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NUCLEAR WEAPONS AND INTERNATIONAL CRIMINAL LAW

Abstract. The main goal of this paper is to research the position of nuclear weapons, i.e. their use and threat, under international criminal law. In that sense, the author, after introductory remarks on some of the most relevant technical issues regarding nuclear weapons, as well as a brief overview of the stance of international law in general towards this kind of weapons, focuses on what he calls two levels of possible reaction of international criminal law in relation to them. The first level of reaction, which could be labeled as a more general one, encompasses all the cases in which core international crimes could be committed by the means of nuclear weapons – as such, the legal status of nuclear weapons is essentially not different from the status of any other means (e.g. conventional weapons) through which these crimes could be perpetrated. On the other hand, the second level of possible reaction is the one which would deem the very use of nuclear weapons as a crime *per se*, regardless of the concrete effects of that use. This second level is still only in the domain of *de lege ferenda*. The author concludes that this is unlikely to effectively change in the near future, once again pointing out at the *ultima ratio* character of criminal law – it is the last resort of legal reaction to unlawful behavior and, on the other hand, when it comes to nuclear weapons, the situation is that they are still not absolutely and universally prohibited even by some other branches of law, more "lenient" branches of law, in the first place international humanitarian law.

Key words: Nuclear Weapons, International Criminal Law, International Humanitarian Law, International Criminal Court, War Crimes.

1. INTRODUCTION

During the closing days of World War II, the World entered the nuclear age. The US have dropped two atomic bombs on Japanese cities of Hiroshima and Nagasaki on August 6th and August 9th, respectively. From then on, a list of other powerful countries has developed their own arsenals of nuclear weapons, which are rightly labelled as 'potentially the most destructive weapons ever invented.'[1]

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1 E. V. Koppe /2014/: Use of nuclear weapons and protection of the environment during international armed conflict, in: *Nuclear Weapons Under International Law*, Cambridge, p. 247.

However, given that the knowledge of monstruous destructiveness of these weapons has become apparent from the start, they have very soon become the point of interest of international law. Nevertheless, it is plausible to say that 'the problem of the legality of use of nuclear weapons is one of the most controversial and most complex issues of contemporary international law and international politics.'[2] Therefore, the approach of international law when dealing with them has been in a way multidisciplinary, i.e. fragmentary – a list of branches of international law "has had something to say", directly or, more often, indirectly, about nuclear weapons – namely: *ius ad bellum*, *ius in bello* (international humanitarian law), international environmental law, international human rights law, international disarmament law, as well as international criminal law.[3]

This paper will deal with the lastly mentioned field of international law which, albeit indirectly, has some relevance to the topic of nuclear weapons, namely the possibility of individual criminal responsibility under international law for the use (or threat) of nuclear weapons. It would therefore research the possibility of subsuming the use (or threat) of nuclear weapons under the core international crimes, i.e., the crime of aggression, crime of genocide, crimes against humanity and war crimes.

Before diving into the topic, we would firstly very briefly give some basic technical information about nuclear weapons, which is necessary for their legal analysis. A nuclear weapon could be defined as 'an explosive device whose destructive force results from either nuclear fission chain reactions or combined nuclear fission and fusion reactions.'[4] Depending on the way in which energy is being created, nuclear weapons may be divided into atomic and thermonuclear weapons (so-called hydrogen bombs).[5] Atomic bombs, which could be regarded as "nuclear weapons of first generation", are based on the process of nuclear fission.[6] On the other hand,

2 S. Avramov /2011/, *Međunarodno javno pravo*, Beograd, p. 706.

3 Notwithstanding this, it is true to state that there is a 'massive institutional shortfall and information deficit exists in the accountability of states and individuals when it comes to nuclear threats and strikes': A. J. Colangelo, P. Hayes /2019/, An International Tribunal for the Use of Nuclear Weapons, *Journal for Peace and Nuclear Disarmament*, № 1, p. 219.

4 G. Nystuen, S. Casey-Maslen /2014/: Introduction, in: *Nuclear Weapons Under International Law*, Cambridge, p. 2. The mostly used generic term for determining this kind of weapons is "nuclear" weapons. However, some other authors use the term "atomic" weapons for this purpose, see for example: S. Manojlović /2009/, Međunarodno pravo i dozvoljenost upotrebe atomskog oružja, *Strani pravni život*, № 3, p. 354.

5 G. Nystuen, S. Casey-Maslen, *op. cit*., p. 2. Others list neutron weapons (or 'neutron bombs') as a third category of nuclear weapons (see for example: N. Raičević /2013/: *Zabranjena oružja u međunarodnom pravu*, Niš, p. 113), which they define as a newest type of nuclear weapons, that 'causes significantly less material devastation, but whose radiation results in great human casualties': N. Raičević, *ibid*., p. 114. Nevertheless, it seems correct to class neutron weapons as a subcategory of thermonuclear weapons: G. Nystuen, S. Casey-Maslen, *op. cit*., pp. 2–3.

6 N. Raičević, *op. cit*., p. 113. 'In fission weapons, a mass of fissile material (enriched uranium or plutonium) is turned into a supercritical mass, either by shooting one piece of subcritical material into another (called the 'gun' method), or by using chemical explosives to compress a subcritical sphere of material into many times its original density (the 'implosion' method)': G. Nystuen, S. Casey-Maslen, *op. cit*., p. 3.

thermonuclear weapons, as so-called "nuclear weapons of second generation",[7] use both fission and fusion – the heat generated by a fission bomb is used to compress and ignite a nuclear fusion stage.[8] It is noted that 'thermonuclear weapons typically have a far higher explosive yield than do fission weapons, in the range of megatons rather than kilotons'.[9] The use of nuclear weapon of any type results in three kinds of effects: blast effect, thermal (heat) effect and radioactive effect.[10] Finally, besides the division of nuclear weapons into atomic and thermonuclear, their division into strategic and tactical nuclear weapons might also be of importance for the topic of this paper.[11, 12]

2. BRIEF OVERVIEW OF THE DEVELOPLMENT OF INTERNATIONAL LAW ON THE ISSUE OF NUCLEAR WEAPONS

In positive international law, there is no absolute, universal and, until quite recently, explicit and comprehensive ban on possession, threat and use of nuclear weapons. Nevertheless, 'various international legal regimes place heavy restrictions on *use* of nuclear weapons',[13] with an overall effect that its practical use could be perfectly legal only in some extreme situations, which could more be regarded as only theoretical possibilities. However, at the beginning we shall emphasize that

7 N. Raičević, *op. cit*., p. 114. Certain writers insist on dichotomy of nuclear and thermonuclear weapons, see for example: S. Avramov, op. cit., 706; M. Kreća /2019/, *Međunarodno javno pravo*, Beograd, p. 778. However, for the purposes of this paper, we have opted for a generic term of "nuclear weapons", which would, as we have already seen, encompass both the atomic weapons and thermonuclear weapons. This approach is also in line with relevant documents of international law, that also use the term "nuclear weapons" as a *chapeu* term, without referring to thermonuclear weapons in that manner. For example: Treaty on the Non-Proliferation of *Nuclear* Weapons, ICJ Legality of the Threat or Use of *Nuclear* Weapons Advisory Opinion, Treaty on the Prohibition of *Nuclear* Weapons, etc.

8 G. Nystuen, S. Casey-Maslen, *op. cit*., p. 3.

9 G. Nystuen, S. Casey-Maslen, *ibid*., p. 3.

10 For more on these effects see: N. Raičević, *op. cit*., pp 114–117.

11 There is no universally adopted definition of neither strategic nor tactical nuclear weapons. In essence, tactical nuclear weapons are intended to be used on the battlefield, against the engaged enemy forces and are of a relatively low yield, while other, more powerful nuclear weapons that are envisioned to be used on a more general, wider (i.e. strategic) scale could be classed as strategic nuclear weapons. For different approaches in defining strategic and tactical nuclear weapons, see: D. Sergueyevich Amirov Belova /2021/, Tactical Nuclear Weapons: History, State of Matter, Armaments, and Strategies of the Major Nuclear States, *Journal of the Spanish Institute for Strategic Studies*, № 17, pp. 550–551. However, some authors are of the opinion that the division of nuclear weapons on 'strategic and tactical is a more subtle theoretical attempt by the atomic powers to reconcile the irreconcilable: the atomic weapons and international law': S. Manojlović, *op. cit*., p. 365.

12 More on the facts about nuclear weapons that are or could be relevant to the application of international humanitarian law and, consequently, international criminal law, see: C. J. Moxley Jr., J. Burroughs, J. Granoff /2011/, Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty, *Fordham International Law Journal*, № 4, pp. 603–606.

13 G. Nystuen /2014b/: Conclusions on the status of nuclear weapons under international law, in: *Nuclear Weapons Under International Law*, Cambridge, p. 486.

one must always bear in mind that 'applying the methods of legal thought to the question of whether possession[14] of nuclear weapons is permissible first requires that purely moral arguments against the possession of the means to do evil must be put aside'.[15]

In order to better understand the scope, and especially the limitations of reaction of international criminal law to nuclear weapons, we shall now make a brief recapitulation of the most important points of development of international law in general regarding this issue.

