

Sylkina S.M.¹, Smanova A.B.², Umbetbayeva Zh.³

¹candidate of jurisprudence, associate professor, e-mail: sylkina.sv@mail.ru

²candidate of jurisprudence, associate professor, e-mail: akmaralbahtyar@gmail.com

³master of legal sciences, e-mail: umbetbaeva@mail.ru

al-Farabi Kazakh National University, Kazakhstan, Almaty

INTERNATIONAL LEGAL MECHANISMS OF THE USE OF NUCLEAR ENERGY FOR PEACEFUL PURPOSES

This article discusses the problems connected with the use of nuclear energy. The specificity of nuclear energy is that its application can serve both good and harm to humanity. Thanks to atomic energy it is possible to create the nuclear weapon which is the most dangerous in the world, potentially such weapon can destroy the whole cities, having destroyed millions of people, and to pose a threat for the environment and lives of the subsequent generations in the long term. Although this type of weapon in the history of mankind was applied only twice (Hiroshima and Nagasaki), not counting the “peaceful” nuclear test, its existence is a threat. In this regard important and at the same time difficult task which is set for the whole world is to prevent the proliferation of nuclear weapons. At the same time, the positive side of the application possibilities of nuclear energy for peaceful purposes is the fact that the use of the enormous potential of peaceful nuclear energy will help to provide the increasing needs of mankind for fuel and energy.

In this regard, the solution of problems of non-proliferation and the peaceful use of nuclear energy requires the creation and effective implementation of the necessary policy and legal mechanisms.

Key words: nuclear energy, cooperation in peaceful use of nuclear energy, international treaties, international organizations, the legislation of the Republic of Kazakhstan.

Сылкина С.М.¹, Сманова А.Б.², Умбетбаева Ж.³

¹з.ғ.к, доцент, e-mail: sylkina.sv@mail.ru

²з.ғ.к, доцент, e-mail: akmaralbahtyar@gmail.com

³заң ғылымдарының магистрі, e-mail: umbetbaeva@mail.ru

әл-Фараби атындағы Қазақ ұлттық университеті, Қазақстан, Алматы қ.

Бейбітшілік мақсатында атом энергиясын қолданудың халықаралық-құқықтық механизмдері

Мақалада атом энергиясын қолдануға байланысты мәселелер қарастырылған. Атом энергиясын пайдаланудың өзгешелігі, оның адамзатқа пайдасымен қатар зиян екендігінде болып табылады. Атом энергиясын қолдану нәтижесінде әлемдегі ең қауіпті ядролық қару жасап шығаруға болады, әлеуетті бұндай қару миллиондаған адамдарды қырып, тұтас қалаларды жоюы, ал ұзақ мерзімді келешекте келер ұрпақтың өміріне және табиғи ортаға қауіп тудыруы мүмкін. «Бейбіт» ядролық сынақтарды санамағанда, аталған қару түрі адамзат тарихында екі рет қана қолданылса да (Хиросима және Нагасаки), оның болуының өзі қауіпті. Осы себепті бүкіл әлемнің алдына қойылған маңызды, сонымен қатар күрделі міндет болып ядролық қаруды таратудың алдын алу табылады. Сондай-ақ, бейбіт мақсатта ядролық энергияны қолдану мүмкіндіктерінің жағымды жағы отын мен энергияда адамзаттың өсіп келе жатқан қажеттіліктерін қамтамасыз етуде бейбіт атомды пайдаланудың орасан зор әлеуеті көмек көрсететіні болып табылады.

Осыған байланысты атом энергиясын бейбіт пайдалану және таратпау міндетін шешуде қажетті саяси, сондай-ақ құқықтық механизмдерді нәтижелі іске асыру және жасау талап етіледі.

Түйін сөздер: атом энергетикасы, атом энергиясын бейбітшілікті қолдану саласындағы ынтымақтастық, халықаралық шарттар, халықаралық ұйымдар, Қазақстан Республикасының заңнамасы.

Сылкина С.М.¹, Сманова А.Б., Умбетбаева Ж.²

¹кандидат юридических наук, доцент, e-mail: sylkina.sv@mail.ru

²кандидат юридических наук, доцент, e-mail: akmaralbahtyar@gmail.com

³магистр, e-mail: umbetbaeva@mail.ru

Казахский национальный университет имени аль-Фараби Казахстан, г. Алматы

Международно-правовые механизмы использования атомной энергии в мирных целях

В данной статье рассматриваются проблемы, связанные с использованием атомной энергии. Специфика атомной энергии заключается в том, что ее применение может служить как во благо, так и во вред человечеству. Благодаря использованию атомной энергии можно создать ядерное оружие, являющееся самым опасным в мире, ведь потенциально такое оружие может разрушить целые города, уничтожив миллионы людей, а в долгосрочной перспективе представлять угрозу для природной среды и жизней последующих поколений. И хотя данный вид оружия в истории человечества применялся лишь дважды (Хиросима и Нагасаки), не считая «мирные» ядерные испытания, опасно само его наличие. В этой связи важной и одновременно сложной задачей, которая поставлена перед всем миром, является предотвращение распространения ядерного оружия. В то же время положительной стороной применения возможностей ядерной энергии в мирных целях является то, что использование огромного потенциала мирного атома поможет обеспечить возрастающие потребности человечества в топливе и энергии.

В этой связи, для решения задач нераспространения и мирного использования атомной энергии требуется создание и эффективная реализация необходимых политических, а также правовых механизмов.

Ключевые слова: атомная энергетика, сотрудничество в области мирного использования атомной энергии, международные договоры, международные организации, законодательство Республики Казахстан.

Introduction

In international legal practice widely used concept of “use of nuclear energy for peaceful purposes.” In some cases can be meet the expression “the use of nuclear energy for exclusively peaceful purposes.” At first glance, it may seem that there is no difference between them. But, on the other hand, before the analysis of legal concepts, it becomes clear that the question of the distinction between peaceful and military atom is not so simple. For example, it is possible to remember well-known historical facts. For example, the use in the United States from 1961 to 1971 nuclear explosions for peaceful purposes: excavation properties of the nuclear explosions were used for the formation of channels and harbors and to facilitate the creation of mines. Test stopped due to unexpectedly high amounts of radioactive fallout and contamination of groundwater. Another project was implemented by the USSR “the Program of recycling of nuclear explosions in the national economy”, the result of which was blown up as 122 bombs. Is it possible in this case to talk about the peaceful use of nuclear energy?

