Jurnalul de Studii Juridice

JOURNAL OF LEGAL STUDIES

ISSN: 1841 – 6195 (print), ISSN: 2067 – 8509 (electronic)

Coverd in: CEEOL, Index Copernicus, Ideas, RePeC, EconPapers, Socionet

---

THE NUCLEAR NON-PROLIFERATION TREATY: CONTEMPORARY LIMITS AND CHALLENGES

Nicoleta LASAN

Jurnalul de Studii Juridice, Anul VI, Nr. 3-4,
Decembrie, 2011, pp: 15-29

The online version of this article can be found at:

http://jls.upa.ro/

Published by:

Lumen Publishing House

On behalf of:

Legal Research Center of Petre Andrei University from Iasi

THE NUCLEAR NON-PROLIFERATION TREATY: CONTEMPORARY LIMITS AND CHALLENGES

Nicoleta LAŞAN[*]

Abstract

The nuclear states club includes nine states, in comparison to only five nuclear states that existed at the moment of entering into force of the Nuclear Non-Proliferation Treaty in 1970. Nuclear proliferation had a significant evolution during the Cold War, but also in the post-Cold War period, which is also known as the second nuclear era.

In these circumstances, it becomes necessary to make a critical analysis of the Nuclear Non-Proliferation Treaty, the basis of the current nuclear nonproliferation international regime. Despite the successes recorded in the application of this treaty, which include among others the raise in the number of state parties to this treaty and the limitation of the number of state which proliferate, the nonproliferation regime suffers from limitations and has to respond to new challenges among which: the impossibility of attracting all of the states as parties to the NPT, the absence of efficient mechanisms for the application of the treaty provisions but also the increase in the number of states wishing to use nuclear technology for military purposes.

Keywords:

nuclear proliferation, Nuclear Non-Proliferation Treaty (NPT), International Atomic Energy Agency, nuclear disarmament, Comprehensive Test Ban Treaty, Fissile Material Cut-off Treaty

[*] PhD candidate in International Relations and European Studies at „Babeş-Bolyai" University Cluj Napoca, Faculty of History and Philosophy, nicoclau2000@yahoo.com

LASAN, N., (2011) THE NUCLEAR NON-PROLIFERATION TREATY: CONTEMPORARY LIMITS AND CHALLENGES, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 15-29

1. Nuclear weapons proliferation

Proliferation represents an essential preoccupation for mankind, this fact being recognized also by the UN Report entitled „A more secure world: Our shared responsibility", where there are mentioned the following threats to international security: international terrorism; proliferations of weapons of mass destruction; interethnic and interreligious conflicts; organized crime networks; environment problems; the dangerous widening of the development gap between the North and the South (United Nations Organizations, (2004), : 23).

If in 1945 only the United States of America possessed the nuclear technology, being also the only state to have ever used nuclear weapons, the end of the Second World War has lead to a real arms race between the two superpowers and to the beginning of the first nuclear era. The end of the Cold War lead to what is known in our days as the second nuclear era, which refers mainly to the spread of nuclear weapons this time among the developing states.

Nuclear proliferation has two sides. On one side we speak about vertical proliferation, meaning the development and modernization of nuclear weapons by nuclear states, and on the other side about horizontal proliferation, meaning the spread of nuclear weapons technology towards other states (Te Koeti, T., (2010), : 7). In order to understand these definitions, we consider useful to be mentioned that a nuclear state is consider to be according to the Nuclear Non-Proliferation Treaty any state "which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967" (The Nuclear Non-Proliferation Treaty, (1970), art. IX). Despite this definition, as it will be shown further, today the nuclear club includes also other states besides those who have acquired nuclear weapons before 1967, a fact which puts under question the correctness of the definition and the validity of the Nuclear Non-Proliferation Treaty.