The first phase of the Cold War was marked by the acquisition of nuclear weapons by five states, which were also incidentally five permanent members of the UN Security Council: US (1945), USSR (1949), UK (1952), France (1960) and China (1964).[16] During this period, first efforts to limit and ultimately prohibit nuclear weapons were undertaken in international community.[17] In 1968 the Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty) was signed (came into force in 1970; extended indefinitely in 1995). This treaty 'has generally been regarded as a "grand bargain" in which the non-nuclear weapon states (NNWS) forsake the nuclear option in exchange for a legal obligation on the part of the nuclear weapon states (NWS) to refrain from transferring the weapons to any other states, and to disarm and eventually eliminate their arsenals'.[18] It rests on so-called three pillars: non-proliferation, peaceful use of nuclear energy and disarmament.[19] Non-proliferation treaty does not completely ban the possession and potential threat or use of nuclear weapons; it rather limits the number of states that are legally permitted have them in possession[20] and calls for their gradual nuclear

14 The quoted author here mentions only the possession of nuclear weapons, but it is indisputable that the cited sentence equally applies to their use and threat of use.

15 A. D. Rubin /1984/, Nuclear Weapons and International Law, *The Fletcher Forum*, № 1, p. 47. The same applies to 'purely political arguments about the desirability of possessing nuclear weapons to deter their use by others, or to take revenge, or to increase national prestige or influence': A. D. Rubin, *ibid.*, pp. 47–48.

16 Ž. Novičić /2005/, Nuklearno oružje u međunarodnoj politici, *Međunarodni problemi*, № 4, p. 508. Nuclear weapons were acquired by the People's Republic of China, whilst at the time of their acquisition the Republic of China based on Taiwan held Chinese chair in the UN Security Council.

17 For example, the first of the so-called nuclear weapon-free zones was established by treaty in Antarctica in 1959. Subsequently, some other parts of the world were also declared to be such zones: Latin America and the Caribbean (1967), South Pacific (1985), Southeast Asia (1995), Africa (1996), Central Asia (2006). In addition, the Outer space (1967), Sea-bed (1970) and the Moon (1979) were also declared by respective international treaties to be nuclear weapon-free. For more about the nuclear weapon-free zones see: N. Raičević, *op. cit.*, pp. 148–160; C. Hellestveit, D. Mekonnen /2014/: Nuclear weapon-free zones: the political context, in: *Nuclear Weapons Under International Law*, Cambridge, pp. 347–373.

18 G. Nystuen, T. Graff Hugo /2014/: The Nuclear Non-Proliferation Treaty, in: *Nuclear Weapons Under International Law*, Cambridge, p. 374. In fact, the Non-Proliferation Treaty is a 'typical example of international treaty in which parties do not have the same rights and obligations. The scope of rights and obligations of states depends on the fact whether it possesses nuclear weapons or not': N. Raičević, *op. cit.*, p. 136.

19 See more on this in: G. Nystuen, T. Graff Hugo, *op. cit.*, pp. 386–392.

20 'For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967' (art. 9 (3) of the Treaty). Therefore, China was the last state to acquire nuclear weapons according to this Treaty.

disarmament.[21] Although the Treaty, and particularly its disarmament clauses have been subjected to justifiable criticism,[22] it is also relatively true that it 'has played, and continues to play, a crucial role in limiting nuclear arsenals in the world, and in limiting the number of states that have access to these weapons'.[23]

One more important aspect in regulation of the issues concerning nuclear weapons by international law is the issue of nuclear tests. Namely, it has very early become apparent that 'in contrast to other weapons whose testing does not infringe the interests of other states, the testing of nuclear weapons leads to detrimental consequences for neighboring states and international community as a whole'.[24] Thus international law has made attempts to limit, and then to completely eradicate the practice of conducting nuclear tests on universal level.[25] In that regard, in 1963 a Treaty Banning Nuclear Tests in the Atmosphere, in Outer Space and Under Water was signed in Moscow (came into force the same year). As we can see, this treaty imposed only partial ban on conducting nuclear tests, which was the reason, *inter alia*, for opening for signature the Comprehensive Nuclear-Test-Ban Treaty in 1996.[26] The provisions of this treaty explicitly 'prohibit the states from conducting all nuclear experiments, both in military, and in peaceful purposes'.[27] Nevertheless, this treaty has not yet come into force.[28]

The end of the Cold War again brought to light the question of legality of nuclear weapons. In this sense, of particular importance is the 1996 Advisory Opinion of the International Court of Justice (ICJ) on the Legality of the Threat or Use of

21 See art. 7 of the Treaty.

22 For example, it has been noted that the Treaty is 'too lax and does not provide a specific time frame for nuclear disarmament': C. Vail /2017/, The Legality of Nuclear Weapons for Use and Deterrence, *Georgetown Journal of International Law*, p. 841. Also, it has been pointed out that 'it has been generally accepted that the regime of non-proliferation of nuclear weapons has become static, which makes it an inadequate answer to contemporary challenges': R. Jauk /2013/, Neširenje nuklearnog oružja i suvremeno međunarodno pravo, *Pravnik*, № 1, p. 129.

23 G. Nystuen, T. Graff Hugo, *op. cit*., pp. 392–393. Up to now, all the member states of the UN except India, Pakistan, Israel and North Korea (which withdrew from the Treaty in 2003) are states parties to the Non-Proliferation Treaty. Data provided according to the Office for Disarmament Affairs Treaties Database website: https://treaties.unoda.org/t/npt/participants, last access 12th August 2025. One can notice that these four states are also states that possess nuclear weapons.

24 N. Raičević, *op. cit*., p. 139.

25 Bans on conducting nuclear were also imposed on regional levels, within the frameworks of certain nuclear-free zones, see supra note 17.

26 For detailed history, overview and effects of the Comprehensive Nuclear-Test-Ban Treaty see: D. Mackay /2014/: The testing of nuclear weapons under international law, in: *Nuclear Weapons Under International Law*, Cambridge, p. 299–305.

27 N. Raičević, *op. cit*., p. 142.

28 Up to this date, the Treaty has been ratified by 178 states (source: United Nations Treaty Collection website: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVI-4&chapter=26&clang=_en, last access: 3rd August 2025). However, it has not entered into force even though an overwhelming majority of the states of international community have ratified it because the special status has been given to forty-four states that possessed a nuclear reactor or a nuclear research reactor at the time of their participation in negotiations regarding the Treaty – in order for the Treaty to come into force, all of those forty-four states need to ratify it, which has yet happened. For more see: D. Mackay, *op. cit*., pp. 300–301.

Nuclear Weapons.[29] The Court did not deem the use or threat of use of nuclear weapons as absolutely illegal.[30] It has concluded that 'the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law',[31] but also the following: 'However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstances of self-defence, in which the very survival of a State would be at stake'.[32] We shall deal with the relevant parts of the Advisory opinion in more detail in the subsequent parts of this paper, dedicated to the possibility of committing international crimes by the means of nuclear weapons. In this place, we would only mention that, since it was issued, the Advisory opinion has been subjected to criticism from various aspects.[33] In general, it could be said that 'the opinion of the Court is burdened with indeterminacy and ambivalence which stems from an exaggerated formalist approach'.[34]

Until recently, there has been no international treaty that explicitly prohibited the use and threat of nuclear weapons. That fact gave nuclear weapons the place unique among the group of three kinds of weapons labelled as "weapons of mass destruction",[35] the other two being biological and chemical weapons.[36] However, in 2017 a Treaty on the Prohibition of Nuclear Weapons was signed and came into

29 *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226 (in further text: *Legality of Nuclear Weapons*). For detailed account on the genesis of the case and proceedings before the ICJ, see: M. N. Schmitt /1998/, The International Court of Justice and the Use of Nuclear Weapons, *Naval War College Review*, № 2, pp. 92–97.

30 Nevertheless, some authors point out that the 'discourse of the Court is such that a clear odium is observed in connection to the eventual use of these weapons': S. Ganić /2017/, Da li savremeno međunarodno pravo ima odgovor na izazov zvani nuklearno oružje?, *Pravni život*, № 12, p. 352.

31 *Legality of Nuclear Weapons*, *dispositif*, point E, para. 1.

32 *Legality of Nuclear Weapons*, *dispositif*, point E, para. 2.

33 Even the judges themselves were deeply divided on the most important question – whether the threat or use of nuclear weapons would generally be contrary to the rules of international humanitarian law – the vote was seven-seven, with the president's "golden vote" finally deciding the issue: M. J. Matheson /1997/, The Opinions of the International Court of Justice on the Threat or Use of Nuclear Weapons, *The American Journal of International Law*, № 3, p. 418.

34 M. Kreća, *op. cit*., p. 780. Some other authors are a considerably harsher, stating that the advisory opinion 'was not in accordance with then valid rules of international law', and that it is an 'indicator of court's policy': B. Milisavljević /2024/, *Međunarodno humanitarno pravo*, Beograd, p. 171.

