPOL and built nuclear forensics, prevent illegal trading of nuclear materials. Centers of Excellence for training and education in nuclear security and network activities are to be encouraged. Moreover, nuclear security culture is reinforced including members of media, academia, NGO and industry negotiations. Sensitive nuclear security-related information is protected and cyber security of facilities is maintained.¹⁴⁵ International cooperation is encouraged and the next Nuclear Security Summit is presented in the Netherland.¹⁴⁶

On the whole, the Seoul Communiqué provides essential timelines for progressing of nuclear security purposes, like the target year (end of 2013) for states to reveal voluntary activities on decreasing the use of HEU and the goal year (2014) for actualize the revised CPPNM. In addition, it reveals the basics to include both the concerns of nuclear security and nuclear safety accurately for the “sustainable peaceful uses of nuclear energy”. It also highlights the requirement for healthier safety spent nuclear fuel and

¹⁴⁴ Key Facts on the 2012 Seoul Nuclear Security Summit

¹⁴⁵ Ibid.

¹⁴⁶ Ibid.

radioactive waste. Furthermore, precise measures to stop radiological terrorism issue were merely slightly mentioned at the Washington Summit.¹⁴⁷

Holding of the global Summits and enlisting the international actors with different thoughts could be very effective in non-proliferation of nuclear weapons. But it is better not to forget that, there are reasons to believe that the work of the NPT regime and its future falls under the big question mark. One of the reasons for the creation of nuclear weapons and spreading of them was an acquisition of large states more power in international affairs. Rejections of such power as a nuclear weapon is possible in the case, if provide the nuclear weapon states with another indicator of the power.

4.2 International Trade in Nuclear Materials

In 1995 the Canadian scholars A. Robitaille and R. Purver wrote an article about the illegal trade of nuclear materials by former Soviet Union. They argued that, the prospect of nuclear materials used in civilian and military nuclear programs finding their way onto the black market where they could get into the hands of "rogue states" and even terrorist groups significantly increased since the collapse of the Soviet Union.¹⁴⁸

Recently, holding nuclear security summits in 2010 and 2012 have started the discussions about the physical control over the nuclear materials. Preventing the availability of the nuclear materials for the terrorist groups was one of the aims of these summits. The Communiqué of the first summit (Washington, 2010) mentioned the issue

¹⁴⁷ Key Facts on the 2012 Seoul Nuclear Security Summit

¹⁴⁸ A. Robitaille, R. Purver: "Smuggling Special Nuclear Materials", Canadian Security Intelligence Service, May 1995, (<http://www.csis-scrs.gc.ca/pblctns/cmmntr/cm57-eng.asp> - 1Mart 2012)

of reviewing national regulatory requirements for nuclear safety and trade in nuclear materials.¹⁴⁹ The purpose of the second summit (Seoul, 2012), was also to ensure the full protection of all nuclear and radioactive materials till 2014.¹⁵⁰ All these make the issue of nuclear materials and trade in nuclear materials an important element against the spreading of nuclear weapons.

There is a need to find accurate information on trade in nuclear materials for determining the situation with the spread of nuclear weapons. Today, it is difficult to find such information due to the fact that all available information that we have is highly incomplete and there are many contradictions in this data which create many problems in research. Generally, such information is a state secret and this is a rule applying not only in authoritarian states but in democratic ones too. UK, for instance, is known for keeping such information hidden from the public. Only the United States and Australia do not hide information about their trade in nuclear materials as other states engaged in this trade do.¹⁵¹

Talking about the nuclear materials, materials like “uranium concentrate, enriched uranium in the form of uranium oxide” etc. can be listed. These types of materials are

¹⁴⁹ The Communiqué of the Washington Nuclear Security Summit (<http://www.whitehouse.gov/the-press-office/key-facts-about-nuclear-security-summit> - 30 March, 2012)

¹⁵⁰ И. Миронова, “Новая повестка дня для Саммита по ядерной безопасности”, ПИР-Центр November 2011, (I. Mironova, “New Agenda for the Nuclear Security Summit,” *Pir-Center*) (<http://pircenter.org/blog/?p=565> - 17 April, 2012)