As also Darryl Howlett recognizes, there are many difficulties in determining the motivations which stay at the basis of the states' wish to posses nuclear weapons, but most of the time factors such as prestige, strategic importance and political benefits seem to have influenced considerably the embracement of such decisions (Howlett, D., (2005), : 499). The fact is that starting with the end of the Second World War the world has witnessed a strong process of nuclear proliferation, as a

consequence of which in 1964 the number of nuclear states raised to 5, and in our days to 9. At the same time, humanity has been facing a raise in the number of nuclear arms and materials providers, this category including not only states but also transnational networks, and the technological developments determined a raise in the sophistication of the nuclear arms delivery systems.

As mentioned before, the end of the Second World War is considered the beginning of the first nuclear era (1945-1990) but also the beginning of the nuclear arms race. In 1945 the United States of America was the only state to possess the nuclear technology, being followed at short time by the Soviet Union - 1949, United Kingdom - 1952, France - 1960, and China - 1964. Practically these five states are the ones that respect the criteria mentioned in the Nuclear Non-Proliferation Treaty for being considered nuclear states.

The 1960s is considered a very tumultuous period, humankind being closer than ever to a nuclear war during the Cuban Missiles Crisis, but also a period in which the two superpowers reached parity in what regards their nuclear capacities. The year 1968 has witnessed the emergence of a new nuclear state, Israel, the decision being determined by state survival considerations. Also the 1970s have been surprising in what regards nuclear proliferation, with India making the first nuclear test 1974, being motivated especially by the fear of China but also by the wish to acquire regional hegemony, while the United Nations was estimating in the report entitled Comprehensive Study on Nuclear Weapons from the year 1981 that there existed approximately 40.000 nuclear devices at the global level.

The arms race continued also during the 1980s, this time the balance being inclined towards the Soviet Union, the assessments made in 1986 mentioning the existence of more than 70.000 nuclear devices at the global level, out of which over 97% were in the hands of the two superpowers (Norris, S. R., Kristensen, H. M., (2006), : 64). This distribution of the nuclear capacities is valid also today, the biggest nuclear arsenals continuing to be located on the territory of the two former superpowers. Starting with the end of the Cold War, we speak about the end of the first nuclear era and the beginning of the second one.

There are numerous interpretations on the nuclear proliferation during the Cold War and on the arms race. The majority of the analysts consider that this arms race brought with itself also stability at the

international level due to the well functioning of the concept of deterrence, which had as a main aim avoiding the total annihilation using nuclear weapons. The end of the Cold War determined changes in what regards nuclear weapons proliferation. Firstly, in the post-Cold War period there can be observed an intensification of the states' activities in the field of non-proliferation, in the first phase the concerns being determined by the dissolution of the Soviet Union and the possibility for a big part of the soviet nuclear arsenal to remain in and be used by some of the former soviet states which in the meantime became independent. Fortunately, this problem was solved, the former soviet states returning to Russia the entire nuclear arsenal located on their territories.

Another feature that strongly distinguishes the period of the Cold War from the period after 1990 is the raising interest of some developing states for having their own nuclear programs. As such, while in some of the world regions previously strongly involved in the arms race nuclear arms become less important and it is tried to reduce their number (Europa, America, former soviet space), other regions seem to be moving in the opposite direction (Asia, South-East Asia) (Howlett, D., (2005), : 501).

It is extremely relevant to mention in this respect the nuclear tests undertaken by India and Pakistan in 1998. If in the case of the first state the motivation was related to the fear from China and the wish to obtain regional hegemony, as mentioned before, in the case of Pakistan we can speak about the wish to counterbalance India. Therefore, in these two cases we can speak about a regional arms race, with unpredictable consequences on the long term.

The year 2006 meant for the international community the entrance in the nuclear club of one more state, North Korea becoming the ninth nuclear state. Among the motivations of North Korea, there is the fear from United States of America, but also the wish to acquire regional power status and getting back South Korea. Another state with potential of becoming nuclear is Iran, this case receiving a special attention from the international community due to the governing regime considered dangerous but also due to its geographical positioning of this state in the Middle East, a region viewed as extremely unstable even in the absence of an arms race.