35 The "weapons of mass destruction", when used, are unable to be controlled, their effects cannot be limited, neither spatially nor in time, and their use leads to a mass-destruction of all living beings and disproportionate destruction in relation to the goal that one aims to achieve: S. Avramov, *op. cit*., p. 704.

36 International humanitarian law traditionally considers these three groups of weapons to fall within the scope of weapons of mass destruction: B. Milisavljević, *op. cit*., p. 165. Both biological and chemical weapons are explicitly prohibited by (almost universal) multilateral international treaties – see the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (signed in 1972; entered into force in 1975) and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (signed in 1993; entered into force in 1997).

force (2021).[37] The Treaty, *inter alia*, stipulates a total and comprehensive ban on 'developing, testing, producing, manufacturing, otherwise acquiring, possessing or stockpiling nuclear weapons or other nuclear explosive device'[38] as well as on 'using or threatening to use nuclear weapons or other nuclear explosive devices'.[39] Furthermore, the Treaty provides a comprehensive system for nuclear disarmament of nuclear-weapon states, should they decide to become parties of it.[40] In legal theory, it is emphasized that this treaty "should not be interpretated as the one opposed to the Non-Proliferation Treaty, nor as an instrument of building of a parallel legal regime regulating nuclear weapons',[41] but as just 'one more evolutive step towards the world without nuclear weapons'.[42] However, it is correctly noted that the main disadvantage of the Treaty on the Prohibition of Nuclear Weapons is its particularity, given the fact that states that do possess these weapons and are not parties of the Treaty would still have a possibility to act in accordance with general rules that exist universally.[43]

3. INTERNATIONAL CRIMINAL LAW REACTION TO NUCLEAR WEAPONS

Regarding the use or threat of nuclear weapons, two levels of international criminal law reaction are possible.[44] The first level, which can be labelled as a general one, deals with the possibility of committing any of the core international crimes by the means of nuclear weapons. In this sense, the use of nuclear weapons is essentially not different from the use of any other weapon as the means of commission of concrete international crime. For example, murder as the crime against humanity would exist in legally equal terms both in the case when it was committed with some conventional weapon (e.g. a gun), or when it was committed using a nuclear weapon.

The second level of international criminal law reaction to nuclear weapons is concerned with the eventual criminal nature of the use (or eventually threat of use) of nuclear weapons *per se*. In other words, it deals with the issue of whether the

37 Until now there are 73 states parties to this treaty, most of them from the regions of Latin America and the Carribean, Africa and Southeast Asia and Pacific. Source: website of United Nations Office for Disarmament Affairs Treaties Database, https://treaties.unoda.org/t/tpnw/participants, last access 31st July 2025.

38 Art. 1 (1) (a).

39 Art. 1 (1) (d).

40 See Art. 4 of the Treaty. Moreover, Arsić notes that 'the Treaty on the Prohibition of Nuclear Weapons was seen...as a kind of a pressure directed against the states which possess nuclear weapons to eliminate it': K. Arsić /2024/, Ugovor o zabrani nuklearnog oružja – položaj, primena i značaj, *Srpska politička misao*, № 4, p. 49.

41 N. Stanković /2021/, Analiza i domašaji Ugovora o zabrani nuklearnog oružja, *Arhiv za pravne i društvene nauke*, № 2, p. 165.

42 N. Stanković, *ibid*., p. 165.

43 B. Milisavljević, *op. cit*., p. 173.

44 Until now, no international criminal trial dealt with the issue of use of nuclear weapons in any way.

very use of nuclear weapons, regardless of the effects of that use *in concreto*, could be regarded as an independent core international crime, namely a war crime. In the following pages we would address these two levels of (possible) reaction of international criminal law to nuclear weapons.

3.1. Nuclear Weapons and the Crime of Aggression

Of all the four core international crimes, the crime of aggression is perhaps the most controversial and contentious one. Its legal predecessor was the incrimination of "crimes against peace" contained in the charters of International Military Tribunal in Nuremberg (IMTN)[45] and International Military Tribunal for the Far East (IMTFE, the so-called Tokyo Tribunal).[46] The incrimination of crimes against peace, subsequently affirmed in the so-called Nuremberg principles,[47] has since then largely become part of general international customary law.

However, within the international legal framework of UN, during the second half of twentieth century there have been numerous attempts to create a new crime which would cover the matter of individual criminal responsibility for unlawful use or threat of force in international relations in a more comprehensive way than the crimes against peace did. This new crime was labelled a "crime of aggression" and was as such included within the jurisdiction of ICC in the original text of the Rome Statute in 1998, while its definition and elements, as well as the special jurisdictional regime, were added to the text in 2010 at the Kampala Conference, with the ICC's jurisdiction over the crime of aggression finally being activated in 2018.[48]

According to art. 8*bis* (1) of the Rome Statute, the crime of aggression 'means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.' The following paragraph (2) of the same article defines the "act of aggression" as 'the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations', and then proceeds with an enumeration of concrete acts of aggression, which are transplanted into the Rome Statute from the UN General Assembly Resolution 3314 (XXIX) of December 14th 1974. The following of those acts are particularly relevant for the topic of this paper: (a) The invasion or attack by the armed forces of a State of the territory of another State...; (b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State; (e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their

45 See art. 6 (2) (a) of the IMTN Charter.

46 See art. 5 (1) (a) of the IMTFE Charter.

47 See Principle VI (1) (a).

48 For a more detailed analysis of the development of the crime of aggression in international criminal law, see: A. Škundrić /2022/, *Agresija kao zločin protiv mira*, master rad, Beograd, pp. 3–62.

presence in such territory beyond the termination of the agreement; (f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State.

It is beyond any doubt that a nuclear-weapon state could commit one of the aforementioned acts of aggression through the use of nuclear weapons against an another state.[49] Namely, the UN Charter generally bans the use and threat of force in international relations,[50] without expressively mentioning any particular weapons by means of which such a use of force materialized.[51] However, not every use of force contrary to the said prohibition would constitute an act of aggression and, consequently, lead to criminal responsibility for the crime of aggression. In order for the certain act of aggression to potentially give rise to the crime of aggression, the act of aggression needs to fulfill the criteria of being, by its character, gravity and scale, a manifest violation of the Charter of United Nations. When such a use of nuclear weapons would meet this requirement is not completely clear,[52] and must be determined on a case-to-case basis. It can only be said that, given the extremely lethal and destructive nature of nuclear weapons, in the case of their use it would generally be easier to conclude that the required threshold of 'manifest violation of the UN Charter' has been met, than in the cases of commission of an act of aggression by other means, e.g. conventional weapons.

There are effectively two exceptions from the prohibition of threat or use of force stipulated by the UN Charter: 1. authorization of use of force by the UN Security Council under the Chapter VII of the Charter, 2. self-defense (individual and collective).

If a nuclear-weapon state, which acts in accordance with the resolution of the UN Security Council by the means of which it was authorized to use armed force, and, *inter alia*, its nuclear weapons, against an another state which has made an infringement of international peace, uses nuclear arsenal at its disposal, its leadership could not be held accountable for the crime of aggression under the norms of the Rome Statute. This is so because such an act of use of force by that state did not, under *ius ad bellum*, constitute an act of aggression. This does not mean that the leadership of the said state could not be held criminally accountable for other crimes which might be committed through this particular use of nuclear weapons, including other core international crimes.

The situation with the right of self-defense of the states is somewhat more complicated. As it was rightfully pointed out by ICJ, 'the submission of the exercise of the right of self-defence to the conditions of necessity and proportionality

49 Moreover, 'at the present moment, perhaps the most immediate violation of international law occupying the world's population when it comes to the use of nuclear weapons is the crime of aggression': A. J. Colangelo, P. Hayes, *op. cit*., p. 224.

50 See art. 2 (4) of the Charter.

51 The similar note has been made by the ICJ, when it stated that the relevant provisions of the Charter 'do not refer to specific weapons. They apply to any use of force, regardless of the weapons employed...': *Legality of Nuclear Weapon*s, para. 39.

52 The 'manifest violation of the UN Charter' criterium was perhaps the element of the 2010 adopted definition of the crime of aggression which was subjected to the most severe doctrinal criticism. For more detail see: A. Škundrić, *op. cit*., pp. 70–77.

is a rule of customary international law'.[53] Therefore, the use of force by a state in self-defense would not be considered unlawful as long as it fulfills, *inter alia*, these two conditions and could not consequently amount to an act of aggression.[54] In that sense, as far as *ius ad bellum* is concerned, the use of nuclear weapons in self-defense would not be unlawful as long as it fulfills all the conditions for a legal self-defense.[55] However, a state that resorts to such a use of nuclear weapons in self-defense must nevertheless use these weapons according to the rules of *ius in bello* (international humanitarian law).[56] Thus it comes as a surprise the conclusion of the ICJ in which it stated that

> 'it cannot reach a definitive conclusion as to the legality or illegality of the use of nuclear weapons by a State in an extreme circumstance of self-defence, in which its very survival would be at stake.'[57]

This paragraph is the part of the 1996 Advisory opinion that has perhaps been debated the most since it was published.[58] This is so because, by its wording, the Court has created somewhat of a confusion between the *ius ad bellum* and *ius in bello*, which it has differentiated elsewhere quite clearly.[59] In this sense, it is stated that the Court has, 'by failing to provide an answer about the legality of use of nuclear weapons in the "extreme circumstances of self-defense, in which the very survival of a state would be at stake", in a way, diminished the obligation to respect IHL in the case of self-defense'.[60] On the other hand, there are those who think

53 *Legality of Nuclear Weapons*, para. 41.

