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ПОЗИЦІЯ ІНДІЇ ЩОДО КЛЮЧОВИХ НОРМАТИВНО-ПРАВОВИХ ДОКУМЕНТІВ У СФЕРІ НЕРОЗПОВСЮДЖЕННЯ ЯДЕРНОЇ ЗБРОЇ ЯК ВИКЛИК МІЖНАРОДНІЙ ЯДЕРНІЙ БЕЗПЕЦІ

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Досліджено позицію Індії щодо основних міжнародних договорів та ініціатив у сфері нерозповсюдження ядерної зброї, а також вплив політики країни у ядерній сфері на функціонування режиму нерозповсюдження ядерної зброї. Проаналізовано причини, чому країна воліє утриматися від підписання основних документів у сфері нерозповсюдження ядерної зброї. Стверджено, що неприєднання Індії до вказаних ініціатив є дестабілізуючим фактором, який підриває систему режиму нерозповсюдження ядерної зброї в світі.

Ключові слова: *ядерна безпека, Індія, ядерна зброя, ядерне роззброєння, Договір про нерозповсюдження ядерної зброї.*

INDIA'S POSITION ON THE KEY LEGAL DOCUMENTS RELATING TO THE NON-PROLIFERATION OF NUCLEAR WEAPONS AS A CHALLENGE TO THE INTERNATIONAL NUCLEAR SECURITY

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It is investigated India's position on major international treaties and initiatives in the field of nuclear weapons non-proliferation (Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Comprehensive Nuclear-Test-Ban Treaty (CTBT), Fissile Material Cutoff Treaty (FMCT)). In addition, it is analysed the impact of the country's policy in the nuclear field on the functioning of the nuclear non-proliferation regime. It is found that according to the National Indian nuclear doctrine, one of the important tasks of national security is general non-discriminatory nuclear disarmament aimed at the quickly achievement of a nuclear-free world. It is analyzed the reasons of the country's refusal to sign the basic documents in the sphere of non-proliferation of nuclear weapons. Firstly, the NPT (1968) is discriminatory, since it gives more rights and authorities to the nuclear states and thereby limits the rights of the non-nuclear states. In addition, it is not capable to provide security of the non-nuclear states in case of attack by the nuclear states. Secondly, the CTBT (1996) does not contain specific terms of eliminating of nuclear weapons, and also allows the so-called sub-critical nuclear tests. At last, the FMCT will not be signed, because India is threatened by China – a member of the "nuclear club", and neighbouring Pakistan, thereby the only way to ensure the security of the people and strengthen its position in the region is to increase the India's nuclear potential. It is alleged that India's non-alignment to these initiatives is a destabilizing factor that undermines the whole system of non-proliferation regime in the world. It is proved the necessity (within the framework of the legal acts that make up the basis of the non-proliferation regime) to develop and offer a set of interconnected measures for stabilizing the situation in the region, mainly between India and Pakistan, and to provide a prospect for its improvement and ensure the international nuclear security.

Key words: *nuclear security, India, nuclear weapons, nuclear disarmament, the Treaty on the Non-Proliferation of Nuclear Weapons.*

In the modern world, the primary task of any state is the assurance of security of its population. The most serious threat to the modern security system is the nuclear-weapon states, since a state with nuclear weapons, de facto, has the military advantage. Unlike conventional weapons, such weapons cause damage due to the use of nuclear, not chemical or mechanical energy. The destructive power of an explosive wave of only one of its units may exceed the action of thousands of ordinary bombs and artillery shells. Consequently, the important task of the international community is to prevent the nuclear weapons proliferation and avert the danger of nuclear war.

The Treaty on the Non-Proliferation of Nuclear Weapons has become a universal international treaty that

laid the foundations for a non-proliferation regime. Nowadays, 189 countries have joined this treaty, and only four countries are outside its jurisdiction (Israel, India, Pakistan and the DPRK). Thus, at the present stage of the international relations system's development, the non-proliferation problem is alarming for the world community and politicians in many countries. In addition, it is a subject of great interest to many scholars. Over the past 20 years, the nuclear non-proliferation regime has faced a whole range of problems. The main of them is the problem of acquiring nuclear weapons by non-nuclear-weapon states, which have not joined major multilateral international instruments in this area or have a special opinion about them. India, undoubtedly, belongs to such states. The nuclear tests conducted by India on 11 and 13 May 1998 have made serious damage to the functioning of the international nuclear non-proliferation regime and a number of international instruments in this field, primarily the Treaty on the Non-Proliferation of Nuclear Weapons. Moreover, these nuclear explosions can be considered as the destabilizing factor that has influenced the existing system of international and regional security.