2. The nuclear non-proliferation regime and the Nuclear Non-Proliferation Treaty

In the analysis of the international non-proliferation regime, the first questioned asked regards the necessity of having such a regime, especially if we take into account the fact that nowadays this regime is more criticized for its failures than appreciated for its recorded successes in limiting the spread of nuclear weapons. Still there are solid reasons that highlight the necessity for this regime to exist.

The spread of nuclear weapons needs to be a subject of major importance for the international community having in mind the effects these can have when used. There are few clear data on the effects of nuclear weapons, the only case in which they were used being the one at the end of the Second World War. The bomb launched on Nagasaki in the morning of August 6, 1945 had a power equivalent to 15.000 tons of TNT, leading to the death of more than 115.000 people, while the bomb launched on Hiroshima on August 9, 1945 had a power equivalent to 21.000 tons of TNT, leading to the death of more than 73.000 people. Besides the loss in human lives, there need to be mentioned also the devastating effects on environment and on the health of the survivals situated in the surroundings (Ruff, T., (2008), : 8). Probably these figures often shock, but they would be much higher nowadays when, due to the evolutions in nuclear technology, the power of the nuclear arms is 100 bigger than that of the two bombs launched more than half a century ago.

Some authors have been concerned also during the Cold War, period in which the majority of the analysts where more inclined to analyze the nuclear arsenals being in the possession of the two superpowers, with the devastating consequences that nuclear weapons could have in case they would be used. In these analyses, there are mentioned the following effects of using nuclear weapons: deaths and illnesses among the population, disturbances in the food production, disturbances in the national economic systems by creating pressures upon some industrial sectors, upon the banking system, energetic system but also due to the necessity of offering governmental aids, evacuation and relocation of citizens with potential of leading to social conflicts, but also international consequences such as commercial imbalance and instability of currencies (Katz, A., Osdoby, S. R., (1982), : 3-5).

LASAN, N., (2011) THE NUCLEAR NON-PROLIFERATION TREATY: CONTEMPORARY LIMITS AND CHALLENGES, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 15-29

Not only the effects of nuclear arms represent a motivation for creating an international nuclear non-proliferation regime, but also the possibility, acknowledged also within the Nuclear Non-Proliferation Treaty, of using these arms in case of war. Furthermore, there cases in history when some states have been inclined to use conventional arms against the nuclear programs of other states, probably due to the insecurity induced to the attacking states by the simple existence of these programs. Only in the period 1942-2000 there are known a number a 15 cases of attacks upon nuclear facilities or programs[1]. Certainly nuclear arms leads to enmity between states, and it is obvious that as long as some state will possess nuclear weapons also other states will wish to acquire them, from here resulting the imperative of stopping this phenomenon with destructive potential upon the entire humankind. Regarding the definition of the non-proliferation regime, we will employ the one offered by Darryl Howlett, who argues that this regime incorporates a great variety of unilateral, bilateral, regional and global measures as response to nuclear proliferation (Howlett, D., (2005), : 502). Consequently, there are included as part of this regime the international treaties, agreements as well as multilateral measures adopted under the auspices of the United Nations but also the regional ones, the bilateral agreements between the United States of America and Russia, and the more recent initiatives which aim to eliminate nuclear arms at global level.

The Nuclear Non-Proliferation Treaty (NPT), the central element of the non-proliferation international regime, was signed in 1968 and entered into force in 1970. The beginnings of the negotiations for this treaty are found in the adoption in the year 1961 by the Un General Assembly of the Irish Resolution, by which it was requested to be adopted some measures which would limit the possibility also for other states to acquire nuclear weapons and it was also asking the states to abstain from the transfer and acquisition of nuclear weapons (Forland, A., (1997), : 230). This resolution was followed by the presentation of a draft treaty by the United States and the Soviet Union on March 11, 1968, and the approval with some amendments of the final draft of the treaty by the General Assembly on July 1, 1968. The treaty entered into force on March 5, 1970.