54 In this sense, Hayashi underlines that 'the prospects of *jus ad bellum* comprehensively outlawing use of nuclear weapons appear distinctly limited. This limitation emanates from the fact that *jus ad bellum* concerns itself with the function of force rather than its form, and that the possibility of nuclear weapons being used in compliance with necessity and proportionality cannot be ruled out in all conceivable circumstances.': N. Hayashi /2014a/: Using force by means of nuclear weapons and requirements of necessity and proportionality *ad bellum*, in: *Nuclear Weapons Under International Law*, Cambridge, p. 30.

55 In that sense, the ICJ determined that 'the very nature of all nuclear weapons and the profound risks associated therewith are further considerations to be borne in mind by States believing they can exercise a nuclear response in self-defence in accordance with the requirements of proportionality': *Legality of Nuclear Weapons*, para. 43.

56 This was also enshrined by the ICJ: 'The proportionality principle may thus not in itself exclude the use of nuclear weapons in self-defence in all circumstances. But at the same time, a use of force that is proportionate under the law of self-defence, must, in order to be lawful, also meet the requirements of the law applicable in armed conflict which comprise in particular the principles and rules of humanitarian law': *Legality of Nuclear Weapons*, para. 42.

57 *Legality of Nuclear Weapons*, para. 97.

58 Moreover, it is recorded that also among the judges of the ICJ 'the greatest apparent division was over the core finding that the use of nuclear weapons would be illegal except perhaps in the extremity of self-defense': M. Schmitt, *op. cit*., p. 107. Doctrine also points out that 'what the Court meant by the "very survival of a State" is not clear; for example, whether it refers to the political survival of the government of a state, the survival of the state as an independent entity, or the physical survival of the population': M. J. Matheson, *op. cit*., p. 430.

59 See e.g. *Legality of Nuclear Weapons*, para. 42.

60 N. Raičević, *op. cit*., p. 135. The cited author further asks 'if, by the means of analogy, a state that does not possess nuclear weapons and whose survival is at stake, could use in self-defense chemical or biological weapons, or conventional weapons in an illegal manner': N. Raičević, *ibid*., p.

that the interpretation of the paragraph in question, according to which the Court meant that 'the rules of international humanitarian law themselves – particularly the rule of proportionality – allow the weighing of the importance of preserving a state against the very severe damage, injury and suffering that may result',[61] would 'clearly be more consistent with the logic of the rules of armed conflict and the concept of humanitarian law.'[62]

Without further entering what the Court precisely meant when invoking 'the extreme circumstances of self-defence', it seems to that correct legal conclusions on the matter are still straight-forward. Firstly, when it comes to the relationship between *ius ad bellum* and *ius in bello*, 'in spite of inconsistencies in recent state practice, there is ample evidence in both treaty law and customary international law for the existence of the separation principle and its corollary, the equal application of IHL to all parties to a conflict.'[63] Secondly, '*jus ad bellum* is not weapon-specific',[64] so, in the realm of this part of international law, the use of any type of weapon might be lawful if it fulfills the prescribed conditions, e.g. for self-defense. And thirdly, a 'state's inherent right to self-defence cannot override IHL rules'.[65] Therefore, we can conclude that the use of nuclear weapons by a state in self-defense would not be, from the point of view of *ius ad bellum*, unlawful and would not represent an act of aggression that could lead to the individual criminal responsibility of the leadership of the said state for the crime of aggression, as long as it fulfills the conditions for the exercise of the right to self-defense.[66]

135. Some other authors similarly remark that 'the Court therefore appeared to leave open the vexing question of whether a state could lawfully justify its use of nuclear weapons – even when such use violated *jus in bello* – by reference to "an extreme circumstance of self-defence." ': J. Moussa /2014/: Nuclear weapons and the separation of *jus ad bellum* and *jus in bello*, in: *Nuclear Weapons Under International Law*, Cambridge, p. 59. Also in that sense: 'Even though the Court thus declared a *non liquet* as it refrained from giving a definite answer regarding the question of legality, the implication of the statement is that use of nuclear weapons contrary to IHL might still be lawful in extreme circumstances of self-defence.': G Nystuen /2014a/: Threats of use of nuclear weapons and international humanitarian law', in: *Nuclear Weapons Under International Law*, Cambridge, p. 150.

61 M. J. Matheson, *op. cit*., p. 430.

62 M. J. Matheson, *ibid*., p. 430. The quoted author then continues: 'Specifically, humanitarian law attempts to limit the infliction of damage and suffering to that which is genuinely required to accomplish legitimate military objectives. It does not pretend that legitimate self-defense may not entail very severe and lamentable human suffering. It is in this sense that the Court properly could not, in the abstract, conclude that the threat or use of nuclear weapons would or would not be lawful in such an extreme situation': M. J. Matheson, *ibid*., p. 430.

63 J. Moussa, *op. cit*., p. 77. Namely, it is 'precisely in an extreme situation of self-defence (or aggression, for that matter) that the rules of IHL are meant to apply, in order to protect those not taking part in hostilities and regulate the actual conduct of hostilities': G. Nystuen /2014a/, *op. cit*., p. 150.

64 N. Hayashi /2014b/: Legality under *jus ad bellum* of the threat of use of nuclear weapons, in: *Nuclear Weapons Under International Law*, Cambridge, p. 58.

65 S. Casey-Maslen /2014a/: The use of nuclear weapons under rules governing the conduct of hostilities, in: *Nuclear Weapons Under International Law*, Cambridge, p. 94.

66 In that sense, we must deem the conclusion to which some authors arrive, that 'it does seem clear that the possession of nuclear weapons and their use *in extremis* and in strict accordance with the criteria governing the right to self-defense are not prohibited under international law' (M. Shaw /2003/, *International Law*, Cambridge, p. 1067), as somewhat imperfect – such a statement would

Any use or threat of use of force (including the use of nuclear weapons) in international relations which cannot be subsumed under the mentioned two exceptions provided for by the UN Charter is therefore unlawful under international law and could amount to an act of aggression, that can in turn amount to a crime of aggression under the Rome Statute if the act of aggression is by its character, gravity and scale a manifest violation of the UN Charter. Therefore, the use of nuclear weapons in the so-called humanitarian interventions or similar situations could also represent an act of aggression and, if the relevant conditions are met, the crime of aggression.[67]

Ending our discussion on the possibility of committing the crime of aggression by the means of nuclear weapons, we must also point out that our considerations and conclusions are mostly of purely theoretical nature. Namely, of all the states that currently own nuclear weapons, only two are the member states of the Rome Statute (UK and France). However, neither of them has ratified or otherwise accepted the Kampala amendments regarding the crime of aggression. Moreover, there exists a specific regime of jurisdiction of the ICC for the crime of aggression, compared to its general jurisdictional regime which is applicable to other three core international crimes. According to it, in order for the ICC to have jurisdiction over the particular crime of aggression, both the aggressor state and the victim state must be state-parties to the Rome Statute and must have ratified or otherwise accepted the Kampala amendments.[68] Therefore, it is currently almost impossible for the ICC to try any individuals for the alleged commission of the crime of aggression, because virtually none of the states that possess such weapons and could potentially commit

only be true if the cited author has, instead of words 'international law', written the words '*ius ad bellum*' or a synonymous construction. This is so because such a use of nuclear weapons, which might as well be completely lawful from the aspect of *ius ad bellum*, could still be contrary to the international law from the aspect of *ius in bello* (international humanitarian law).

67 In this sense, although the cautious attitude of some authors is very likely justified (e.g., Stojanović notes that the requirement of "manifest violation" of the UN Charter 'leaves room for those who commit aggression to continue to invoke "humanitarian intervention", protection of human rights and similar reasons, thereby making their act a contentious one from the aspect of the said requirement and, therefore, beyond its reach': Z. Stojanović /2012/, *Međunarodno krivično pravo*, Beograd, p. 114), from a strictly legal point of view, it seems that, as far as the so called „humanitarian intervention" is concerned, the situation is clear. Namely, the use and threat of use of force are generally prohibited by the *ius cogens* norm of international law, contained in the UN Charter as a universal international treaty. Any exception to such an imperative rule of international law must also belong to *ius cogens* and must also be part of treaty law (i.e. written law, *lex scripta*), not customary law. This is because it is impossible for an international custom to emerge *contra legem*, given the fact that it would require an appropriate state practice, which would in turn be in violation of the existing written *ius cogens*, and therefore unlawful (in this sense, see: M. Kreća, *op. cit*., p. 199). As there has been no such an amendment of the Charter to include humanitarian intervention as a third lawful exception from the general prohibition of use and threat of force, we can conclude that such a right of the states does not exist at all. In that sense, Škulić correctly concludes that 'the conception of "humanitarian intervention" by the means of using an armed force against another state, in its essence represents a type of a camouflaged aggression': M. Škulić /2024/: Humanitarna intervencija i odgovornost za zaštitu (R2P koncept) u kontekstu međunarodnog krivičnog prava, in: *Odnos međunarodnog krivičnog i nacionalnog krivičnog prava*, Vol. 1, Beograd, p. 46.