The fact that speaking about the necessity of nuclear energy for peaceful purposes it is important to note that neither in the special scientific literature, nor in international law is not given any clear definition of this concept. No explanation of this term and

in the domestic legislation of Kazakhstan and other countries. It should be noted that the contents of the “peaceful purposes” is derived or formulated on the basis of a common understanding of special interpretation or analysis of texts existing sources and the relevant law enforcement practices.

The Treaty on the Non-Proliferation of Nuclear Weapons doesn't disclose the concept of “for peaceful purposes”, only opposes to them the objectives associated with nuclear weapons and nuclear explosive devices (Treaty on the Non-Proliferation of Nuclear Weapons, 1970).

Only in the last five years in the world, there were more than 50 intergovernmental and more than 7 interdepartmental agreements on the issues of cooperation in the field of nuclear energy.

They are about trade of nuclear material and nuclear technology, construction of nuclear power plants and research reactors, the creation of innovative nuclear facilities and the storage and processing of spent nuclear fuel. By these Agreements are defined the foundations of cooperation for companies of the States parties of these Agreements in certain energy sectors. From their content it is possible to determine what kind of the activity in the field of nuclear energy is regarded by States as being carried out for peaceful purposes.

So, in the text of the cooperation Agreement between the government of the Republic of Kazakh-

stan and EURATOM in the field of use of atomic energy for peaceful purposes, peaceful activities in the field of nuclear energy are: the nuclear safety, the process of controlled nuclear fusion, research and development in other fields of peaceful use of nuclear energy such as, trade in nuclear materials and provision of nuclear fuel cycle (Постановление Правительства РК «Об утверждении Соглашения о сотрудничестве между Правительством РК и Европейским сообществом по атомной энергии (Евратом) в области мирного использования атомной энергии», 2008).

Also of interest is the Agreement between the Government of the Republic of Kazakhstan and the Government of the French Republic on cooperation in the field of use of atomic energy for peaceful purposes. Here the parties cooperate in the field of use of atomic energy for peaceful purposes, precluding the establishment of any nuclear explosive device. Hence, **the peaceful purpose is opposed to the creation of explosive devices** (Постановление Правительства РК «Об утверждении Соглашения между Правительством РК и Правительством Французской Республики о сотрудничестве в области мирного использования атомной энергии», 2012).

More specifically, «the use of nuclear energy for peaceful purposes» discloses by the Agreement between the Government of the Republic of Kazakhstan and the Government of the Republic of India on cooperation in the field of use of atomic energy for peaceful purposes: «The use for peaceful purposes» involves the conduct of research, exploration and exploitation of deposits of uranium, production of nuclear fuel for nuclear power plants; nuclear power industry; conduct fundamental and applied scientific research in the field of peaceful use of nuclear energy, not requiring, in respect of works on research reactors, use uranium that is enriched to 20% or more in the isotope uranium 235 where it is technically feasible; the development of fuels based on low-enriched uranium, which allows to convert those reactors, where the currently used highly enriched uranium; the application of nuclear energy in such fields as agronomy, biology, medicine, industry, research about the Earth (Постановление Правительства РК «Об утверждении Соглашения между Правительством Республики Казахстан и Правительством Республики Индия о сотрудничестве в области мирного использования атомной энергии», 2012).

Interest is a similar Agreement between the Government of the Russian Federation and the Government of the Republic of India on cooperation in the

field of use of atomic energy for peaceful purposes, where the «peaceful uses of nuclear energy» include the use of information, nuclear materials, equipment or components in such fields as research, power generation, medicine, agriculture and industry, but does not include use in a nuclear explosive device, carrying out research or development in this area or for any other military purpose. Providing the military base with electricity received from a power grid, isotope production for medical purposes at military facilities for the diagnosis, therapy or sterilization and other similar purposes, which can be mutually consistent by the Parties, are not considered as military targets (Соглашение между Правительством РФ и Правительством Республики Индии о сотрудничестве в области использования атомной энергии в мирных целях, 2010).

The legislation of the RK concretizes the concept of “use of atomic energy for peaceful purposes”. Thus, in the contents become invalid in 2016, the Law of the RK “On nuclear energy use” of 14 April 1997, is given an exhaustive list of the main types of activities in the area of this region. These include: location, design, construction, entering to commissioning, exploitation, conservation and decommissioning of objects of use of atomic energy; execution of works and provision of services related to the use of nuclear energy, except for activities accredited in the system of technical regulation of testing laboratories that use sources of ionizing radiation below the level of the exemption; handling of nuclear materials, ionizing radiation sources and radioactive materials, exploration and extraction of minerals containing these materials and substances and the manufacture, use, processing, transportation and placement of nuclear materials, radioactive substances and radioactive waste; implementation of scientific researches with the use of nuclear installations, ionizing radiation sources, nuclear materials and radioactive substances; management of use of atomic energy; all types of activities at the sites of nuclear explosions; safety in the use of atomic energy; physical protection of nuclear installations and nuclear materials; accounting and control of nuclear materials, ionizing radiation sources, radioactive substances and radioactive waste; the export and import of nuclear materials, technology and equipment, special non-nuclear materials; materials, technologies and dual-use equipment, ionizing radiation sources, radioactive substances; monitoring of radiation situation on the territory of the RK; transit of nuclear materials and radioactive substances through the territory of the RK; training and certification of professionals and staff (Закон РК «Об ис-

пользовании атомной энергии», 1997). However, it should be noted that on the territory of Kazakhstan from January 12, 2016 a new edition of the Law «On use of atomic energy». It, unlike the previous version, the list of the main types of peaceful use of nuclear energy does not contain.

Exploring the concept of «the use of nuclear energy for peaceful purposes» it is necessary to pay attention to the interpretation of the similar norms applied in the systems of the other industries and institutions of international law, and therefore in relation to other objects of international legal regulation in order to conduct a comparative legal analysis between them. The same analysis is required the term for «exclusively peaceful purposes».