[1] For more details see Matthew Fuhrmann, Sarah E. Kreps (2010), „Targeting Nuclear Programs in War and Peace: A Quantitative Empirical Analysis, 1941-2000" in *Journal of Conflict Resolution*, Vol. 54, No. 6.

LASAN, N., (2011) THE NUCLEAR NON-PROLIFERATION TREATY: CONTEMPORARY LIMITS AND CHALLENGES, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 15-29

The Nuclear Non-Proliferation Treaty has, as it results also from the treaty text, three main objectives, namely: non-proliferation, peaceful use of technology and disarmament. Through this treaty, considered by the majority of the analysts to be a compromise, the world is split in nuclear states (meaning the states to have produced or exploded nuclear weapons or other nuclear devices until January 1, 1967), and non-nuclear states. According to the treaty, the nuclear states (US, Soviet Union, China, United Kingdom and France) undertake not to transfer nuclear weapons to any other states or to afford help in developing these weapons by other states (The Nuclear Non-Proliferation Treaty, (1970), art I), while the non-nuclear weapon states agree not to receive, develop or seek to develop nuclear weapons (The Nuclear Non-Proliferation Treaty, (1970), art. II). At the current moment all of the states are parties to the treaty with the exceptions of Israel, Pakistan and India, which have never been parts, and North Korea, who decided to withdraw following the development of a military nuclear program.

The treaty specifies also in the preamble the principle of the universal use of nuclear technology for civilian purposes, being encouraged the cooperation and exchange of equipments, materials and technology with the aim of peaceful application of nuclear energy. The nuclear states undertake in this respect to put at the disposal of the non-nuclear states the potential benefits resulting from any peaceful application of nuclear explosions (The Nuclear Non-Proliferation Treaty, (1970), art. V). The third objective of the treaty makes reference to an eventual disarmament at global level, article VI requesting the states to pursue negotiations which could lead to the elimination of the arms race and to conclude agreements on disarmament. In order to accomplish this objective, the NPT envisages the possibility for states to conclude agreements in what regards the creation of nuclear weapons free areas.

The end of the treaty refers to the possibility of the states to withdraw in case of extraordinary events and in case the nuclear weapons put in danger their supreme interests. Moreover, taking into account that the treaty was concluded for a period of 25 years, it is stipulated the necessity of organizing a conference five years after the entrance into force of the treaty for analyzing its efficiency, and 25 years after the entrance into force to decide if the treaty will be prolonged for an undefined period of time or only for five more years (The Nuclear Non-Proliferation Treaty, (1970), art. X).

LASAN, N., (2011) THE NUCLEAR NON-PROLIFERATION TREATY: CONTEMPORARY LIMITS AND CHALLENGES, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 15-29

The verification of the way in which states respect the NPT could not take place in the absence of a control body. This task is fulfilled by the International Atomic Energy Agency (IAEA), founded in 1957 and having as a main aim encouraging and supporting states in research, development and application for peaceful purposes of the atomic energy (International Atomic Energy Agency Statute, art. III). Still, the most important task of the agency is to monitor and ensure the security of the nuclear material in order to prevent its use for military purposes.

The legal basis of the verifications undertaken by the agency is found in the three types of agreements that states conclude with this institution: comprehensive agreements, specific agreements and voluntary agreements, these agreements determining the powers and aims of the verifications and monitoring undertaken by the agency. Moreover, states can conclude besides these agreements also additional protocols. The comprehensive agreements are the most encountered in practice and have as objective the verification of all nuclear materials and facilities of a state. In principle, IAEA can verify not only the nuclear materials and facilities declared by the state but also the correctness of the information (International Atomic Energy Agency, (2009), : 2).