68 See more in: A. Škundrić, *op. cit*., pp. 119–120.

and act of aggression by using them have ratified or otherwise accepted the Kampala amendments.[69, 70]

3.2. Nuclear Weapons and Genocide

Genocide has been famously labelled as "crime of crimes", or as a most serious, "capital crime".[71] It has been firstly codified in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, whose 'most important substantive provisions have gradually become part of customary international law'[72] and were as such also included in the text of the Rome Statute.[73]

Nuclear weapons, when used with intent to destroy, in whole or in part, a certain national, ethnical, racial or religious group as such, could constitute a crime of

69 However, even here some exceptions are possible. Namely, it is possible that a certain nuclear-weapon state deploys its nuclear weapons on the territory of its ally, which is a non-nuclear weapon state. If in such a constellation these weapons are used contrary to the UN Charter, than a leadership of the non-nuclear weapon state which has provided its territory to its ally to deploy its nuclear weapons, could be held individually criminally responsible by the ICC, in relation to the act of aggression prescribed by the art. 8*bis* (2) (f) of the Rome Statute, provided that the state in question, as well as the victim state, are both the state parties to the Rome Statute and of the Kampala amendments. Even more complicating situation could arise in the case of the so-called 'nuclear sharing' concept, developed within the framework of NATO. Namely, 'NATO's nuclear deterrence relies in part on US nuclear weapons being forward deployed in Europe and on capabilities and infrastructure provided by allies. In particular, this concerns the fielding of DCA fleets in the air forces of Belgium, Germany, Italy and the Netherlands that are able to jointly deliver US nuclear weapons': A. Mattelaer /2021/: Nuclear Sharing and NATO as a 'Nuclear Alliance', in: *Alliances, Nuclear Weapons and Escalation: Managing Deterrence in the 21st Century*, Acton, pp. 124–125. The nuclear sharing concept presupposes the involvement of non-nuclear weapon-states in *using* the nuclear weapons provided by their allies. What makes this problematic even more legally interesting is that all of the four listed states (Belgium, Germany, Italy and the Netherlands) are members states of the Rome Statute and have ratified the Kampala amendments on the crime of aggression. Therefore, in a potential case of the joint-use of these weapons by the US and one of these states, their leadership could be held criminally accountable for committing the crime of aggression, if the said use of nuclear weapons would represent an act of aggression which is in its character, gravity and scale a manifest violation of the UN Charter and if they were used against the state which is a member of the Rome Statute and has also ratified the Kampala amendments. In any case, any notion of the eventual criminal responsibility of the US leadership for such an act is excluded, given the fact that the US is not the member state of the Rome Statute.

70 Theoretically, it is also formally possible for the ICC to exercise jurisdiction for the alleged crime of aggression committed by the use of nuclear weapons in one more case. Namely, it stems from art. 15*ter* of the Rome Statute that when the UN Security Council reports a situation in which it appears the a crime of aggression has been committed, then the ICC could exercise its jurisdiction for that crime regardless of the question whether the aggressor and the victim state have ratified the Kampala amendments, or even regardless the fact if they are the member states of the Rome Statute: A. Škundrić, *op. cit*., p. 123. Practically, this is unlikely to happen, given the fact that most of the nuclear powers are the states that are the permanent members of the UN Security Council with a power of veto, and that the rest of nuclear-weapon states have strong relations, even amounting to alliances, with them.

71 M. Škulić /2020/, *Međunarodno krivično pravo*, Beograd, p. 240.

72 A. Kaseze /2005/, *Međunarodno krivično pravo*, Beograd, p. 112.

73 See art. 6 of the Rome Statute.

genocide. In this regard, they can be used to perpetrate the following acts of commission of the crime:[74] (a) killing members of the group, (b) causing serious bodily or mental harm to members of the group, or (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part.[75] It is noted that 'depending on the nature, extent and level of geographical concentration of the relevant group, it is conceivable that an attack using a nuclear weapon with a sufficiently large footprint of effect may indeed have the capacity to destroy a substantial part of such a group'.[76]

However, not every use of nuclear weapons would as such constitute the crime of genocide. The key condition is that the acts of commission, e.g. killing, were committed with the specific intent (*dolus specialis*), aimed at the destruction of a certain protected group as such. Namely, 'it must be demonstrated that use of a nuclear weapon sought to target a defined "national, ethnical, racial or religious group, as such."'[77] In other words, the use of nuclear weapons which has in some imaginary example inflicted numerous civilian casualties *per se* is not enough to automatically conclude that the crime of genocide has been committed – it must be proven that such use was committed with a mentioned specific intent.[78] Where no such intent could be established, a genocide could not be established neither.[79]

3.3. Nuclear Weapons and Crimes Against Humanity

Stacey-Maslen reminds that since 1991, the UN General Assembly has regularly in its relevant resolutions reaffirmed the claim that 'the use of nuclear ... would be a crime against humanity'.[80] However, the cited author then immediately correctly underlines that 'as with genocide, however, a given use of a nuclear weapon may constitute a crime against humanity, but will not necessarily do so'.[81]

74 More on possibilities of perpetration of alternatively prescribed acts of commission of the crime of genocide by the means of nuclear weapons, see in: S. Casey-Maslen /2014b/: Using of nuclear weapons as genocide, a crime against humanity or a war crime, in: *Nuclear Weapons Under International Law*, Cambridge, pp. 195–201.

75 It has been noted that, pertaining the alternatively prescribed act of commission in the point (c), the radioactive fallout provoked by a nuclear strike could also be considered as being relevant: S. Casey-Maslen /2014b/, *op. cit*., p. 196.

76 W. H. Boothby, W. H. von Heinegg /2022/, *Nuclear Weapons Law*, Cambridge, p. 172.

77 S. Casey-Maslen /2014b/, *op. cit*., pp. 197–198.

78 As Schabas correctly points out, 'what sets genocide apart from crimes against humanity and war crimes is that the act, whether killing or one of the other four acts defined in Article 6, must be committed with the specific intent to destroy in whole or in part a national, ethnical, racial or religious group as such': W. A. Schabas /2001/, *An Introduction to the International Criminal Court*, Cambridge, p. 31.

79 The ICJ has provided us with the similar reasoning: "the Court would point out in that regard that the prohibition of genocide would be pertinent in this case if the recourse to nuclear weapons did indeed entail the element of intent, towards a group as such...In the view of the Court, it would only be possible to arrive at such a conclusion after having taken due account of the circumstances specific to each case": *Legality of Nuclear Weapons*, para. 26.

80 S. Casey-Maslen /2014b/, *op. cit*., p. 202.

81 S. Casey-Maslen /2014b/, *ibid*., p. 202.

Nuclear weapons could of course be used as a means of committing the crimes against humanity, of which, naturally, the acts of murder[82] and extermination[83] seem to be the most relevant ones.[84] Nevertheless, in order for such acts to amount to crimes against humanity, they need to fulfill the so-called contextual elements – they need to be perpetrated as a part of a 'widespread or systematic attack directed against any civilian population[85]',[86] and with the knowledge of such attack.[87] Doctrine explains that the function of the construction of 'widespread and systematic' conduct is to 'descriptively give the contours of a general context, to indicate that the crime against humanity is a mass crime, to eliminate the isolated, sporadic acts that, however brutal, are not the result of a policy or plan, and to leave room for an individual to be responsible even for a single act of violence if it fits in the general context'.[88]

Having the very nature of nuclear weapons in mind, it is beyond any doubt that their concrete use could satisfy the required *chapeau* elements of the crimes against humanity. Namely, in its jurisprudence, the ICC has determined that the term "widespread" supposes the 'large-scale nature of the attack and large number of targeted persons',[89] while the term "systematic" 'reflects the organised nature of the acts of violence and the improbability of their random occurrence'.[90]

The use of nuclear weapons against population centers could easily fulfill those requirements and make the person who used them criminally responsible under the provision of crimes against humanity.[91] However, it could also be possible to

82 Art. 7 (1) (a) of the Rome Statute.

83 Art. 7 (1) (b) of the Rome Statute.

84 Moreover, when accompanied with a specific, so-called discriminatory intent, the use of nuclear weapons *in concreto* could also amount to a crime against humanity of persecution. Namely, "persecution" means the 'intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity' (art. 7 (2) (g) of the Rome Statute). According to this formulation, the relevant deprivation of fundamental rights 'could refer to, for example, the right to life' (B. Ristivojević /2014/, *Međunarodna krivična dela* – deo I, Novi Sad, p. 135), and could, *inter alia*, be committed through the use of nuclear weapons.

85 It has been further stipulated that "attack directed against any civilian population" means 'a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack' (Art. 7 (2) (a) of the Rome Statute).