¹⁵¹ Vladimir Evseev “The Influence of the International Trade of Nuclear Materials and Technologies on the NPT regime,” *The Weapons of Mass Destruction Commission*, 2008, 9 (<http://www.blixassociates.com/wp-content/uploads/2011/03/no39.pdf> - 9 May, 2012)

used in power reactors. The number of working power reactors in the world is 439.¹⁵² These working power reactors are in 30 countries around the world. They are working with the net capacity of approximately 360 GW and need nuclear materials close to 66.000 tons each year.¹⁵³ According to V. Evseev there were 35.600 tons of uranium produced in the world in 2003, and this was only a half of demanded materials for this year.¹⁵⁴

Vladimir Evseev describes the dilemma with the nuclear materials. He points out that, notwithstanding strengthening of the efforts aiming at preventing the spread of nuclear weapons, the fact is that trade in nuclear materials is growing at the same time. Taking into account the modern trade conditions which are based on the principle of “free trade”¹⁵⁵, it is difficult to pursue and clarify the exact purpose of the sold materials. Two factors should be taken into consideration in dealing with trade in nuclear materials – non-proliferation of nuclear arms technology and secure expansion of nuclear industry. The number of states which are using nuclear energy or trying to enrich the uranium is growing. If any state has the technology and human resources for producing nuclear energy, it can use the same capability for producing nuclear weapons, too. In other words, the development of the trade on uranium materials is a risk for the development of the nuclear weapons as well. And this complicates the detecting of the proliferated

¹⁵² “Uranium Markets”, *Nuclear Issues Briefing Paper* (2004), p. 36 (<http://www.uic.com.au/nip36.html> - 18 November, 2011)

¹⁵³ Ibid.

¹⁵⁴ Vladimir Evseev, 9

¹⁵⁵ Free trade- policy by which a government does not discriminate against imports or interfere with exports by applying tariffs (to imports) or subsidies (to exports) or quotas.

weapons of mass destruction, because the nuclear commerce, training and cooperation are increasing.¹⁵⁶

There are some states that lead the market in the trade with uranium materials. First place in exporting nuclear materials belongs to Russia. The capacity of Russia's export of nuclear materials is 16.000 tons. The United States, France, Great Britain, Germany, South Korea, Belgium, Spain, the CIS countries, and Eastern Europe import uranium sold by Russia. 30-35 % of nuclear materials imported to Europe are exported from Russia.¹⁵⁷

Canada is the second biggest exporter of nuclear materials. For 2002, 13.600 tons of materials were exported to "the United States, France, Japan, Great Britain, Germany, South Korea, Taiwan, Argentina, Spain, China, Mexico, the Czech Republic, and Switzerland". Each year Canada is exporting the nuclear materials close to \$850 million. 15 % of all nuclear materials imported to the Europe are exported from Canada. Canada is a big nuclear materials supplier for the United States, France, and Japan.¹⁵⁸

In the third place on this list of the main nuclear material suppliers is Australia. Thirteen percent of the global export of nuclear materials belongs to Australia. According to the information of 2003, Australia exported 9.600 tons of materials which made the budget of the country \$268 million. Fourth place in nuclear export goes to the United States.

¹⁵⁶ George Perkovich, "Abolishing Nuclear Weapons: Why the United States Should Lead," October 2008 (http://www.carnegieendowment.org/files/abolishing_nuclear_weapons.pdf - 24 November, 2012)

¹⁵⁷ Vladimir Evseev, 10

¹⁵⁸ Ibid., 11

Generally, 12 % of nuclear export volume belongs to the US. Nearly \$1 billion of income came from the nuclear materials in 2004. The US exported nuclear materials to Japan, Taiwan, Kazakhstan, South Korea, Great Britain, and Germany. In the fifth place of the nuclear materials trade is France with its 7 percent of the global export.¹⁵⁹

As mentioned above, the trade of nuclear materials might create a problem for the non-proliferation of nuclear weapons. According to the “Annual Report to Congress on Foreign Economic Collection and Industrial Espionage” the aim of some foreign entities is to obtain the US nuclear technology. This is commonly done by the direct requests, that are “sometimes legal”¹⁶⁰ without any governmental interference.