In case of the specific agreements, IAEA has the power to verify and monitor only those materials, facilities and equipments mentioned in that agreement. These agreements are less often encountered in practice, being recorded only three agreements of this type. Finally, the voluntary agreements are only for nuclear states and refer to the possibility for the agency to monitor and verify certain nuclear materials and facilities of these states selected from a list provided by the five nuclear states. The additional protocols appeared in the agency's practice in the 1990s, being documents concluded with states which already have an agreement with the IAEA and through which the agency has at its disposal new tools for verifying the correctness of the states' declarations through increase access and more diverse tools in accomplishing its tasks.

The IAEA Statute stipulates also the measures that can be taken against the states that do not respect their NPT obligations. Therefore, in case there are found irregularities following the verifications, the agency's inspectors have to send a report to the General Director, whom transmits it further to the Board of Governors. If the negotiations with the state for solving the irregularities fail, the Board of Governors reports the irregularities to all of the agency's members but also to the UN Security

Council and UN General Assembly. The UN Security Council can impose the necessary measures for solving the situation, including both non-military sanctions and military sanctions.

3. The Nuclear Non-Proliferation Treaty: contemporary limits and challenges

Since the entrance into force of the NPT and the beginnings of the activity of the IAEA, numerous analysts have put under question the efficiency of these two instruments. On one side, the NPT and IAEA have registered successes from the perspective of raising the number of the states parties to the treaty, but also from the perspective of limiting the number of states that possess nuclear weapons. There have even been cases, South Africa being he most cited one, of states, which although possessed nuclear weapons have renounced them and became parties to the treaty. On the other side, we cannot but notice the numerous criticisms addressed to the NPT and to the activity undertaken by the IAEA.

A first category of criticisms has to do with the number of states parties to the NPT. General adherence to NPT is considered essential for the treaty's efficiency (Suleman, A. M., (2008), : 219), and the non-proliferation regime is criticized in this sense for the inability of attracting Israel, Pakistan and India (nuclear states never parties to the treaty) and for maintaining North Korea (withdrawn in 2003). In fact, the number of nuclear states is not five, but nine, the existence of four additional nuclear states putting under question the definition of a nuclear state as stipulated in the treaty.

Other limits in the application of the NPT include the actions of member states through which the nuclear non-proliferation regime efficiency has been undermined. Starting with the Cold War, the two superpowers placed their nuclear weapons in the satellite states from Europe, violating in this way the treaty provisions (Te Koeti, T., (2010), : 9), while the transfer of technology for military purposes from nuclear state to non-nuclear states did not limit to this single episode. It is well-known the fact that United States transferred military nuclear technology to Israel, while during the Cold War has afforded support to Pakistan in developing its own nuclear program and after the end of this war has supported India. Through this type of actions, the big powers have done

LASAN, N., (2011) THE NUCLEAR NON-PROLIFERATION TREATY: CONTEMPORARY LIMITS AND CHALLENGES, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 15-29

nothing else but to strengthen the vision of non-nuclear states that NPT is a discriminatory treaty and the vision according to which the NPT is just another tool through which big powers are allowed to maintain a monopoly on nuclear weapons.

Another set of criticisms to the NPT and the IAEA relates to the absence of a standard model of punishing the states that do not respect the obligations undertaken through NPT. What was the reaction of the IAEA in the case of Israel, Iran, Iraq, North Korea and Pakistan? In the case of Israel, the IAEA did not undertake any measure since Israel is not party to the NPT. In the case of Iran, state party to the NPT, there were adopted economic sanctions, the efficiency of which still needs to be tested. In the case of Iraq, the United States decided to use unilaterally the force without the approval of the UN Security Council. In the case of North Korea, it was decided to apply sanctions, the state preferring to withdraw from the NPT and declare itself nuclear state in 2006. In the case of Pakistan, state that was never been a party to the NPT, there could not be adopted measures by the IAEA, but there have been applied unilateral sanctions by the US.