Methodology

The methodological and empirical basis of the research consists in applying general methods of scientific knowledge: historical, comparison, analysis, synthesis, classification; special methods: formal-legal, structural-functional, comparative-legal. Application of the above methods led to a deep, qualitative analysis of regulations, both foreign and domestic legal documents in the field of use of atomic energy for peaceful purposes.

Literature review

The concept of “atomic energy” and the use of nuclear energy for peaceful purposes has been studied by many legal scholars in the field of General theory of law, theory of international law and international nuclear law and international environmental law. Questions about concepts of nuclear energy and nuclear law can be found in the works of such foreign authors as H. de Aréchaga, A. Boyle, I. Brownlie, F. Sands, A. Kiss, D. Shelton, etc. For example, Malcolm N. Shaw in his work “International law” considered nuclear activities under international environmental law. He studied the basic legal instruments on this topic and determined that “a variety of international organizations are now involved to some extent in the process of developing rules and principles concerning nuclear activities and environmental protection” (Shaw, 2008: 889).

Also a great contribution to the development of research on the use of atomic energy for peaceful purposes, have made various foreign jurists and researchers. For example, in article “International law and nuclear energy: Overview of the legal framework” Mohamed El Baradei, Edwin Nwogugu and John Rames reviewed the activities of the IAEA

and a number of agreements that are grouped into 4 Categories of safeguards agreements. According to the authors of this article, “four categories of safeguards agreements have been entered into by the IAEA. The first category is with non-nuclear – weapon States that have made a non-proliferation commitment, e.g. States Party to the NPT, the Treaty of Tlatelolco, the Treaty of Rarotonga, or the Brazilian-Argentine Agreement on the Exclusively Peaceful Utilization of Nuclear Energy. These safeguards agreements cover all the nuclear activities of the State. The second category of agreements is with non-nuclear-weapon States that have not made a binding non-proliferation commitment. The third category of agreements is with nuclear-weapon States. The fourth category is with non-nuclear – weapon States which have not made a previous non-proliferation commitment but which are ready to make that commitment as a part of the safeguards agreement” (El Baradei, 1995).

However, issues about the use of nuclear energy for peaceful purposes mostly fully reflected in many international instruments, on the basis of which are created and functioning international organizations (IAEA and EURATOM), documents developed and adopted by them, which represent the embodiment of normative and governing functions of international organizations (standards), as well as international treaties concluded by States, primarily the Convention on nuclear safety, 1994, the Treaty on the nonproliferation of nuclear weapons, 1968, etc. The rules governing the use of nuclear energy are also listed in legal documents as the Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water, 1963, the Convention on the prevention of marine pollution by dumping of wastes and other materials, 1972, the Treaty on principles governing the activities of States in the exploration and use of outer space, including the moon and other celestial bodies, 1966, etc.

However, it is worth noting that to date there is no clear definition of the use of nuclear energy “for peaceful purposes” or for “exclusively peaceful purposes” in the special scientific literature, or international legal instruments and domestic legislation of the country. In many international instruments there is only a general understanding of special interpretation or the list of actions falling under the concept.

Results and discussion

The principle of the “exclusively peaceful purposes” of certain territories, areas, spheres of space and nuclear energy has always been an integral part

of the initiatives of the USSR, which were aimed at the elaboration of a legal regime and order of use with the aim of strengthening international peace and security.

A striking example of such initiatives are the agreements such as the Antarctic Treaty of 1959, Treaty on Principles governing the activities of States in the exploration and use of Outer Space, including the Moon and other Celestial Bodies of 1967, the Treaty on the Nonproliferation of nuclear weapons of 1968, Declaration of Principles Governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of National Jurisdiction of 1970, the Soviet draft Treaty on the Moon.

The analysis of international agreements shows that in international law has been established such approach to the term “exclusively peaceful purposes” in which it is used to refer to purely non-military, civilian activities (Калинкин, 1970:164).

However, even in the twentieth century, some Western lawyers believed that this term implies a defensive and other military activities of the peaceful nature.

For the first time the principle of “exclusively peaceful use” was nominated in 1967 by the representatives of Malta at the XXII session of the UNGA with considering the issue on “the preservation for exclusively peaceful purposes of the seabed together with subsoil that part of the seas and oceans open water, which do not fall under the scope of existing national jurisdiction, and use its resources for the benefit of mankind (Мелков, 1973: 153).

Many delegations, when using this term in their speeches, had invested its own contents. This caused considerable disagreement among the delegations of the States members of the UN and among international lawyers.

Proof of this are the responses of States to the note of the UN Secretary General in 1968, which referred to the need to clarify the meaning and the legal meaning of the term “peaceful use”(UN DocumentA/AC 135/- andAdd.2).

Soon the Maltese delegation gave his explanation of this term, however, some Western scholars continued to assume that this term is not very clear (Мелков, 1973: 154).

At the Rome Symposium on the problems of the international regime of the seabed in 1969Dr. D. Evensen said that, together with the use of the term «peaceful purposes» is used also the term use «for military purposes», which has a rather broad meaning not quite clear. He apparently includes military bases and installations, as well as any military maneuvers or actions on the ocean floor or the subsoil

thereof. Is the research for military purposes with military equipment included here – it is not clear (Evensen, 1969: 23).

Different interpretation of the term «peaceful purposes» has been repeatedly stressed by various delegations at the sessions of the UN Committee on the seabed.

The question was posed as follows:

1) «Does the term for «exclusively peaceful purposes» mean the prohibition of all types and forms of use of the seabed for military purposes;

2) Does the term allow the defensive and other military activities for peaceful purposes in accordance with the UN Charter and international obligations;

3) Does the specified term allow the military activities undertaken for research purposes with the use of military personnel and equipment?» (Мелков, 1973: 154).

As a result of long negotiations in the UN and international symposiums, which were devoted to legal regime of the seabed revealed two concepts regarding the legal content of the term for «exclusively peaceful purposes».