The “Missile Technology Control Regime”, the “Australia Group”, the “Nuclear Suppliers Group”, and the “Wassenaar Arrangement” watch over international cooperation and coordination among industry, governments, and the multilateral export control arrangements, which need development of their undertakings.

Currently, business and politics are requiring more organized and strong actions in the government-industry cooperation. For instance, in the United States, even in sample matters the industry and the government are not on the same page.¹⁶¹

¹⁵⁹ Vladimir Evseev, 11

¹⁶⁰ Annual Report to Congress on Foreign Economic Collection and Industrial Espionage - 2004, *National Counterintelligence Executive (ONCIX)*, April 2005, (<http://www.fas.org/irp/ops/ci/docs/2004.pdf> - 23 November, 2011)

¹⁶¹ M. C. Fuhrmann, “Industry and Non-proliferation: Don't Neglect the First Line of Defense,” *Disarmament Diplomacy*, 82 (2006)

Recent summits (Washington, Seoul) on nuclear security have reflected a clear response to “nuclear terrorism, protection of nuclear materials and facilities, and preventing of illicit trade” on nuclear materials. These efforts to nuclear non-proliferation will reflect the changes of international security environment and expand the scope of discussions. They will also serve for the strengthening of “central sanctions mechanism” for preventing the proliferation of nuclear weapons.¹⁶²

4.3 Sanctions against the Proliferation of Nuclear Weapons

International regimes are obviously less centralized than international institutions and, especially, international organizations. This decentralization does not mean the absence of sanctions for violating of rules and norms of the regime, but it means the need for approval of such sanctions by each participant, and also less stringent and mandatory application of sanctions. Therefore, international regimes are less focused on the implementation of joint decisions and more focused on establishing and maintaining an atmosphere of transparency and predictability of international actors.¹⁶³

As Oliver Wendell Holmes observes,

“If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict,

¹⁶² Sung-Hwan Kim.

¹⁶³ В. Петровский, “Новая парадигма безопасности в Евразии,” *Обозреватель* 4, 171 (V.Petrovski, “The New Paradigm of the Security in Eurasia,” *Observer* 4, 171) (<http://viperson.ru/wind.php?ID=238870> – 28 February, 2012)

not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience.”¹⁶⁴

According to Holmes prediction, there are material consequences of proliferation or of non-conformity with the NPT with the possibility of being revealed and the agreements expected to be compulsory.

Nowadays, the international community is at a letdown in imposing sanctions on NPT regime. NPT Article III claims that state parties intend to accomplish safety measure agreements with the IAEA. Today only thirty NPT states are parties that have so far accomplished these safeguards agreements.¹⁶⁵

4.3.1 The Iran Issue

In spite of the fact that Iran is the signatory of the NPT, it made an announcement, in the Summer of 2002 that it was working on a nuclear enrichment program. This information was given by the National Council of Resistance of Iran.¹⁶⁶ According to this exiled council of Iran, their “country” is producing nuclear weapons in the two hidden nuclear

¹⁶⁴ Oliver Wendell Holmes, Jr.: “The Path of the Law,” *Harvard Law Review* 10 (2005)
(http://www.constitution.org/lrev/owh/path_law.htm - 1March, 2012)

¹⁶⁵ NPT Comprehensive Safeguards Agreement: Overview of Status, *IAEA*, March , 2007
(http://www.iaea.org/Publications/Factsheets/English/nptstatus_overview.html - 14 January, 2012)

¹⁶⁶ “Implementation of the NPT safeguards agreement in the Islamic Republic of Iran”, *Report by the Director General of IAEA*, 6 June 2003

cities, in Natanz and in Arak.¹⁶⁷ After the IAEA's visit to Iran in the second half of February 2003, the core elements of these rumors were confirmed.¹⁶⁸

Iran, for more than 18 years did not comply with its obligation to inform the IAEA about its nuclear activities.¹⁶⁹ In that period, Iran has built major nuclear facilities without IAEA detection.¹⁷⁰ First written report in which the IAEA Director General declared Iran's noncompliance to the IAEA Board of Governors was in June 2003.¹⁷¹