The different responses offered by the international community in these cases of proliferation undermine the role of the NPT and of the IAEA and damage the image of the agencies being under the subordination of the UN. They create the impression that these are tools that the big powers can use how they want and according to motivations such as economic importance and strategic military alliances. In these conditions, we consider necessary the existence of a standard response from the part of the IAEA when non-nuclear states do not comply with the NPT provisions. Moreover, there needs to be prevented the unilateral use of military force against states which proliferate without the approval of the UN Security Council[2], because these actions have the potential of dividing the world in nuclear states that use force unilaterally and non-nuclear state, which frustrated by the treaty provisions and by the actions of the nuclear states, wish not to respect the obligations undertaken regarding non-proliferation.

A part of the shortcomings in applying the Nuclear Non-Proliferation Treaty result also from the limits of the agreements that

[2] For a more detailed vision on the rol of the Security Council in the field of non-proliferation see Vivek Kanwar (2008), *The Legislator of Last Resort: Security Council's Emerging Role in WMD Proliferation Crises*, Centre on Public Law and Jurisprudence, India.

LASAN, N., (2011) THE NUCLEAR NON-PROLIFERATION TREATY: CONTEMPORARY LIMITS AND CHALLENGES, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 15-29

IAEA concludes with non-nuclear states. Practically, the NPT objectives do not fit with the surveillance, monitoring and implementation mechanisms being at the agency's disposal. As the House of Commons Foreign Affairs Committee from United Kingdom has noticed in 2008, the comprehensive agreements present some major shortfalls. Among these are the fact that not all non-nuclear states parties to the NPT have concluded such agreements with the agency, the lack of mechanisms for applying these agreements when the signatory states refuse and not lastly their incapacity of contributing to limiting the nuclear non-proliferation as long as they apply only to the nuclear activities declared by the states (House of Commons Foreign Affairs Committee, (2009), : 40). Nor in what regards the additional protocols things do not look better because, due to their voluntary base, the number of states that decided to sign such agreements is very low, and in some cases, like Iran, states although sign them refuse to apply them.

Another problem that the agency has to face with in fulfilling its tasks is the reduced budget allocated to it. The size of the budget will considerably affect the IAEA activity, taking into account the increase in the number of states that wish to develop civilian nuclear programs, leading to the increase of the activities that the agency will have to undertake. As noticed by the agency in a report made in 2008 on the future of IAEA in 2020 „the quantity of nuclear material being under surveillance raised 10 times in the period 1984-2007, while the budget suffered a real increase with zero with the exception of a modest increase in 2003" (International Atomic Energy Agency, (2008), : VII).

The non-proliferation regime is furthermore criticized due to the limited actions undertaken for accomplishing the third NPT objective: disarmament. The fulfillment of this objective was discussed with the occasion of the NPT review conferences, which take place every five years, the results being mixed and the actual activity in this field being mostly passed on the hands of the non-governmental organizations. At the NPT Review Conference from 1995, it was decided not only to extend for an undetermined period of time the NPT, but also the possibility of concluding two new agreements crucial for the non-proliferation regime, meaning The Comprehensive Test Ban Treaty and The Fissile Material Cut-off Treaty. There followed the NPT Review Conference in 2000, where the five nuclear states issued a common declaration on their engagement regarding a possible elimination of nuclear weapons.

LASAN, N., (2011) THE NUCLEAR NON-PROLIFERATION TREATY: CONTEMPORARY LIMITS AND CHALLENGES, Jurnalul de Studii Juridice, Anul VI, Nr. 3-4, Decembrie, pp: 15-29

This declaration was never implemented, and moreover at the Review Conference in 2005 the United States declared that the 13 steps assumed by the five nuclear states on disarmament are not operational anymore and that they will limit their actions at reducing the role that nuclear weapons play in international affairs and not at their total elimination (Graham, A., (2006), : 16). In contrast, the last conference, which took place in 2010, registered some important successes on non-proliferation, disarmament and peaceful use of nuclear technology, and in proposing some steps for the creation of a nuclear weapons free area in the Middle East.