The first concept, which was made by the USSR, is that this term excludes all types and forms of military activities on the seabed outside the territorial waters of coastal States (UN DocumentA/AC. 135/20, 1969). In the Memorandum the government of the USSR on some urgent measures for ending the arms race and disarmament, July 1, 1968, the question was raised about the timely securing in proper form of such a regime for the seabed, «which would ensure the use of the seabed beyond existing territorial waters for exclusively peaceful purposes. Thus it was forbidden in particular the establishment of fixed military installations on the seabed, as well as other activities of a military nature (Известия, 1968).

Further, the delegation of the Soviet Union elaborated on their understanding of the term. So, the representative of the Soviet Union said that his delegation has conducted an analysis of current international practices in the field of application of the concept of «preservation for exclusively peaceful purposes» and has felt that this concept should exclude all military activity, consistent with the provisions of the UN Charter. According to the theory of the Soviet delegation to «the seabed and ocean floor and subsoil thereof beyond the Maritime zone of coastal States borders which should be agreed in international negotiations in the field of disarmament, should be used for exclusively peaceful purposes; in accordance with this, all military activities are ex-

cluded, and any kind of military use is prohibited» (UN Document A/AC 138/SC.1/SR.12-29, 1969: 75). Thus, in accordance with the first concept, legal meaning of the term «exclusively for peaceful purposes» prohibits all kinds and forms of military activities, including offensive and defensive, any other military activities to «peaceful purposes» and the use of military personnel and equipment for research purposes.

The second concept is that the seabed should be used solely for peaceful purposes, but «should not prohibit military activities with peaceful purposes or which is carried out with peaceful intent, in accordance with the UN Charter and obligations under international law. The founder of this concept is considered to be the US.

Thus, the second concept involves combining in this term the possibility of implementation of a purely peaceful, non-military activities with the activities of a military nature. And this would mean that not all military activities are excluded clause «exclusively for peaceful purposes», that the term «peaceful purposes» does not exclude «military activities in General», but on the contrary, admits it, if only these activities were «non-aggressive», «defensive» in nature.

However, the opinion of the USSR representative in the UN Committee on the seabed is such that «...if you say that only aggressive military activity should be considered incompatible with the principle of conservation of the seabed for exclusively peaceful purposes, it will not change anything in the existing position and will not prevent the spread of an arms race on the seabed and ocean floor» (Мелков, 1973: 156).

Pointing to the ambiguity of the concepts of «peaceful use» and «non-aggressive use» the Indian scholar K. Rao was in agreement with the Soviet position, and stated that the notion of «peaceful uses should be interpreted in an absolute sense as prohibiting all military activities» (Rao, 1969: 16).

Therefore, the concept of «peaceful» corresponds to the concept of «non-military» and should exclude any measures of a military nature. Similar view was held and German scientists in the face of K.D. Ernst and G. Gerner. They argued that the seabed should be used only for peaceful purposes (Мелков, 1973: 157).

Further use of the term «exclusively for peaceful purposes» was confirmed by the Antarctic Treaty of 1 December 1959, in which «the governments ... recognizing that it is in the interest of all mankind, Antarctica shall continue forever to be used exclusively for peaceful purposes and shall

not become the scene or object of international discord» agreed to prohibit «any measures of a military nature» (The Antarctic Treaty, 1961). In a letter to the USSR, the U.S. government emphasized that «... Antarctica shall be used by all Nations for peaceful purposes; this means in particular that there shouldn't be created any military bases in the Antarctic, and made military, naval and air maneuvers, and also tests of any kinds of weapons» (Правда, 1958).

In this way the Soviet Union signed a Declaration on the continental shelf of the Baltic sea, saying that it «should be used by all States for exclusively peaceful purposes» (Известия, 1968).

The incompatibility of the term with any military activity can be detected in the analysis of the resolutions of the UN General Assembly that pertain to nuclear energy.

Thus, the term «exclusively for peaceful purposes» provides for the possibility of a purely civil, non-military activities and fully excludes all kinds and forms of military activity anywhere.

In the results of the persistent position of the delegation of the Soviet Union this view has received the final recognition and approval on the XXV session of the UN General Assembly, which adopted the Declaration of Principles governing the Sea-Bed and the Ocean Floor, and the Subsoil Thereof, beyond the Limits of Nations Jurisdiction (Мелков, 1973: 159).

Further, in order to finally consolidate understanding of the above terms should focus on some individual norms that contain mandatory rules, i.e. rules of exclusively nature.

Article 88 of the UN Convention on the Law of the Sea of 10 December 1982 provides for a separate provision on «the high seas shall be reserved for peaceful purposes» (UN Convention on the Law of the Sea, 1982). Here, as well as in the field of using the atomic energy, does not define «peaceful purposes». However, the analysis of certain rules on the legal regime of the high seas leads to the conclusion that the term «peaceful purposes» is most consistent with the partial demilitarization. It necessary to pay attention to the fact that the open sea is the sea area extending beyond the territorial sea that isn't under state sovereignty. As rightly pointed out by Zh.M. Amanzholov, the 1982 Convention, by not giving a definition of this term, explicitly confirms the implementation of military activities in the open sea, and, moreover, does not prohibit such activities in exceptional form, but with the only disclaimer that «military targets» will be implemented in full compliance with the UN Charter and other norms of

international law and international humanitarian law (Аманжолов, 2006: 62).

Article 141 of the Convention on the Law of the Sea is regulated activities in the international seabed area for exclusively peaceful purposes. Such norm affects research in this area.

To clarification this provision it's necessary to pay attention to the words of Zh. M. Amanzholov who believes that article 141 of the Convention, the phrase "exclusively for peaceful purposes" means that the seabed is covered by the regime of complete demilitarization. This in turn means that any action of a military nature, including establishment of military bases and fortifications, the carrying out of military maneuvers and the testing of any type of WMD is prohibited. However, here, Zh.M. Amanzholov more inclined to the fact that "exclusivity" should not prevent the use of military ships, aircraft, military personnel as well as equipment for scientific purposes in remote areas of the seabed. For example, participation of the military hydrographs in the exploration of the sea is not a violation of this principle, because the goal, obtaining biological samples, had peaceful nature. In the purpose of marine scientific research should not be the presence of the military or other similar content. So, in his opinion, it can be argued on the basis that "...contemporary international Treaty and customary state practice doesn't consider such activity as one of forms of their military activities, even if such an environment there is a norm about its use of "exclusively peaceful purposes" (Аманжолов, 2006: 62).