Pierre Goldschmidt, the IAEA Deputy Director General from 1999 to 2005 was of the opinion that, Iranian noncompliance detailed in the IAEA's report to its Board of Governors in November 2003, should have been reported to the UNSC as foreseen in the Agency's statute.¹⁷²

¹⁶⁷ Asli Bali, "The US and the Iranian Nuclear Impasse, Middle East Research and Information Project," *MER 241 – IRAN* (2006) (<http://www.merip.org/mer/mer241> - 20 October, 2011)

¹⁶⁸ "Implementation of the NPT safeguards agreement IAEA Safeguards Overview:nt in the Islamic Republic of Iran"

¹⁶⁹ Pierre Goldschmidt, "Decision Time on Iran", *New York Times*, September 14, 2005, (http://www.nytimes.com/2005/09/14/opinion/14goldschmidt.html?_r=1 – 16 March, 2012)

¹⁷⁰ Nazila Fathi, "Iran: Minister Says "Nuclear Spies" Worked for U.S. and Israel," *New York Times*, December 23, 2004 (<http://query.nytimes.com/gst/fullpage.html?res=9A03E4DB1130F930A15751C1A9629C8B63> – 17 March, 2012)

¹⁷¹ "Implementation of the NPT safeguards agreement in the Islamic Republic of Iran"

¹⁷² Pierre Goldschmidt.

By the time the IAEA reported about Iranian noncompliance to the Security Council in February 2006, the Agency had information regarding Iranian tests which had a military nuclear dimension.¹⁷³

As a final point, UN Security Council reached consensus on Iran for its nuclear reduction violations in its Resolution 1737 on December 23, 2006. Far ahead in March 24, 2007 was enacted the Resolution 1747 of the Security Council stating that the Iran's failure to act in accordance with the requirements of Resolution 1737.¹⁷⁴

Russia and China agreed on the sanctions imposed on Iran by Resolution 1737.¹⁷⁵ Resolution 1737 includes several decisions that Iran must comply with maintaining international peace and security. Principally, Iran must “stop all enrichment-related and reprocessing activities and search, production and use of nuclear energy for peaceful purposes”.¹⁷⁶ Iran also must suspend work on all heavy water-related projects, refrain from exporting “certain specified nuclear and ballistic missile equipment and technology” and provide cooperation according to the requests of IAEA.¹⁷⁷

¹⁷³ “Implementation of the NPT safeguards agreement in the Islamic Republic of Iran”

¹⁷⁴ O. F. Kittrie, “Averting Catastrophe: Why The Nuclear Non-proliferation Treaty Is Losing Its Deterrence Capacity and How to Restore it?” *Michigan Journal of International Law* (May 2007) 38

¹⁷⁵ Maggie Farley, “U.N. Slaps Iran With Sanctions”, Los Angeles Times, December 24, 2006, (<http://articles.latimes.com/2006/dec/24/world/fg-iran24>. - 12 October, 2011)

¹⁷⁶ UN Security Council Resolution 1737, December 23, 2006, ([http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1737\(2006\)](http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1737(2006)) – 3 November, 2011)

¹⁷⁷ Ibid.

Also Resolution 1737 sets some measures to be employed to give effect to its mandates.

These measures include:

1. “Restrictions on the export to Iran of certain specified nuclear and ballistic missile items, materials, equipment, and technology”;¹⁷⁸
2. A freeze of overseas assets of twelve named officials and ten institutions associated with Iran’s proliferation-sensitive nuclear activities or the development of nuclear weapon delivery systems.¹⁷⁹

The IAEA Director General reported on February 22, 2007 that Iran had not complied with the requirements of Resolution 1737 and in response to this the Council imposed on Iran a number of sanctions in its Resolution 1747 of March 24, 2007. Resolution 1747 also requested that the IAEA Director General provide, within sixty days, a report on Iranian compliance with Resolutions 1737 and 1747. Resolution 1747 committed the Council, in the event that the report found Iranian noncompliance, to adopting further appropriate measures under Article 41 of the UN Charter to persuade Iran to comply. The original draft of Resolution 1747 submitted by France, Germany, and the United Kingdom included bans on the travel of relevant Iranian officials and on arms exports to Iran, but these were removed at the insistence of Russia and China.¹⁸⁰

¹⁷⁸ UN Security Council Resolution 1737.