A strong movement for a world without nuclear weapons started even before the NPT Review Conference in 2010. One of the projects that aims to attain this objective is The Nuclear Security Project, which amerged after an article published in Wall Street Journal (Shultz, G. P., Perry, W. J., Kissinger, H. A., Nunn, S., (2007), : A15) and which gathers under the same umbrella important names from the American and global politics, among which also the former State Secretary Henry Kissinger. The launching of the Global Zero Campaign, which also militates for a world without nuclear weapons and gathers important politicians worldwide, shortly followed this project.

Although this desideratum could seem a utopia, various motives make one believe that it can become reality. If the normal population has often expressed the wish that nuclear weapons disappear from the entire globe due to the danger they present, the initiatives of states, regions and even international organizations seem to support as well this project.

There are many examples of states that despite developing nuclear weapons renounced them. South Africa renounced to the nuclear weapons at its own initiative, while Libya, due to the international pressure, changed the aim of its nuclear program from military to civilian. Furthermore, even the US and Rusia, the states with the biggest nuclear arsenals, have demonstrated, al least verbally, the wish to renounce to nuclear weapons.

Proofs that there can take place an elimination of nuclear weapons come also from the part of the regions which have decided to sign agreements for creating nuclear weapons free areas. Supportive signs come also from the international organization. If the states parties to the NPT discuss at each review conference the problem of eliminating nuclear weapons, the International Court of Justice formulated in its part

an opinion on this topic. Hence, in 1996 it has considered that the threat to or the use of nuclear weapons would be contrary to the international law rules applicable in armed conflicts, and especially contrary to the principles and rules of humanitarian law. Although the statement is somehow ambiguous, it reveals that nuclear weapons cannot be used in any situation from the point of view of international law. And naturally comes the question: are they still useful in these circumstances? In addition, having in mind that during time is was possible to abolish also other types of weapons, such as chemical, biological, surely it is possible to ban nuclear weapons, the only obstacles remaining at this point being the economic, political, cultural and strategic interests of the nuclear states.

Until the state of a world without nuclear weapons, it is considered that for eliminating the shortcomings of the non-proliferation international regime it would be necessary to adopt, as discussed also at the NPT Review Conference in 1995, two additional treaties. The first one, the Comprehensive Test Ban Treaty (CTBT) adopted in 1996 by the UN General Assembly did not yet enter into force, the biggest opponent being the US. The aim of the treaty is to ban all nuclear explosions in all types of environments for civilian as well as military purposes.

The entrance into force of this treaty would represent a success especially for the non-nuclear states, which have requested its adoption as condition for them to tolerate the nuclear weapons of the nuclear states and for them to put their civilian programs under the surveillance of the IAEA through additional protocols (O'Hanlon, M., (2008), : 120). While the supporters of this treaty consider that once it enters into force it will contribute to the decrease of vertical as well as horizontal proliferation, the critics argue that banning the tests is hard to be verified in practice and that the treaty is incapable of constraining proliferation (Howlett, D., (2005), : 513-514).

The same hot discussions irrupted on the possible adoption of the Fissile Material Cut-off Treaty (FMCT). In the year 1993, the UN General Assembly adopted a resolution through which it requested the start of negotiations for an international treaty that would ban the production of fissile material for nuclear weapons or any other nuclear explosive devices. The UN Disarmament Conference decided in 1995 to start the negotiations for this treaty, but the negotiations have never started on the basis that it would be impossible to verify in practice the way in which

states respect its provisions (House of Commons Foreign Affairs Committee, (2009), : 69).