86 See art. 7 (1) of the Rome Statute.

87 See Elements of Crimes, Article 7 Crimes against humanity, Introduction (2).

88 T. Šurlan /2011/, *Zločin protiv čovečnosti u međunarodnom krivičnom pravu*, Beograd, p. 266.

89 See: *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07, Trial Judgment, 7 March 2014, para. 1123; The *Prosecutor v. Jean-Perre Bemba Gombo*, ICC-01/05-01/08, Trial Judgment, 21 March 2016, para. 163; *The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06, Trial Judgment, 8 July 2019, para. 691; *The Prosecutor v. Dominic Ongwen*, ICC-02/04-01/15, Trial Judgment, 4 February 2021, para. 2681; *The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud*, ICC-01/12-01/18, Trial Judgment, 26 June 2024, para. 1113.

90 See: *Katanga*, para. 1123; *Ntaganda*, Trial Judgment, para. 692; *Ongwen*, para. 2682; *Al Hassan*, para. 1114.

91 A possible legal problem might arise in the case of just one nuclear strike against, e.g., a major city. In this case, it would be easy to conclude that an attack has been directed against the civilian population, that it has been of a large scale and targeted a large number of persons, as well as that it was organized. However, the Rome Statute itself also stipulates that, the attack directed against any civilian population, *inter alia*, means a course of conduct involving the *multiple commission*

use nuclear weapons without that use being qualified as a crime against humanity. A theoretical example is the use of so-called tactical nuclear weapons solely against enemy forces in an environment where no civilian population is present (e.g. desert or high seas). A more complicated situation would be the use of nuclear weapons against a military target, where there are certain civilian casualties, but where these casualties could be deemed 'incidental'.[92] Therefore, whether the use of a nuclear weapon *in concreto* represents a crime against humanity or not has to be determined with due consideration of the relevant circumstances of a particular case.

3.4. Nuclear Weapons and War Crimes

There are two main groups of situations in which the use of nuclear weapons can amount to the commission of a war crime. The first group of situations are those in which some forms of war crimes could also be committed by other means, i.e. other weapons, and not only by nuclear weapons. The second situation, still in the *de lege ferenda* phase, is the one in which the use of nuclear weapons *per se* is a war crime, regardless of the effects of that use.[93]

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of acts (italics A. Š.) referred to in art. 7 (1) of the Statute. On the other hand, in relation to the first act in the list of alternatively prescribed acts of commission of the crimes against humanity – i.e. murder, which is most likely to be committed by the means of nuclear weapons – the Elements of Crimes stipulate that it covers situations in which 'the perpetrator killed one *or more persons* (italics A. Š.)' (Element 1 to art. 7 (1) (a)).

According to the ICC's practice, the requirement that the acts form part of a 'course of conduct' indicates that Article 7 is meant to cover a series or overall flow of events, as opposed to a mere aggregate of random or isolated acts' (*Ongwen*, para. 2674; *Al Hassan*, para. 1105), while 'the "multiple commission of acts" sets a quantitative threshold involving a certain number of acts falling within the course of conduct' (*Ongwen*, para. 2674; *Al Hassan*, para. 1105). Finally, the ICC admitted that 'a single incident or operation in which *multiple crimes* (italics A. Š.) are committed could amount to a crime against humanity provided that the relevant contextual elements are met' (*The Prosecutor v. Bosco Ntaganda*, ICC-01/04-02/06 A A2, Appeal Judgment, 30 March 2021, paras. 381, 431).

Some other authors also similarly point out to this problem, stating that 'the requirement that an attack be part of an intentionally repeated pattern of similar crimes may be problematic in the nuclear context, at least in abstract. A single state actor committing a single nuclear strike cannot fairly be said to be part of such a pattern': A. J. Colangelo, P. Hayes, *op. cit*., p. 230.

92 The civilian population must be the primary target and not the incidental victim of the attack: *Katanga*, para. 1104; *Bemba*, para. 154; *Ongwen*, para. 2675. However, the presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character: *Katanga*, para. 1105; *Bemba*, para. 153; *Ongwen*, para. 2675; *Al Hassan*, para. 1106.

93 It is interesting how both the UK and France (up to now the only member states of the Rome Statute that possess nuclear weapons), upon their respective ratifications of the Statute, made statements under which they effectively excluded the application of all the provisions of the Statute on war crimes (the whole art. 8) on the eventual use of nuclear weapons. In this sense, the statement of France is particularly interesting: 'The provisions of article 8 of the Statute, in particular paragraph 2(b) thereof, relate solely to conventional weapons and can neither regulate nor prohibit the possible use of nuclear weapons nor impair the other rules of international law applicable to other weapons necessary to the exercise by France of its inherent right of self-defence, unless nuclear weapons or the other weapons referred to herein become subject in the future to a comprehensive ban and are specified in an annex to the Statute by means of an amendment adopted in accordance with the provisions of articles 121 and 123', see: W. A. Boothby, W. H.

In the first case, as we have said, there is no legal difference whether a particular war crime has been committed by nuclear weapons or some other weapons.[94] In that sense, a broad variety of war crimes codified in the Rome Statute, could be perpetrated through the use of nuclear weapons during an international armed conflict, and particularly: war crime of willful killing,[95] war crime of willfully causing great suffering,[96] war crime of destruction and appropriation of property,[97] war crime of attacking civilians,[98] war crime of attacking civilian objects,[99] war crime of attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission,[100] war crime of excessive incidental death, injury, or damage,[101] war crime of attacking undefended places,[102] war crime of killing or wounding a person hors de combat,[103] war crime of attacking protected objects[104] and war crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions.[105]

Also, some of the war crimes stipulated by the Rome Statute that could be perpetrated in an armed conflict of a non-international character, can also be committed by the means of nuclear weapons, namely: war crime of murder,[106] war crime of attacking civilians,[107] war crime of attacking objects or persons using the distinctive emblems of the Geneva Conventions,[108] war crime of attacking personnel or ob-

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von Heinegg, *op. cit*., pp. 169–170. Although the legal strength of such statements, which are in their essence similar to the institute of reservations under international treaty law ('a reservation is an unilateral statement of will of a state or international organization that intends to conclude a treaty regardless of its formal name': M. Kreća, *op. cit*., p. 454), is at least questionable ('no reservations may be made to this Statute', art. 120 of the Rome Statute), it quite plainly once again demonstrates the resolute stance of nuclear powers to avoid any notion of limitation of, as they see it, their inherent right to use their own nuclear arsenals.

94 In general, the ICC 'shall have jurisdiction in respect of war crimes in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes' (art. 8 (1) of the Rome Statute). This specific limitation of the Court's jurisdiction *ratione materiae* shows that there is an 'intention that only the most severe cases of war crimes should be adjudicated by the ICC, i.e. when they stemmed from a broader context created by the existence of a plan or policy, as well as when they have been committed *en masse*': M. Škulić /2020/, *op. cit*., p. 272. Given the specific nature of nuclear weapons and the conceivable situations of their use, it is plausible to say that this condition would regularly be met when a particular war crime has been committed through their use.

95 Art. 8 (2) (a) (i).

96 Art. 8 (2) (a) (iii).

97 Art. 8 (2) (a) (iv).

98 Art. 8 (2) (b) (i).

99 Art. 8 (2) (b) (ii).

100 Art. 8 (2) (b) (iii).

101 Art. 8 (2) (b) (iv).

102 Art. 8 (2) (b) (v).

103 Art. 8 (2) (b) (vi).

104 Art. 8 (2) (b) (ix).

105 Art. 8 (2) (b) (xxiv).

106 Art. 8 (2) (c) (i).

107 Art. 8 (2) (e) (i).

108 Art. 8 (2) (e) (ii).

jects involved in a humanitarian assistance or peacekeeping mission,[109] war crime of attacking protected objects[110] and war crime of destroying or seizing the enemy's property.[111]

3.4.1. Failure to Criminalize the Use of Nuclear Weapons as a War Crime per se in the Rome Statute

Now we should focus on the second level of possible reaction of international criminal law to the problem of use or threat of nuclear weapons – i.e., is the use, and eventually the threat of their use, a war crime *per se*? Namely, in international humanitarian law various weapons are explicitly prohibited from being ever used in an armed conflict. Such is the situation, for example, with biological (bacteriological) and chemical weapons. We have seen that until the entry into force of the Treaty on the Prohibition of Nuclear Weapons in 2021 no such prohibition of nuclear weapons existed. However, as we have also seen, this treaty is far from being universal and therefore its legal effect is limited only to its parties.