The principle of peaceful use is also spreading to outer space. Outer space and celestial bodies – the territory with the international legal regime. The use of outer space for peaceful purposes is one of the main principles of international space law. But here, a clear and common understanding of the term «peaceful» and the scope of the principle of the peaceful use of outer space is also absent.

The analyze of international documents prohibiting nuclear tests and explosions in outer space can give much more in the understanding of the peaceful uses of outer space. So, in the Resolution of the UNGA on 17 October 1963 under the title « Question of general and complete disarmament, urged «to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, installing such weapons on celestial bodies, or stationing such weapons in outer space in any other manner» (Resolution on "Question of general and complete disarmament", 1963). Treaty on Principles Governing the Activities of States in the Exploration

and Use of Outer Space, including the Moon and Other Celestial Bodies (1967) establishes the legal regime of outer space and celestial bodies, that assume the prevention of the placement of weapons in outer space, the use of force or threat of force against outer space objects (The Outer Space Treaty, 1967).

According to the Law «On space activities», such activity aims to the exploration and use of outer space to achieve the scientific, economic, environmental, defense, information and commercial purposes (Закон РК «О космической деятельности», 2012). International cooperation in the exploration and use of outer space for peaceful purposes is in accordance with the provisions of international law including the UN Charter and the Outer Space Treaty of 1967. It should be noted that Kazakhstan is party to international treaties in the field of exploration and use of outer space for peaceful purposes with countries such as Russia, Ukraine, France, Germany, Israel, India, etc.

Peaceful purposes in the use of space means limited military use of outer space, f.e., the passage through it of the trajectories of Intercontinental ballistic missiles, and implementation of supporting activities for military purposes using satellites for reconnaissance, navigation and surveillance. For example, the US considers such kinds of activities as part of a strategy of nuclear deterrence as measures having a stabilizing effect for international peace and security. Flights of ballistic missiles through space, a permanent deployment of weapons in orbit is not contrary to peaceful purposes, based on the analysis of international acts.

So, the strategy of deterrence is the reason for the distinction between peaceful use (partial demilitarization) and exclusively peaceful use (full demilitarization). Full demilitarization is limited by celestial bodies. So the Moon shall be used by all States for exclusively peaceful purposes. It is prohibited threat of force or use of force or any other hostile act or threat to commit any hostile action on the moon. It's also prohibited to use of the moon to commit any such action or application of any such threats against the Earth, the Moon, spacecraft, personnel of spacecraft or man-made space objects. And the use of military personnel for scientific research or any other peaceful purposes is not prohibited. Not also prohibited the use of any equipment or facility necessary for peaceful exploration and use of the Moon. Thus, today the space is used for peaceful purposes (banning the placement of weapons of mass destruction), and the Moon and other celestial bodies for exclusively

peaceful purposes (the prohibition to place any weapons).

Based on the foregoing international legal analysis of the use of the term «for peaceful purposes» and «exclusively for peaceful purposes» in such areas as international law of the sea and international space law, there can be concluded the following.

First, the need to use nuclear energy for peaceful purposes is derived from set out in contractual international legal obligations of States.

Secondly, should pay attention to the fact that these obligations have been formulated not in the kind of any general recommendations, as in the form of specific rules, principles, adherence to which is compulsory, and in case of failure entail certain legal consequences.

Third, reporting norms, according to Zh. M. Amanzholov, despite their strict, mandatory nature («exclusively peaceful purposes») they aren't absolute in their legal nature and power, and allow «... some exemptions, dictated, as can be seen the goals of practicality and functional need...» (Аманжолов, 2006:67).

Thus, international legal and domestic consolidation of the terms «use of nuclear energy for peaceful purposes» and «use of nuclear energy for exclusively peaceful purposes» at the moment are absent. However, the analysis of the legal material suggests that the term «for peaceful purposes» means the partial demilitarization, which excludes the focus on the development, manufacture, testing, operation and disposal of nuclear weapons and nuclear power installations of military purposes, but allowed to supply electricity to a military facility, if this energy is obtained from nuclear power plant, to use nuclear energy for medical purposes, even if it is a military hospital etc.

Nuclear energy for peaceful purposes is an activity which is associated with the production of electricity, i.e. the functioning of the so-called nuclear fuel cycle, including extraction of nuclear raw materials; nuclear fuel production; fuel combustion in a nuclear reactor; removing and storing nuclear waste; the use of nuclear energy for agricultural, industrial, scientific, medical and other purposes with non-military nature. At the same time as non-peaceful, military uses should be considered: testing and use of nuclear weapons, the activities of organizations related to the use of nuclear materials and radioactive substances during the work of a defensive nature. This includes the development, manufacture, testing, transportation, operation, storage, elimination and disposal

of nuclear weapons and nuclear power installations of military purposes.

It is well known that the use of nuclear energy is associated with special risks to the health and safety of persons and the environment: risks that must be carefully regulated.

Immediately after the founding of the UN the idea of liquidation nuclear weapons has become one of the priority directions of activity of this organization. The first resolution adopted by the UN General Assembly on 24 January 1946, provided for the establishment of a Commission to deal with the problems associated with nuclear energy production. In particular, the Commission was given the responsibility of making proposals for the control of nuclear energy to the extent necessary to «ensure its use for peaceful purposes» and «the elimination from national armaments of nuclear weapons and of all other major weapons adaptable to mass destruction» (Resolution “Establishment of a Commission to Deal with the Problem Raised by the Discovery of Atomic Energy”, 1946).

The so-called «Baruch plan» (named in honor of U.S. representative in the Commission) was to contribute to the control and monitoring of developments in the field of nuclear energy the United States. However, to this step, the Soviet leadership responded with a plan based on three points:

1. Prohibition of use of nuclear weapons in the world, as it is a weapon of mass destruction.
2. Countries should abandon the production of nuclear weapons.
3. Those countries that have nuclear weapons don't have to distribute (share with others).

Just in the second half of the twentieth century began to develop many sources of legal regulation in the field of using of the nuclear energy. They are in some extent were the result of the agreements of the US and the USSR.