4. Conclusions

Nuclear security has been and will continue to be an essential preoccupation of the international community, especially if one takes into account the emergence after the end of the Cold War of the second nuclear era, which refers to the spread of nuclear weapons at a higher speed than in the past among the developing countries. The use of nuclear technology for military purposes through the development of nuclear weapons has witnessed a considerable increase especially after the end of the Cold War. If in 1968, when The Nuclear Non-Proliferation Treaty was signed, there were only five nuclear states, their number got to nine nowadays, with the possibility of Iran becoming the tenth nuclear state.

The survival of the nuclear non-proliferation international regime depends on the way the international community decides to correct the shortcomings that it presents through the adoption of the Comprehensive Test Ban Treaty and of the Fissile Material Cut-off Treaty, but also on the way in which the international community responds to the new cases of nuclear proliferation.

References

Treaties, courses, monographies

Te Koeti, T., (2010) *Nuclear Disarmament and International Security: Imperatives for the Global Community*, United Nations Associations in Canada, Ottawa, Canada.

Forland, A., (1997) Negotiating Supranational Rules. The Genesis of the International Atomic Energy Agency Safeguards System, *http://www.iaea.org/inis/collection/NCLCollectionStore/_Public/29/032/29032393.pdf*.

Kanwar, V., (2008) The Legislator of Last Resort: Security Council's Emerging Role in WMD Proliferation Crises, Centre on Public Law and Jurisprudence, India.

House of Commons Foreign Affairs Committee, (2009) *Global Security: Non-proliferation*, The Stationery Office Limited, London.

International Atomic Energy Agency, (2008) *Reinforcing the Global Nuclear Order for Peace and Prosperity: The Role of the IAEA to 2020 and Beyond,* Vienna.

Scientific articles

Howlett, D., (2005) "Nuclear Proliferation" in *The Globalization of World Politics* edited by Baylis, J., Smith, S., 3rd Edition, Oxford Universiy Press, New York.

Norris, R. S., Kristensen, H. M., (2006),"Global Nuclear Stockpiles, 1945-2006", in *Bulletin of Atomic Scientists*, Vol. 62, No. 4.

Ruff, T., (2008),"From Hiroshima and Nagasaki towards a World without Nuclear Weapons" in *Australian Journal of Peace Studies*, Vol. 3.

Katz, A., Osdoby, S. R., (1982),*The Social and Economic Effects of Nuclear War*, Cato Institute Analysis No. 9.

Fuhrmann, M., Kreps, S. E., (2010)„„Targeting Nuclear Programs in War and Peace: A Quantitative Empirical Analysis, 1941-2000" in *Journal of Conflict Resolution*, Vol. 54, No. 6.

Suleman, A. M., (2008),"Bargaining in the Shadow of Violence: The NPT, IAEA, and Nuclear Non-Proliferation Negotiations" in *Berkeley Journal of International Law*, Vol. 26, No. 1.

Graham, A., (2006),"Global Challenges and Nuclear Proliferation" in *Nuclear Proliferation. Risk and Responsibility*, edited by Graham, A., De Carmoy, H., Delpech, T., Min Lee, C., Trilateral Commission, Washington.

Shultz, G. P., Perry, W. J., Kissinger, H. A., Nunn, S., (2007),"A World Free of Nuclear Weapons" in *Wall Street Journal.*

O'Hanlon, M., (2008)„„Resurrencting the Test-Ban Treaty" in *Survival*, Vol. 50, No. 1.

Legislation

United Nations Organizations (2004) *A more secure world: our shared responsibility*, Report of the high-level working group of the Secretary General on threats, challenges and change, New York.

The Nuclear Non-Proliferation Treaty (1970).

International Atomic Energy Agency Statute,

http://www.iaea.org/About/statute_text.html#A1.2.

International Atomic Energy Agency, (2009), The Safeguards System of the International Atomic Energy Agency,

http://www.iaea.org/OurWork/SV/Safeguards/safeg_system.pdf.