¹⁷⁹ Ibid.

¹⁸⁰ Paul Kerr “Security Council Broadens Iran Sanctions,” *Arms Control Today*, April 2007 (http://www.armscontrol.org/act/2007_04/SecurityCouncil.asp. - 5 December, 2011)

According to view of Cooper and Weisman, the Resolutions 1737 and 1747 are too weak to force Iran into obedience, encompass Iran's capability to progress its nuclear weapons program, prevent other states from being in the direction of Iran's lead and evolving their own nuclear weapons program, or penalize Iran.¹⁸¹

Tolson thinks that, after spending huge sums of money for developing the nuclear weapons program, it is hardly to expect that, Iranian leaders would agree with the removal of its nuclear program, because of the very limited trade embargo and asset freeze. This would be true even if the Iranian leadership is perceived by his personal interest in the Western capitalist conditions. The Iranian leadership, however, is motivated by nationalist and religious beliefs, which exalt values including martyrdom and suffering.¹⁸²

Before the second Nuclear Security Summit there were predictions that Iran issue would be one of the dominant agendas on this summit. But according to Mark Hibbs, issue of Iran was not quite a subject of the agenda; however it showed its impact in the international response to the summit, irrespective of the point that neither country was present at the meeting. Due to the fact that nuclear terrorists have not yet accomplished a dramatic violence, many nuclear professionals, heads of state and publics are doubtful if this threat is factual. On the other hand, Iran's resolution to enhance more uranium and

¹⁸¹ Helene Cooper , Steven R. Weisman, "West Tries a New Tack to Block Iran's Nuclear Agenda", *New York Times*, January 2, 2007 (http://www.nytimes.com/2007/01/02/world/middleeast/02sanctions.html?_r=1&ref=world&oref=slogin – 30 April, 2012)

¹⁸² Jay Tolson, "Special Report: Aiming for Apocalypse," *U.S. News and World Report*, May 22, 2006

activate a plutonium production-type reactor surely stimulates international responsiveness.¹⁸³

The NPT regime is at a “tipping point”¹⁸⁴, with its viability in the balance. If a nuclear 9/11, someday occurs, main reason will be due to the fact that the international community failed to improve and repair the NPT regime, which still not so late to do. It’s time for acting, now. The future of humanity depends on it.

This chapter covers the main issues about the place of the NPT regime in international relations. One of the purposes of this chapter was to determine the main problems of the implementation of the NPT regime in international relations. One of these weak points of the regime is the absence of the control on trade on nuclear materials. Holding nuclear security summits in 2010 and 2012 claim this point and call an international community to cooperate and support for the keeping of nuclear material from the hands of terrorist organizations.

The power of the regime in international relations measures the imposing and realizing of the sanctions. Especially, regarding the NPT regime, firstly, the strengthening of mechanism of sanctions of the regime comes to the mind. This chapter shows the power of the mechanism of sanctions in NPT regime. I would say that these sanctions cannot change the decision of a state to abandon from the power like nuclear weapon. And

¹⁸³ Mark Hibbs.

¹⁸⁴ Stephan Mergenthaler, Joel Sandhu, “Reinvigorating the NPT regime: Towards a new consensus,” *Munich Security Conference*, March 2010, (<http://www.securityconference.de/Article-Details.57+M5fe5209c37d.0.html?L=1> – 14 January, 2012)

international community should not close the eyes to the fact that the use of sanctions, which are usually the economic blockade as we saw in Iran case, almost hits the interests of the people, especially ordinary people, and usually does not lead to rising internal pressure on the leadership to force him to abandon from the production of nuclear weapons.

Chapter 5

CONCLUSIONS

At the dawn of the nuclear era, the international community has come to realize that the enormous destructive power of new weapons proliferation is a threat to international security. This conviction led to the creation of an international NPT regime which includes the formal and informal principles, norms, rules and procedures, as well as domestic legislation, and states and non-state actors of international relations. However, the regime did not fulfill its primary mission: it could not fully stop the spread of nuclear weapons, materials and technology for their creation.

Taking into account all of the theoretical, legislative and realistic aspects of the NPT regime discussed in this thesis, concerning the answer to the question “is NPT regime effective?” is more clear.