Therefore, the purpose of this article is to provide a comprehensive analysis of India's position on major international treaties and initiatives in the area of non-proliferation of nuclear weapons and to study the impact of the country's nuclear policy on the functioning of the nuclear non-proliferation regime.

The nuclear policy of India and its impact on the regime of non-proliferation of nuclear weapons and the international security system, as well as the official position of the government of the country on key documents and initiatives in the field of non-proliferation of nuclear weapons, attract the attention of many scholars of our time, namely: A. Arbatov and V. Dvorkin [Арбатов, Дворкин 2006; Арбатов, Чуфрина 2005], V. Belokrenitsky [Белокреницкий, Москаленко, Шаумян 2003], M. Izuyama and S. Ogawa [Izuyama, Ogawa 2003], T. Nikonova [Никонова 2010], V. Orlova [Орлова 2002], R. Timerbaev [Тимербаев 2009], B. Chellani [Челлани 2014], and others. The source of the research of India's position was the official documents of India concerning the nuclear aspect of the country's policy [" Draft Report on National Security Advisory Board on Indian Nuclear Doctrine", 1999; "Permanent Mission of India to the Conference on Disarmament Geneva", 2003], as well as texts of major international non-proliferation treaties: the Treaty on the Non-Proliferation of Nuclear Weapons ["Про нерозповсюдження ядерної зброї: Договір", 2017; "Про нерозповсюдження ядерної зброї: Договір", 1968], the Comprehensive Nuclear-Test-Ban Treaty ["О всеобъемлющем запрещении ядерных испытаний: Договор", 2017; "О всеобъемлющем запрещении ядерных испытаний: Договор", 1996] and the Fissile Material Cut off Treaty ["The Fissile Material Cut off Treaty", 2009].

Unfortunately, very few researchers in Ukraine draw their attention to the development of these problems. However, in our opinion, further scientific consideration and research of nuclear proliferation in the region of South Asia, its impact on the international non-proliferation regime, and the official position of the countries of the region on nuclear disarmament and proliferation are very important. Since these studies will help to identify the main challenges to the operation of the nuclear non-proliferation regime from India, their causes and consequences, and, consequently, to identify and develop ways to overcome the crisis of the non-proliferation regime.

Despite the nuclear tests conducted in 1998, India has a consistent policy on non-proliferation and disarmament. The country traditionally supports all equal multilateral initiatives aimed at general and complete nuclear disarmament and strengthening the non-proliferation regime. The government argues that India does not aim at the nuclear arms race. It is emphasized that its decision to produce nuclear weapons did not violate any international obligation of the state and was made for opposition to threats to national security, the strategic autonomy of the state and achievement the development goals for the people of India ["Permanent Mission of India to the Conference on Disarmament Geneva", 2003].

According to the National Nuclear Doctrine of India, one of the important tasks of its national security is the general non-discriminatory nuclear disarmament aimed at the attainment of a nuclear-free world as soon as possible. The government of the country has officially announced its readiness to engage in multilateral negotiations on the reduction and elimination of the nuclear weapons stockpiles, prohibition of fissile materials production and the establishment of export controls. In addition, the representatives of India are convinced that the total elimination of nuclear weapons will contribute to solving the global problem of the present time – nuclear terrorism ["Draft Report on National Security Advisory Board on Indian Nuclear Doctrine", 1999].

The government advocates the recognition of nuclear-weapon-free zones; the adoption of measures to reduce nuclear danger and prevent the acquisition of weapons of mass destruction by terrorists; the reduction of the value of nuclear weapons in the nuclear doctrines

of the states and adoption of a convention prohibiting the use of nuclear weapons [Никонова 2010: 75–76].

Based on the foregoing, it can be argued that India actively supports most of the nuclear non-proliferation initiatives and strives to the prompt establishment of a nuclear-free world. At the same time, it is well known that the government of the country refuses to accede to major international treaties that form the basis of the non-proliferation regime.

With regard to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which laid the foundations for the international nuclear non-proliferation regime, India has criticized its provisions and is still refusing to sign it. According to Russian scientist A. Arbatov, in the interpretation of the phenomenon of nuclear proliferation, in particular, in defining its starting point, the treaty contains the most important and very controversial precondition, which became a delay-action bomb for the entire regime of non-proliferation of nuclear weapons [Арбатов, Дворкин 2006: 141]. From the authors of the NPT point of view, the proliferation of nuclear weapons began with India, which was the first country that has conducted nuclear tests after January 1, 1967, namely in May 1974. However, India's government argued that it was a "peaceful nuclear device" test. According to the provisions of the NPT, "a nuclear weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive devices prior to 1 January 1967" (Article IX) ["Про нерозповсюдження ядерної зброї: Договір від 1 липня 1968 р.", 1968]. The NPT envisages the possibility of conducting peaceful nuclear explosions by non-nuclear-weapon states, parties of the Treaty, but only within the framework of the relevant international agreements on receiving assistance from the nuclear-weapon States.