A huge step towards the realization of the objectives on the peaceful use of nuclear energy was the establishment of the International atomic energy Agency (IAEA) in 1956. The organization was created, according to help of which all member States were able to cooperate in the peaceful use of nuclear energy, but also to control that the system of control, established IAEA, was not allowed to use nuclear energy for military purposes.

According to the IAEA Statute «...the Agency seeks to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world...» (The Statute of the IAEA, 1956). This is possible only through the establishment of effective legal infrastructure and regulatory

framework. To date accumulated a wealth of legal material, which allows us to speak about the existence in international law of the private sector – international nuclear law.

The sources of international nuclear rights are international treaties covering a wide range of issues for security and cooperation in the peaceful uses of atomic energy.

The cooperation of States in this area is carried out according to General rules of international law, including the Charter of the UN. The main role here belongs to an international Treaty.

The specificity of the development of international treaties in the field of nuclear energy is that nearly all of the projects developed in the framework of the IAEA.

One of them is the Treaty on the Non-Proliferation of Nuclear Weapons (NPT).

In 1965, during operation of the Geneva conference on disarmament, the leading States of the world community began consideration of a draft Treaty on the Non-Proliferation of Nuclear Weapons. The conference concluded the relevant negotiations in 1968, and on 1 July of that year the NPT was opened for signature. It entered into force on 5 March 1970 to 43 parties, including three nuclear powers (USSR, UK and USA) out of five.

Under the provisions of the NPT, nuclear are considered States which had manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967. These are China, the Russian Federation (as successor to the USSR), France, United Kingdom and United States of America. Therefore, all other States are non-nuclear.

The main content of the NPT rests on three pillars: non-proliferation, peaceful use of nuclear energy and disarmament (Treaty on the Non-Proliferation of Nuclear Weapons, 1970).

Non-proliferation. According to article I of the NPT the nuclear powers undertake not to transfer nuclear weapons or other nuclear explosive devices to any recipient or some way to help, encourage, or induce any state not possessing nuclear weapons to manufacture or acquire such weapons.

According to article II of the NPT States not possessing nuclear weapons undertake not to buy and not to exercise control over nuclear weapons or of other nuclear explosive devices and not to seek help and not take it for the production of such devices. According to article III of the Treaty, States not possessing nuclear weapons undertake to accept IAEA safeguards for the inspections to «prevent the diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices».

Peaceful use. Article IV of the NPT recognizes the right of all parties to develop nuclear energy for peaceful purposes and use the benefits from international cooperation in this field in accordance with its commitments in the nonproliferation sphere. Article IV also encourages cooperation in this field.

Disarmament. According to article VI of this document, all parties agree to conduct good faith negotiations on effective measures relating to cessation of the nuclear arms race in the near future and for nuclear disarmament and on a Treaty on General and complete disarmament under strict and effective international control.

These «pillars» are interrelated and complement each other. Effective regime of non-proliferation of nuclear weapons, whose members fulfill their obligations, provides a stable base for progress in disarmament, making the establishment of an intensive cooperation in the peaceful uses of atomic energy. By purchasing the right of the access to the benefits of peaceful nuclear technology, the players of the world stage are beginning to realize the responsibility for the non-proliferation of weapons of mass destruction. And the promotion of disarmament, in turn, intensify care their efforts to strengthen the non-proliferation regime and compliance obligations, thereby facilitating cooperation in the field of «peaceful atom».

On the eve of the conclusion of the NPT, the UN Security Council adopted Resolution № 255 on security assurances, according to which aggression involving nuclear weapons or the threat of such aggression against a state that does not possess nuclear weapons, is a cause for urgent action by the Security Council (especially the permanent members) (Question relating to measures to safeguard nonnuclear weapon States parties to the Treaty on the Non Proliferation of Nuclear Weapons, 1968).

Since 1970, with 43 parties, the number of parties to the NPT currently has grown to 190 countries and turned the document into the largest in human history, binding agreement on the non-proliferation of weapons or arms control. Only three States – India, Israel and Pakistan – never adhered to the provisions of this Treaty, and one country – North Korea announced withdrawal from the NPT. The results of the 1995 conference on review and extension of the Treaty States decided to prolong the document indefinitely.

The main advantage, which the NPT provides to the international community, is reinforced international peace and security. Its norm on the non-proliferation of nuclear weapons – evidence of international consensus that the further spread of

WMD will lead to the weakening of the security of all States, and the undermining global and regional stability – and still is of great importance. The NPT is the cornerstone of the international regime of non-proliferation of nuclear weapons, which provides a system of legal restrictions, safeguards, export control procedures, methods of interstate cooperation, as well as other mechanisms that help to prevent the proliferation of nuclear WMD. The completion of the nuclear arms race during the cold war allowed Russia and the United States to continue reduction of nuclear weapons stockpiles to a level that was unthinkable just a few decades ago. At the same time, there had been a significant increase in the use of nuclear energy for peaceful purposes: increased the number of States that had peaceful nuclear program, was strengthened the level of international cooperation directed in providing the peaceful benefits of nuclear energy to an increasing number of the world's population.

The NPT is the only international binding instrument that creates a global barrier to the spread of nuclear weapons. The Treaty, the embody norm on non-proliferation, as well as elements of the broad non-proliferation regime, the underlying document, helped prove the incorrectness of the predictions of the mid-twentieth century that 20 to 30 countries working to develop nuclear weapons.

Practically preventing the proliferation of such weapons, these elements enhance the individual security of each state, as well as contribute to global and regional stability. The Treaty reduces the number of incentives for acquiring nuclear weapons by non-nuclear States and contributes to the peaceful settlement of disputes between countries. After opening the document for signing, a number of States decided to stop development of programs to develop nuclear weapons, and later abandon it. For example, South African Republic which abandoned its nuclear program in 1991 and joined the NPT as a state not possessing nuclear weapons. So the successor States of the former USSR (Belarus, Kazakhstan and Ukraine) did the same by transferring their nuclear ammunition of Russia and received the status of countries not possessing nuclear weapons. In addition, the NPT invokes international players to enter into the security agreements the total absence of nuclear weapons in certain areas. Now there are five treaties establishing nuclear-weapon-free zones: Latin America (Treaty of Tlatelolco, 1967), South Pacific (Treaty of Rarotonga, 1985), Southeast Asia (Bangkok Treaty, 1995), Africa (Pelindaba Treaty, 1996) and Central Asia (Treaty of Semipalatinsk, 2006).