To answer this question in the first place I need to clarify the criteria that measure or identify the effectiveness of the NPT regime. For this, the first thing is to look into the number of the parties of this regime, because the efficacy of any regime depends on the scale of its influence. Then, there is a need to pay attention to compliance with the regime and in particular obligations originating from treaties constituting the legal framework of the regime. The analysis of the major problems related with the enforcement of the NPT regime, their seriousness and the reasons of their existence were

the subjects of this thesis and allows us to formulate conclusions concerning the efficacy of the NPT regime.

As mentioned in this thesis, the legal core of the regime has acquired the level of *jus cogens* norms of universal application. An analysis of the interaction of customary legal norms of non-proliferation of nuclear weapons and the NPT norms allows concluding that all nations of the world, must comply with these rules, regardless of their participation or non-participation in the NPT.

Despite the fact that, according to the number of the parties the NPT, is the most prevalent international treaty in the field of security, the goal of achieving the universality of the treaty is still relevant. The work to connect to the NPT countries remaining outside its legal framework should consistently be carried out, with respect to both nuclear and non-nuclear states having in mind their compliance with the provisions of the NPT especially those of them who do not give up the nuclear weapons (India, Pakistan), or are not recognized in the possession of such weapons (Israel).

From the legal point of view, the basis of the international NPT regime stem from the special principles accumulated in legally-binding rules of non-proliferation of nuclear weapons. First, the principle of nuclear non-proliferation including the obligations of both nuclear and non-nuclear states prevents the emergence of new states possessing nuclear weapons. Second, the principle of peaceful use of nuclear energy by non-nuclear-weapon states, which means that the obtained by non-nuclear states the nuclear materials, equipment and technologies with the help of IAEA and other international

organizations and states must be applied and used only for peaceful purposes. A special place in the international NPT regime occupies the principle of nuclear disarmament, affecting the obligation to comply strictly with nuclear weapon states and implementing the already signed agreements on nuclear disarmament in good faith to achieve an early conclusion of new treaties aimed at limiting, reduction and subsequent elimination of nuclear weapons. This principle is a specific principle of disarmament, because it is in the stage of development as a new generation of international legal instruments in the field of nuclear disarmament.

Based on the content analysis of the NPT, I have identified the following obligations of the international legal regime for the non-proliferation of nuclear weapons: the obligation of nuclear states is not to transfer any form of nuclear weapons to non-nuclear states, and do not encourage or induce its production and acquisition; the obligations of non-nuclear states is not to adopt nuclear weapons or control over them, not to acquire such weapons by any means, and not to produce them; the obligation of non-nuclear states to use nuclear materials, technologies and equipment for peaceful purposes only; obligations of states possessing nuclear weapons to respect the goal of nuclear disarmament.

The prohibition of proliferation of nuclear weapons in no way precludes the right of states to use nuclear energy for peaceful purposes. However, the complexity of the problem is characterized by the fact that, peaceful and military nuclear activities are closely linked. States that acquire nuclear technology may become a nuclear state within a certain time with the adoption of relevant political decision to reclassify its peaceful

nuclear program into the military one. In addition, there is a danger that non-nuclear states will be able to develop nuclear weapons, using the absence of the NPT clear definition of "peaceful use of nuclear technology".

The study shows that there are several major groups of factors that may lead to instability of the international regime of non-proliferation of nuclear weapons:

- The Policy of nuclear states, primarily the U.S. and Russia in the sphere of disarmament;
- The desire of the extremist organizations to gain access to nuclear weapons, as well as doubts about the safety of stockpiled nuclear materials by many countries;
- The presence of the "black market" - nuclear and missile technologies and materials, the lack of control over the export of such materials;
- Inhibition of development of the NPT regime due to the lack of agreements on a comprehensive nuclear test ban and the production of fissile materials for military purposes;
- The lack of effectiveness of control of the functions of NPT regime, especially the IAEA safeguards, which have demonstrated, the examples of Iraq, North Korea and Iran.