In May 1998, India has openly conducted nuclear tests and declared its nuclear status. In the opinion of some scholars, this state can be considered as the "initiator" of the proliferation of nuclear weapons in the world. Nevertheless, the government of India disagrees with this statement and emphasizes that India has never been the party of the NPT and, accordingly, has not violated any norms in the field of nuclear non-proliferation [Арбатов, Чуфрина 2005: 23]. In addition, the representatives of India focus attention on the examples of Israel and South Africa, which began the manufacture of their own nuclear weapons a few years earlier than India. However, Israel, unlike India, did not carry out any nuclear test and never declared itself as a nuclear power. As for South Africa, it has conducted a series of nuclear tests that have been the subject of long disputes by specialists. Nevertheless, this state has got rid of its nuclear weapons under the control of the IAEA and became a party of the NPT ["Про нерозповсюдження ядерної зброї: Договір", 2017].

However, the position of India is not devoid of historical reasons. Indeed, five legitimate nuclear states earlier than other countries have manufactured their own nuclear weapons, and only until 1968, three of them (the USA, the USSR and the United Kingdom) were able to agree with the NPT. As a result, the date of January 1, 1967, was defined as a frontier, crossing which any new nuclear state was considered "illegal" (but according to legal logic, only within the framework of the NPT, which had no relation to the countries which had not joined it) [Арбатов, Дворкин 2006: 142]. In our opinion, the date of January 1, 1967, was an obstacle to India's accession to the NPT, since membership, as a nuclear member for it is closed, and non-nuclear – politically unacceptable. In part, these difficulties could be overcome by the accession of the state to all mechanisms and regimes of the NPT, in addition to the Treaty itself. In addition, the government of India could officially declare its intention to comply with all NPT provisions relating to the nuclear states, even formally not being a party to the Treaty.

Among other reasons for non-accession of India to the NPT, the following should be singled out. Firstly, according to the government of India, this treaty establishes unequal rights and obligations for its member countries. The nuclear-weapon states have more rights and powers than the non-nuclear countries. The Government of India considers it as a policy of "nuclear apartheid" [Izuyama, Ogawa 2003: 82].

Secondly, the representatives of the country believe that this Treaty is not able to eliminate the security problems. The main disadvantage of the NPT is that it does not identify any measures to ensure the security of non-nuclear-weapon States against the nuclear threat. At the same time, it prohibits these countries to manufacture and possess nuclear weapons. Taking this disadvantage into account, and in order to encourage India and other non-nuclear states to sign the treaty, in June 1968, the United States, the United Kingdom and the USSR have provided a "positive security guarantee" for the non-nuclear-weapon states. They pledged, in accordance with the UN Charter, to assist the non-nuclear states in the event of a nuclear threat or attack. However, the Government of India expressed the view that such political statements alone could not guarantee India's security. In addition, several years later, the five nuclear powers took over the responsibility "not to use or threaten to use nuclear weapons against non-nuclear-weapon states". Nevertheless, these obligations are not legally binding ["Про нерозповсюдження ядерної зброї: Договір", 2017; Izuyama, Ogawa 2003: 82-83]. Thirdly, the

representatives of India claim that the NPT does not foresee direct prohibitions on the transit of nuclear weapons, and emphasize that, in order to ensure the effectiveness of the Treaty, all state parties must simultaneously abandon nuclear weapons and agree on their general elimination [Белокреницкий, Москаленко, Шаумян 2003: 217–218].

Consequently, it can be argued that the NPT was not able to prevent the proliferation of nuclear weapons in South Asia, and the emergence in this region of two new nuclear powers – India and Pakistan – severely damaged the nuclear non-proliferation regime and cast doubt on the future of the NPT.