Besides the NPT, there are several multilateral conventions, which are considered to be one of the main international instruments in the field of regulation of nuclear energy.

In 1959 the International atomic energy Agency had developed an action plan for member States of the Agency in case of accidents involving radioactive materials. On the basis of these activities, the IAEA has provided assistance to any member state. Moreover, the Agency urged States to conclude with neighboring countries agreements on assistance. In 1967 in order to facilitate the conclusion of such agreements, the IAEA has developed model projects which have been sent to all States members of the Agency. By 1980 were concluded many bilateral agreements on mutual assistance, information exchange and early notification.

In 1986, after the Chernobyl accident, at a special meeting it was decided to develop two draft international conventions – the Convention on Early Notification and Convention on Assistance in the case of a Nuclear Accident or Radiological Emergency.

Convention on Early Notification entered into force on 27 October 1986. Within this document was created the system of «early warning» in case of nuclear accidents. With regard to the Convention on assistance in the case of a nuclear accident entered into force in February 1987. It provides for the provision of operational assistance by the IAEA, informing it about the availability of equipment, experts and other relevant materials. The IAEA in turn acts as a coordinator, providing information required talent pool, as well as providing all kinds of assistance.

There is also Convention, governing liability for nuclear damage. It is the Vienna Convention on Civil Liability for Nuclear Damage, adopted under IAEA auspices in 1963 and entered into force in 1977, and the Convention on Third Party Liability in the Field of Nuclear Energy (in force in 1968), acting in the framework of the OECD.

And although in the case of their simultaneous application there may arise a legal conflict (if the parties involved in a nuclear accident are parties to various conventions) both of these conventions require a specific regime, which is aimed at obtaining adequate compensation. The basis of these conventions serve four principles:

- 1) absolute and exclusive liability of the organization that operates the relevant nuclear installation;
- 2) material and temporal limits of responsibility of the organization that operates the station;

3) the obligation of the organization to ensure financial coverage of its liability in the form of insurance or other financial security;

4) guarantee of state intervention to meet the claims for compensation of damage exceeding the financial ability of the operator of the station (Бюллетень МАГАТЭ, 1987: 33).

In 1972 the IAEA released a collection of recommendations aimed at physical protection of nuclear material used or stored in any one state. Based on these recommendations a decision was made to create a universal Convention under the auspices of the IAEA. In 1979 was approved by the Convention on the Physical Protection of Nuclear Material. It entered into force in February 1987.

Under this Convention, all the participants commit to undertake efforts aimed at a coherent level of protection in the international transportation within their territory or on the aircraft board, ship within their jurisdiction (Convention on the Physical Protection of Nuclear Material, 1979).

Also, under the Convention, member States shall not import, export or at least to grant permission for transit through its territory, in the absence of guarantees that during international transport of nuclear material will be provided with an adequate level of protection.

States has also committed itself to cooperate and provide legal assistance and also protect and recover nuclear material for any interested state in the event of theft, seizure, sabotage, or any such threats. The legislation of all the countries participating in the Convention should consider the following actions related to nuclear material as the serious criminal offences, which necessarily involve prosecution or extradition.

There are talking about the features of the Convention on the Physical Protection of Nuclear Material there can't be ignored the existing, but still not adopted by the 2005 Amendment. The Amendment primarily was aimed at strengthening the global anti-terrorist regime, particularly in such areas as nuclear energy. The amendment first of all addresses the issue of combating nuclear terrorism. Thus, significantly expanded the scope of the Convention. For the first time in the new edition as criminal offences added smuggling of nuclear material, and organizing and abetting the Commission referred to in article 7 of the amended Convention offences. Greatly enhanced the measures for rapid response by the communication and provision of comprehensive international assistance in cases of theft of nuclear material.

Overall, the updated Convention modified the mechanisms of cooperation and more rigid the approach of States to prosecute and punish terrorists.

May 8, 2016, after the ratification of the document by 2/3 of the countries parties to the Convention, i.e. 103 out of 152 States, this amendment officially came into force. Thus, it is worth noting that it took more than 11 years.

Amendment to the Convention is a great achievement in the quest around the world to confront the global threat of terrorism.

An important role in the field of use of atomic energy for peaceful purposes is played by the Convention on Nuclear Safety. It was opened for signature on 20 September 1994 and entered into force on 24 October 1996.

The Convention was the first international legal instrument concerning the safety of nuclear installations. Under the «nuclear facilities», according to article 2 of the Convention, means «for each Contracting Party any land-based civil nuclear power plant under its jurisdiction including such storage facilities and installations for treatment and processing of radioactive materials that are on the same site and directly related to the operation of the nuclear power station» (Бюллетень МАГАТЭ, 1987: 33)

The main objectives of the Convention according to article 1 are achieving a high level of nuclear security through stronger national measures and international cooperation; establishing and maintaining in nuclear installations effective means of protection; to prevent accidents with radiological consequences.

The provisions of the Convention on Nuclear Safety determine a number of obligations of States parties and cover all aspects of nuclear safety, including environmental aspects.

In addition, the Convention provides for the adoption by States of measures in the sphere of common security. In particular, States should to:

- ensure that all organizations engaged in activities relating to nuclear facilities, a policy in which priority is given to nuclear safety (article 10);
- ensure the adequacy of financial and human resources necessary to maintain the safety of each nuclear installation (article 11);
- take measures to ensure that the capabilities and limitations of human performance are taken into account throughout the lifecycle of a nuclear installation (article 12);
- implement quality assurance programs «... in order to create confidence in the fact that the requirements for all important for nuclear safety ac-

tivities are performed throughout the life cycle of a nuclear installation» (article 13),

– take measures to ensure the protection of personnel and population against radiation (article 15).