Nevertheless, there is a question if, regardless of the issue of their explicit prohibition, the illegality of use and threat of use of nuclear weapons could be deduced from international customary law, most importantly from the principles of international humanitarian law. This was the method also applied by the ICJ in its 1996 advisory opinion regarding nuclear weapons.[112] The Court noted that

'The cardinal principles contained in the texts constituting the fabric of humanitarian law are the following. The first is aimed at the protection of the civilian population and civilian objects and establishes the distinction between combatants and non-combatants; States must never make civilians the object of attack and must consequently never use weapons that are incapable of distinguishing between civilian and military targets. According to the second principle, it is prohibited to cause unnecessary suffering to combatants: it is accordingly prohibited to use weapons causing them such harm or uselessly aggravating their suffering. In application of that second principle, States do not have unlimited freedom of choice of means in the weapons they use'.[113]

The Court further observed that

> 'None of the States advocating the legality of the use of nuclear weapons under certain circumstances, including the "clean" use of smaller, low yield, tactical nuclear weapons, has indicated what, supposing such limited use were feasible, would be the precise circumstances justifying such use;[114] nor whether such limited use would not tend to esca-

109 Art. 8 (2) (e) (iii).

110 Art. 8 (2) (e) (iv).

111 Art. 8 (2) (e) (xii).

112 See *Legality of Nuclear Weapons*, paras. 74–87.

113 *Legality of Nuclear Weapons*, para. 78.

114 In this sense, Raičević provides a following example in which, according to them, there would be no violation of the principle of distinction of international humanitarian law: 'If armed forces use a low-yield nuclear weapon (under 1 KT), precisely aimed at the important military objective, in which surroundings there are no civilians nor civilian objects, in such a manner that none of

late into the all-out use of high yield nuclear weapons. This being so, the Court does not consider that it has a sufficient basis for a determination on the validity of this view.'[115]

However the ICJ has also stated:

'Nor can the Court make a determination on the validity of the view that the recourse to nuclear weapons would be illegal in any circumstance owing to their inherent and total incompatibility with the law applicable in armed conflict... In view of the unique characteristics of nuclear weapons... the use of such weapons in fact seems scarcely reconcilable with respect for such requirements. Nevertheless, the Court considers that it does not have sufficient elements to enable it to conclude with certainty that the use of nuclear weapons would necessarily be at variance with the principles and rules of law applicable in armed conflict in any circumstance.'[116]

In the aftermath of the ICJ's Advisory opinion, the diplomatic negotiations for the drafting of the text of the statute of the future permanent international criminal court were conducted. It is noted that the planned provision on the use of prohibited weapons 'again brought to surface the longstanding dispute as to legality of the use of nuclear weapons'.[117] Moreover, 'the debate over whether to explicitly classify the use of nuclear weapons as a war crime proved one of the most contentious issues of the negotiations'.[118]

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the three effects of that weapon does not inflict any damage to civilians or civilian objects.': N. Raičević, *op. cit*., p. 128. In that sense, also: 'As to the principle of distinction, the Court failed to discuss either the precision of nuclear systems or the target sets against which they can be targeted. Why, for instance, would a strike upon troops and armor in an isolated desert region with a low-yield air-burst in conditions of no wind not be discriminatory enough?': M. N. Schmitt, *op. cit*., p. 108. These authors continue with explaining their stance that nuclear weapons could neither be with certainty regarded as a kind weapon that causes superfluous injury or unnecessary suffering, see: M. N. Schmitt, *ibid*., p. 108; N. Raičević, *op. cit*., pp. 128–129. This second conclusion could only be true in a theoretical situation in which all the soldiers that have been targeted by such a nuclear wepon are killed instantly – if that would not be the case, the survivors would certainly be subjected to a harmful effects of radiation, which undoubtly do represent unnecessary suffering and, in some cases, superflous injuries. In this sense O'Connor stresses that this temporal aspect of nuclear weapons is also important, stating that 'It clearly gives the user of nuclear weapons no military advantage that people exposed to nuclear weapons use develop cancer or other diseases long at er the attack.': S. O'Connor /2014/: Nuclear weapons and the unnecessary suffering rule, in: *Nuclear Weapons Under International Law*, Cambridge, p. 146.

115 *Legality of Nuclear Weapons*, para. 94.

116 *Legality of Nuclear Weapons*, para. 95. Raičević thus concludes that 'a final answer on the question of legality of nuclear weapons cannot be given *in abstracto*, but that it always has to be done *in concreto*': N. Raičević, *op. cit*., p. 135. Nevertheless, some authors still argue that 'Applying the legal requirements of IHL to the known facts regarding nuclear weapons, including such facts as stated by various judges of the ICJ, it seems evident that nuclear weapons cannot be used consistently with IHL': C. J. Moxley Jr., J. Burroughs, J. Granoff, *op. cit*., p. 642. The quoted authors further and very comprehensively elaborate their view, see: C. J. Moxley Jr., J. Burroughs, J. Granoff, *ibid*., pp. 642–678.

117 A. Zimermann /1998/, The Creation of a Permanent International Criminal Court, *Max Plank Yearbook of United Nations Law*, p. 192.

118 A. Golden Bersagel /2014/: Use of nuclear weapons as an international crime and the Rome Statute of the International Criminal Court, in: *Nuclear Weapons Under International Law*, Cambridge, p. 221.

'A majority, perhaps a substantial majority, regarded nuclear weapons as prohibited under international customary law... but an adamant group, composed mostly of the Permanent Five members of the Security Council (P5) and NATO members, believed the contrary'.[119] Naturally, 'the nuclear powers resisted any language that might impact upon their own prerogatives, such as a reference to weapons that might in the future be deemed contrary to customary international law'.[120] Then some of the non-nuclear states, revolted by such firm stance of nuclear powers, 'succeeded in forcing an ultimatum upon the delegates to the Diplomatic Conference: if nuclear weapons were omitted from Article 8, so too would any explicit mention of chemical or biological weapons be omitted'[121] – as Schabas points out, 'some of the non-nuclear States in the developing world objected to language that would explicitly prohibit the 'poor man's atomic bomb', that is, chemical and biological weapons.[122] The result was that 'the status of a relatively uncontroversial provision, including biological and chemical weapons among the list of weapons whose use is prohibited, was held hostage to the nuclear weapons debate'.[123]

Finally, on the last day of the 1998 Rome conference, a compromise was reached – neither the nuclear, nor the biological nor chemical weapons were to be explicitly mentioned in the statute of the future court.[124] In art. 8 (2) (b) (xx) of the Rome Statute a specific war crime which could be committed only in an armed conflict of international character,[125] was prescribed as following:

'Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123'.

The first part of the cited clause of the Rome Statute contains reference to two very important rules of international humanitarian law, referred to by the ICJ as 'cardinal principles' of international humanitarian law:[126] 1. principle of distinction – 'it is a fundamental rule of IHL that parties to a conflict must direct attacks only against lawful military objectives (whether military personnel or objects of concrete

119 R. S. Clark /2009/, Building on Article 8 (2) (b) (xx) of the Rome Statute of the International Criminal Court: Weapons and Methods of Warfare, *New Criminal Law Review: An International and Interdisciplinary Journal*, № 3, p. 368.

120 W. A. Schabas, *op. cit*., p. 49. A notable exception was India which, although itself a nuclear power, offered to be a leader of the group of states which were for the expressive mentioning of the nuclear weapons in the future statute of the court. See more about this in: R. S. Clark, *op. cit*., p. 371.

121 A. Golden Bersagel, *op. cit*., p. 225.

122 W. A. Schabas, *op. cit*., p. 49.

123 A. Golden Bersagel, *op. cit*., p. 225.

124 For a detailed account of the negotiations in Rome on the issue of prohibited weapons, see: R. S. Clark, *op. cit*., pp. 369–377; A. Golden Bersagel, *op. cit*., p. 222–226.

125 According to the text of the Rome Statute, no such or similar war crime could be committed in an armed conflict of non-international character.

126 *Legality of Nuclear Weapons*, para. 78.

military value)',[127] 2. the prohibition of causing superfluous injury or unnecessary suffering – 'this principle limits equally the suffering or injury caused to combatants even though they are legitimate targets of attack under IHL.'[128]

These two rules are well entrenched in general customary international humanitarian law.[129] Nevertheless, the relevant Rome Statute provision limits their scope by prescribing two further conditions: 1. that the weapons, projectiles and material and methods of warfare in question 'are the subject of a comprehensive prohibition' and 2. that they are included in the relevant still-to-be adopted annex to the Rome Statute. Doctrine points out that the Rome Statute, by prescribing these two conditions, adopted a narrower regime of legal protection than the one stipulated in the relevant provisions of Additional Protocol I to the Geneva conventions (1977) – namely its art. 35 (2) and art. 51 (4).[130]

As Schabas somewhat wittily points out, the 'casual reader of the Statute might get the impression that it was drafted in the nineteenth century',[131] with the result where 'poisoned arrows and hollowed bullets are forbidden yet nuclear, biological and chemical weapons, as well as anti-personal mines, are not'.[132] Nevertheless, the cited author reminds as that 'such, however, are the consequences of diplomatic negotiations, especially in the context of an international system where a handful of States monopolize the production and control of the most nefarious weapons'.[133]

Thus, the Rome Statute was adopted without explicit mention of nuclear weapons. In the decades that followed, there were sporadic efforts to change this.[134] For example, during the 2010 revision conference in Kampala, famous for adopting the amendments on the crime of aggression, Mexico proposed that the use of nuclear weapons should also be added to the text of the Rome Statute as a war crime[135] –

127 S. Casey-Maslen /2014a/, *op. cit*., p. 95.

128 M. Sassòli /2019/, *International Humanitarian law: Rules, Controversies, and Solutions to Problems Arising in Warfare*, Cheltenham, p. 381 (para. 8.389).