According to the above mentioned list, a system should be proposed aiming not only at eliminating of nuclear weapons but also at improving of the NPT regime. The basic preconditions for the International NPT regime should be the seeking of the

compromises between national interests of individual states and interests of the international community as a whole. The basis of the system of measures to strengthen non-proliferation regime should be to reduce the motivation of non-nuclear states to acquire nuclear weapons.

The interaction between nuclear powers should be supported by multilateral efforts aimed at strengthening the legal framework of the non-proliferation regime (NPT, CTBT, etc.), and the commitment of all countries to fulfill their obligations under the export control regimes and agreements with the IAEA.

Universalization of the norms and mechanisms of the INNR depends on the solution of regional problems of nuclear non-proliferation. It is important to note the necessity of an individualized approach to problematic regions and countries: indirect legitimization of nuclear status of India and Pakistan, "freezing" of Iran's nuclear program, the continuation of a political settlement to the North Korean problem, finding solutions to the Middle East problem in the broader context of stabilization of the region. The main emphasis in the interaction with such problems should be to involve them in joint international projects and institutions, as opposed to isolation. As Donnelly noted, the effectiveness of the regime cannot be evaluated only by analyzing the components of its legal documents, but also it should definitely consider the actions of states of this regime.¹⁸⁵

¹⁸⁵ J. Donnelly, "International human rights: a regime analysis," *International Organization* 40/ 3 (1986), 599-639

The most urgent task in the field of non-proliferation is the reduction of the motivation of NNWSs to possess nuclear weapons, prevention of withdrawal from the NPT countries who are now parties to it, prevention of acts of nuclear terrorism, progress in nuclear disarmament, implementation of the agreements reached at the NPT Review Conference and other international forums, as well as search for new, equally beneficial for NNWS and NWS in a way of cooperation in the field of peaceful nuclear energy.

The real and consistent way to fully effective nuclear disarmament is extremely complex and fraught with risks for strategic stability. It requires the highest realism and professionalism. Taking into the account of all the subtleties and interrelationships of political, military, economic and technical aspects of the problem, the mechanism of the NPT regime should link carefully and reasonably to the all elements of the process, its bilateral and multilateral formats, clear-pair steps in disarmament and nuclear non-proliferation, in up the juridical, military, technical activities.

There is no a single reliable and simple means against the danger of nuclear proliferation. None of the states can solve this problem alone. That is why an improvement of control over the proliferation of nuclear weapons in modern conditions is one of the most important activities of the international community to ensure the stability of international relations.

Disarmament obligations provided for all the parties of the NPT are: "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"¹⁸⁶. Thus, the agreement has actually established a double standard. It obliges non-nuclear states to give up the acquisition of nuclear weapons, but it does not provide for precise timing of renunciation of nuclear weapons by the five great powers. This approach has been declared discriminatory and criticized by the three countries, which refused to participate in the NPT - Israel, India and Pakistan.

The research describes that, one of the main theories of the NPT regime is the theory of hegemonic stability. The hegemonic stability is one of the theoretical barriers in achieving the world without nuclear weapons. The theory of hegemonic stability relates the existence of effective international institutions with a unipolar distribution of power in the security sphere and binds to the existence of international regimes dominating in this area of the state. According to this theory, as soon as the structure of power underlying the regime disappears, the regime itself collapses, or becomes an inefficient set of rules and regulations those violate the states when they consider it beneficial. Regimes and institutions, ultimately, are secondary in world politics and bloom and fade due to changes in law enforcement capacities and interests of the principal actors - states.¹⁸⁷

One of the disadvantages of the NPT regime is that the member states themselves determine what items to put under the IAEA safeguards. This may open the opportunity

¹⁸⁶ The Treaty on the Non-Proliferation of Nuclear Weapons (NPT),VI Article

¹⁸⁷ Д.И. Победаш, Международные Режимы Нераспространения Ядерного Оружия (Екатеринбург , 2010), 8-11 (D.I. Pobedash, International NPT regime (Yekaterinburg, 2010), 8-11) (www.fir.usu.ru/media/files/2011/.../Победаш-2010-Мн-режимы-НЯО.pdf - 14 May, 2012)

for violations of the Treaty, since any state could hide the presence of the infrastructure to build nuclear weapons, and the IAEA has no right to check it.¹⁸⁸

Among the problems of nuclear proliferation, one of the particularly important issues is the prospect of a nuclear-free world. It is necessary to continue the signing of the international legal treaties and agreements for the successful resolution of this issue aimed at the gradual reduction of nuclear weapons until its liquidation.