Interesting innovation of the Convention was the provision on the preparation and submission of national reports on the implementation of the Convention (Art. 22). Each state party prepares a national report which is discussed at the review meetings of the Convention, held once every three years (Art. 21 and 22). Thus, the meetings provide an opportunity to exchange experience on nuclear safety.

Closely related to the international nuclear law the emerging international environmental law.

There are talking about the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. This Convention was developed under the auspices of the IAEA, however, the main responsibilities and tasks were on the Agency (The «London Convention», 1972).

In 1958 UN Conference on the law of the sea adopted a Resolution that recommends the IAEA to undertake the necessary research and to take steps to assist countries in monitoring the dumping of radioactive waste at sea.

In 1972 at the UN Conference on environment of particular concern has caused international measures to control emissions to the marine environment and the need to conserve marine resources. In the same year was approved by the London Convention.

The essence of this Convention is to implement the international control of sources of pollution of the marine environment. The Convention identified 3 categories of materials:

1) materials prohibited for discharge into the ocean

2) materials for the discharge of which is necessary to obtain a special permit

3) other wastes and matter, for the discharge of which is necessary to obtain from public authorities an ordinary permit.

It is to the first two items are radioactive materials. In addition, the Convention prohibits the dumping of highly radioactive materials, and the Agency was instructed to identify highly active materials that can't be reset. Also, the IAEA was requested to prepare recommendations concerning the issuance of special permits for the dumping of radioactive materials.

Later, the Agency has developed these recommendations, and they contain a detailed environmental assessment and environmental analysis, as well as requirements that apply to the choice of the location of the dumping of radioactive materials.

However, as emphasized by the Agency, these recommendations should not be construed as encouraging the dumping at sea of radioactive materials.

An important step towards ensuring the peaceful use of atomic energy was the conclusion of a Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water of 5 August 1963 between the Governments of USSR, USA and UK.

In the preamble to the Treaty of 1963, the States parties proclaimed as its main objective the speedy achievement of an agreement on comprehensive and complete disarmament under strict international control in accordance with the UN Charter, which would put an end to the arms race and eliminate the incentive to manufacture and test all kinds of weapons, including nuclear.

According to article 1 of the Agreement each of the parties “ undertakes to prohibit, prevent and not to make any test explosions of nuclear weapons or any other nuclear explosions in any place under its jurisdiction or control: a) in the atmosphere; beyond its limits, including outer space, under water, including territorial waters or high seas; or b) in any other environment if such explosion causes radioactive debris outside the territorial limits of the state under the jurisdiction or control of which produced such an explosion...” (The Partial Test Ban Treaty, 1963).

The Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water of 5 August 1963. It open for signature by all States and it is perpetual.

Conclusion

Thus, all these multilateral Agreements are the main international instruments in the field of regulation of usage nuclear energy for peaceful purposes.

At the regional level within the CIS, the Agreement on basic principles of cooperation in the field of peaceful uses of nuclear energy of 1992, and also the Framework Programme of cooperation of States-participants of the CIS in the field of peaceful use of nuclear energy for the period until 2020 “Cooperation “ATOM-CIS”. These Agreements define the main directions of cooperation, including the principles of trading in nuclear material and technology, which must be based on the guidelines of the IAEA, the Agency’s safeguards, notification and assistance in case of accidents.

Bilateral treaties between the States occupy a special place among the sources of nuclear law. The Republic of Kazakhstan, for example, signed and successfully implemented its own international

agreements of a bilateral nature with foreign States and international organizations. For example, the Agreement on cooperation between the government of the Republic of Kazakhstan and the European atomic energy community (EURATOM) in the field of peaceful uses of atomic energy, signed on 5 December 2005. Similar Agreements Kazakhstan has signed with South Korea, China, Canada, France, India, etc.

These Agreements serve as the legal basis for cooperation in the peaceful uses of atomic energy and are intended to ensure the consolidation of comprehensive cooperation based on mutual benefit, without prejudice to the rights of each of them.

A. I. Iojrish, putting the question of the allocation of the atomic legislation in a special category, notes that “relations associated with the use of nuclear energy has the complex nature. The legal norms governing these relations are divided into domestic (national) law and norms of international law” (Грищенко, 2013: 31).

In the Republic of Kazakhstan regulatory legal act governing activities in the field of nuclear energy is the Law «On nuclear energy use» dated January 12, 2016.

The law defines legal basis and principles of regulation of social relations in the field of use of nuclear energy and is aimed at ensuring the regime of the non-proliferation of nuclear weapons, nuclear, radiological, and nuclear physical security in the use of nuclear energy (Закон РК «Об использовании атомной энергии», 2016).

The law clearly defines the categories of radiation hazard installations and sources of ionizing radiation for the delineation of safety requirements. Introduced specific requirements for enterprises that operate in the field of nuclear energy use, requirements of accounting and control of sources of ionizing radiation, the requirements for protection

of personnel, population and environment, as well as requirements concerning the level of personnel training.

The fact that today’s international legal and domestic fixing of the terms «use of nuclear energy for peaceful purposes» and «use of nuclear energy for exclusively peaceful purposes» does not exist. However, the analysis of international legal sources allowed to determine that the term «for peaceful purposes» means the partial demilitarization, exclusive focus on the development, manufacture, testing, operation and disposal of nuclear weapons and nuclear power installations of military purposes, but allows to supply the electricity to a military facility, if this energy is obtained from nuclear power plant, to use nuclear energy for medical purposes, even if it is a military hospital, etc.

Thus, there was developed the understanding that nuclear energy for peaceful purposes is an activity which is associated with the production of electricity, i.e. the functioning of the so-called nuclear fuel cycle, including extraction of nuclear raw materials; nuclear fuel production; fuel combustion in a nuclear reactor; removing and storing nuclear waste; the use of nuclear energy for agricultural, industrial, scientific, medical and other purposes than military ones. At the same time as non-peaceful, i.e. military use should consider the testing and use of nuclear weapons, the activities of organizations related to the use of nuclear materials and radioactive substances during the work of a defensive nature. This includes the development, manufacture, testing, transportation (carriage), operation, storage, elimination and disposal of nuclear weapons and nuclear power installations of military purposes.

This activity is associated with a special risk to the health and safety of people and the environment. Such risks should be regulated in detail through the creation of effective international legal mechanisms.

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