129 See in detail: N. Raičević, *op. cit*., pp. 22–29. Particularly, there is a 'strong case to be made that the rule of distinction, the most fundamental of all IHL rules, is a peremptory norm of international law': S. Casey-Maslen /2014a/, *op. cit*., p. 95. On the other hand, the literature notes that 'notwithstanding the claimed cardinality of the unnecessary suffering rule and its recognition as a norm of customary international law, its exact content is far from clear': S. O'Connor, *op. cit*., p. 128.

130 See more in: A. Golden Bersagel, *op. cit*., p. 226.

131 W. A. Schabas, *op. cit*., p. 49.

132 W. A. Schabas, *ibid*., p. 49. When speaking of 'poisoned arrows and hollowed bullets', Schabas had in mind the art. 8 (2) (b) (xvii to xix) which expressively prohibits such and similar weapons.

133 W. A. Schabas, *ibid*., p. 49.

134 There was also severe criticism in the legal theory regarding the solution on prohibited weapons and methods of warfare that was found in Rome in 1998. For example, Clark believed that 'the list of absolutely banned weapons in Article 8(2) that survived the Rome process is too short and that lengthening the list is in order': R. S. Clark, *op. cit*., p. 369. Similarly, some other authors note that an 'obvious disadvantage of the Rome Statute is a striking absence of explicit incrimination of use of chemical, biological and nuclear weapons as a war crime': V. Đ. Degan, B. Pavišić, V. Beširević /2011/, *Međunarodno i transnacionalno krivično pravo*, Beograd, p. 191.

135 The proposed incrimination, which was to be added to the art. 8 (2) (b) of the Rome Statute as a separate provision, was formulated in a very simple way – 'Employing nuclear weapons or threatening to employ nuclear weapons': A. Golden Bersagel, *op. cit*., p. 228

this proposal did not pass.[136] In 2017, *inter alia*, the Rome Statute was amended to explicitly include the use of biological (bacteriological) weapons as a separate war crime (which could be committed both in international and non-international armed conflicts), independent from the provision of art. 8 (2) (b) (xx).[137] In this way, biological weapons have become the only category of weapons of mass destruction to be *expressis verbis* incriminated by the Rome Statute.[138]

In 2021 a Treaty on Prohibition of Nuclear Weapons came into force. Could this be read as a "comprehensive prohibition" of nuclear weapons, i.e. as one of the two conditions for deeming the use of nuclear weapons criminal under the art. 8 (2) (b) (xx) of the Rome Statute? We would argue that it could – the prohibition of nuclear weapons contained in the Treaty is *comprehensive*, i.e. it covers all the relevant legal aspects of nuclear weapons and prohibits all of them. Another question is the one of the universal acceptance of this Treaty, which, as we have seen, is obviously lacking.

Nevertheless, even if we accept that the Treaty on Prohibition of Nuclear Weapons is a comprehensive prohibition of nuclear weapons, the second requirement for the application of art. 8 (2) (b) (xx) to nuclear weapons is still missing – the annex to the Rome Statute that must include the list of weapons to which this provision of the Rome Statute could apply. Without this annex, the norm contained in art. 8 (2) (b) (xx) of the Rome Statute is *nudum ius* and is thus unapplicable.

There is of course the possibility of bypassing the art. 8 (2) (b) (xx) and incriminating the use of nuclear weapons as a separate war crime, in a way that it has been done with biological weapons. However, it seems that it is very unlikely to happen

136 S. O'Connor, *op. cit*., p. 135. In the end, the Kampala conference in the field of war crimes only broadened the list of war crimes which could be committed in a non-international armed conflict (art. 8 (2) (e) of the Rome Statute), by including new provisions (xiii–xv), which prohibit the same weapons as those that have already been prohibited by the original text of the Rome Statute in relation to an international armed conflict (poison or poisoned weapons; prohibited gases, liquids, materials or devices, prohibited bullets). Until now, these amended were ratified by 49 state-parties of the Rome Statute. Source: United Nations Treaty Collection website: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-a&chapter=18&clang=_en, last access: August 3rd 2025.

137 See art. 8 (2) (b) (xxvii) and art. 8 (2) (e) (xvi) of the Rome Statute. However, new provisions regarding the prohibition of biological weapons have been ratified only by 24 Rome Statute member-states. Source: United Nations Treaty Collection website: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-d&chapter=18&clang=_en, last access: August 3rd 2025.

138 Besides biological weapons, in 2017 new war crimes incriminating the use of 'weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays' (see art. 8 (2) b (xxvii) and art. 8 (2) (e) (xvii) of the Rome Statute), as well as 'employing laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices' (see art. 8 (2) b (xxviii) and art. 8 (2) (e) (xviii) of the Rome Statute) were also added to the Rome Statute. However, these amendments were not ratified by a majority of the states parties to the Rome Statute. In both cases, the number is 22. Source: United Nations Treaty Collection website: https://treaties.un.org/PAGES/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-e&chapter=18&clang=_en, https://treaties.un.org/Pages/ViewDetails.aspx?src='TREATY&mtdsg_no=XVIII-10-f&chapter=18&clang=_en, both lastly accessed on August 3rd 2025.

in the near future. The same could be said about some theoretical proposals for the creation of a specialized "tribunal(s) for the use of nuclear weapons."[139]

4. CONCLUSION

The analysis conducted in this paper has shown that positive international criminal law does not deal specifically with the use or threat of nuclear weapons. In other words, in international criminal law there is no specific crime which consists of the use of this kind of weapons as such. Therefore, in the field of nuclear weapons, international criminal law limits itself with the possibility of subsuming their use under the existing international crimes – in these cases the use of nuclear weapons is not criminal because nuclear weapons were used *per se*, but because by the means of nuclear weapons, these crimes (e.g. genocide) were committed.

This is the reality of international criminal law today and it perhaps once again casts the light on the *ultima ratio* character of criminal law as a branch of law (international or national). Namely, if it is not universally and absolutely accepted in general international law, and particularly in the rules of international humanitarian law, that the use of nuclear weapons is unlawful, then no one could expect for international criminal law to contain the rule of criminalizing such an action.

The overall conclusion is that the criminalization of the use of nuclear weapons by the norms of international criminal law and effectively putting into practice such an incrimination is not conceivable in the near, and even in the further future. The international community would have to undergo radical changes in order for such a thing to be possible – a result that currently does not seem realistic. Therefore, we can end this paper by concurring with the following:

'The question as to the individual criminal liability for the use of nuclear weapons – despite its obvious major political importance – seems to be more of a theoretical nature. If any state were ever to seriously consider using nuclear weapons, such a step would, under all imaginable scenarios, involve such a military threat in which possible criminal consequences of any use would be of little if any relevance'.[140]

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139 See: A. J. Colangelo, P. Hayes, *op. cit*., pp. 219–252.

140 A. Zimmermann, *op. cit*., p. 193.

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NUKLEARNO ORUŽJE I MEĐUNARODNO KRIVIČNO PRAVO

REZIME

Osnovni cilj ovog rada jese istraživanje statusa nuklearnog oružja, odnosno njihove upotrebe i pretnje njima, prema međunarodnom krivičnom pravu. U tom smislu se autor, nakon uvodnih izlaganja o nekim od najrelevantnijih tehničkih pitanja u pogledu nuklearnog oružja, kao i kratkog osvrta na opšti stav međunarodnog prava prema njima, fokusira na tzv. dva nivoa moguće reakcije međunarodnog krivičnog prava u odnosu na ovu vrstu oružja. Prvi nivo te reakcije, koji se može nazvati opštim, obuhvata slučajeve u kojima se nuklearno oružje može javiti kao sredstvo izvršenja međunarodnih krivičnih dela u užem smislu – u tom pogledu, krivičnopravni status nuklearnog oružja suštinski nije drugačiji od statusa bilo kog drugog sredstva (npr. konvencionalnog oružja) koje je podobno da bude sredstvo izvršenja ovih krivičnih dela. Sa druge strane, drugi nivo potencijalne reakcije jeste proglašavanje upotrebe nuklearnog oružja za krivično delo *per se*, nezavisno od konkretnih posledica te upotrebe. Drugi nivo reakcije međunarodnog krivičnog prava na nuklearno oružje je i dalje u *de lege ferenda* domenu. Autor zaključuje da je malo verovatno da se ovo stanje promeni u skorijoj budućnosti, te u tom smislu ukazuje na *ultima ratio* karakter krivičnog prava – ono je krajnje sredstvo pravne reakcije na određeno protivpravno ponašanje, a, sa druge strane, kada je reč o nuklearnom oružju, situacija je takva da ono još uvek nije apsolutno i univerzalno zabranjeno čak ni od strane nekih drugih, manje represivnih grana prava, a u prvom redu normama međunarodnog humanitarnog prava, kao matične oblasti za materiju zabrane pojedinih (vrsta) oružja.

Ključne reči: nuklearno oružje, međunarodno krivično pravo, međunarodno humanitarno pravo, Međunarodni krivični sud, ratni zločini.

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