Taking into the account the enormous military power, scientific, technical and economic potential, and the political influence of the five officially recognized nuclear powers, it is important to mention that the prospect of nuclear non-proliferation critically dependent on them. NWS should abandon the development of new weapons, the formulation of strategic concepts, providing greater opportunity for the use of nuclear weapons, as well as get rid of the outdated concept of nuclear deterrence, which limits the cooperation between the major nuclear powers and is ineffective against the new threats, including international terrorism.

The nuclear non-proliferation is challenged not only by actions of states such as North Korea and Iran. The policy of the “nuclear club” powers in relation to the de-facto nuclear India, Pakistan and Israel is no less a challenge to the stability of the regime. Therefore, strengthening of the security is a concerted action at the level of the

¹⁸⁸ А. Пикаев, “Международный Режим Нераспространения Ядерного Оружия,” Октябрь 2007, (А. Pikaev, “International Nuclear Weapons Non-Proliferation Regime,” October 2007) http://www.perspektivy.info/rus/desk/mezhdunarodnyj_rezhim_nerasprostraneniya_jadernogo_oruzhija_2_007-10-25.htm - 15 May, 2012)

international community, and in the thoughtful and balanced steps at the level of national governments. Positive prospects for the NPT regime is equally depend on unilateral and multilateral actions.

As a result of the research regarding the NPT regime: its weaknesses, possible ways for solution and prospects, I have reached some suggestions about the improvement of efficacy of this regime.

The first conclusion is that, in order to improve the efficiency of the IAEA safeguards it is necessary:

- To achieve adherence to the Additional Protocol on safeguards (1997) by all States, especially by the leading nuclear parties of NPT regime. The current situation is that, almost 15 years since the protocol signed more than 140 states have agreed to this protocol, and it cannot be considered satisfactory for the regime that are participating almost all (190 states, excluding India, Pakistan, Israel, North Korea) states in the world¹⁸⁹;
- Nuclear Suppliers Group (NSG) should make a general rule that the accession to the Additional Protocol would be a prerequisite for export of nuclear materials, equipment and technologies.

¹⁸⁹ IAEA Safeguards Overview: Comprehensive Safeguards Agreements and Additional Protocols, (http://www.iaea.org/Publications/Factsheets/English/sg_overview.html , 22 March, 2012)

Second, strengthening the rules and mechanisms of the NPT must be done in conjunction with improving the system of export controls; means harmonization of national export control systems, integration of China, India and Pakistan into this process.

The third conclusion is that strengthening the NPT regime requires strict formalization and improvement of the political significance of the procedure of withdrawal:

- Statement by the State about its desire to withdraw from the NPT should be an occasion for intensive inspections by the IAEA for possible violations of the NPT or the Safeguards Agreement;
- All materials and technologies that were available for the country at the time of withdrawal from the NPT, regardless of their origin, should be used only for peaceful purposes and remain under IAEA safeguards.

The fourth observation involves the consolidation of the NPT, entry into force and signing of additional multilateral treaties for formulating the "barrier" against the breach or withdrawal of it. First of all, we are talking about the immediately signing of a treaty banning production of fissile materials for military purposes (FMCT) and the gradual expansion of its coverage, with appropriate control mechanisms for nuclear and non-nuclear NPT members, with the connection of its "outsiders" also.

Such measures are impossible without the unity of the great powers and other members of the UN Security Council. As suggested above, steps in favor of more stringent non-

proliferation regime for NNWS's and the strong political position of the five nuclear powers require that they should demonstrate consistent progress in implementing their commitments in the sphere of nuclear disarmament.

After presenting the above conclusions, it is also necessary to mention that the international community is on the direct way towards resolving the problem of nuclear proliferation, and the important changes might turn today's inefficient regime of non-proliferation of nuclear weapons into the most efficient regime leading to achieving a world without nuclear weapons and highest control over the use of nuclear technology for peaceful purposes.

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APPENDIX