Another key non-proliferation instrument is the Comprehensive Nuclear-Test-Ban Treaty (CTBT). The representatives of India have called for the complete prohibition of nuclear tests for many years, as evidenced by the Indian Prime Minister Jawaharlal Nehru's statement made in April 1954. He called for the beginning of the negotiations on the elimination of nuclear weapons and the complete cessation of nuclear tests in the world. However, at the Conference on Disarmament, held in Geneva in September 1996, India opposed the adoption of the CTBT. Firstly, the Treaty did not specify a timeframe for the elimination of nuclear weapons. At the stage of the CTBT discussion (1994-1996), the representatives of India called for the definition of a specific year to which nuclear weapons should be completely destroyed. Secondly, the representatives of India were dissatisfied with the approval of the so-called "sub-critical nuclear tests". The Government of India believes that, like the Treaty Bunning Nuclear Tests in the Atmosphere, in Outer Space and Under Water (Partial Test Ban Treaty) (1963) which allowed underground nuclear tests, the CTBT allows nuclear tests of a laboratory type. Consequently, the treaty was criticized because, instead of prohibiting any type of nuclear test, it approved the conduct of "sub-critical nuclear tests" by states possessing nuclear weapons and technology capabilities. The treaty not only continued the inequality but could make the elimination of nuclear weapons virtually impossible. Thirdly, India considers it unacceptable that it is obliged to sign this Treaty for its entry into force. The representatives of the country also expressed their dissatisfaction with the fact that other member states had rejected their calls for the establishment of a timeframe for the elimination of nuclear weapons in the Treaty. In addition, they stated that even if the CTBT came into force, they intend to refuse to sign it and assure that they will prevent its adoption at the Conference on Disarmament [Izuyama, Ogawa 2003: 84].

The Government of India states that the "comprehensive" nuclear-test-ban, in the true sense of the word, and the achievement of the elimination of nuclear weapons are important tasks for the world community. However, achieving consensus in the negotiations on these issues is an extremely difficult task, both in political and technological terms. The choice of the 44 countries whose signatures are necessary for the entry into force of the Treaty is based on the fact that these countries possess atomic energy and research reactors, and India is one of the countries included in this list. The fact that the choice of countries is based exclusively on the availability of the nuclear facilities and research reactors on their territory is problematic. However, if the exclusion from this list of five nuclear states, that repeatedly have conducted the nuclear tests, is outrageous and inadmissible, then India also should not be excluded from this list because it has conducted the nuclear tests in 1974. In the end, India's statements only detained the completion of the CTBT negotiations, which almost reached the finish line ["О всеобъемлющем запрещении ядерных испытаний", 2017; Izuyama, Ogawa 2003: 84].

India's position on the CTBT substantially changed after it has conducted nuclear tests in May 1998. Immediately after the nuclear tests held on May 11, India stated that it is ready to accept certain provisions of the Treaty, subject to a "series of reciprocal actions". On May 21, India declared a moratorium on nuclear tests. It has not cancelled her decision even after Pakistan made nuclear tests at the end of May in response to tests conducted by India. In addition, at the special session of the UN General Assembly in 1998, India stated that it would not interfere with the entry into force of the Comprehensive Nuclear-Test-Ban Treaty. Similar statements were made in March and August 2000 during visits to India of President of the USA Bill Clinton and Prime Minister of Japan Yoshiro Mori. This position of India meant that India would agree to sign and ratify the CTBT, if all 44 countries from the list, except it, signed and ratified it. Such a change in India's CTBT policy was a significant step towards the entry into force of this treaty [Izuyama, Ogawa 2003: 84–85].

Therefore, the problem of the ban of nuclear tests is extremely complex and controversial. For its prompt solution, it is necessary to achieve a national consensus among all stakeholders, including India. According to government statements, India strives to reach consensus within the country on the issue of banning nuclear tests. Moreover, India expects that other countries will also accede to this Treaty without granting them any additional conditions [Никонова 2010: 75].

Since the 1950s, a global ban on the production of fissile materials used for the manufacture of nuclear weapons, namely enriched uranium and plutonium, has been promoted as one of the necessary steps to strengthen the non-proliferation regime and promote nuclear disarmament. In 1993, the UN General Assembly unanimously adopted a resolution in favor of the elaboration of a "non-discriminatory, multilateral international" Fissile Material Cut-off Treaty (FMCT), which is subject to international control" [Тимербаев 2009: 26].

In January 1994, negotiations had been held at the Conference on Disarmament in Geneva aimed at the establishing an "Ad Hoc Committee on Prohibiting Production of Weapons-grade Fissile Material", which was supposed to deal with issues of the FMCT. However, the Ad Hoc Committee could not be established until March 1995 as planned. The reason for the delay of more than a year was that states could not reach agreement on the existing stockpiles of fissile materials in the world. The resolution adopted in December 1993 by the UN General Assembly did not concern the existing stockpiles of fissile materials, but only contained a call for a ban on their production. However, Egypt and Pakistan have requested the inclusion of existing fissile materials in the negotiation agenda. Most countries agreed with Egypt and Pakistan, as they believed that the necessary condition for nuclear disarmament was the elimination of stocks of these materials. Nevertheless, the five nuclear states and India refused to support this appeal, referring to the UN General Assembly resolution adopted in December 1993. Finally, both sides agreed that the negotiations on the FMCT would address the issue of existing stocks of fissile materials, but the focus would be on the prohibition of the production of these materials [Izuyama, Ogawa 2003: 85–86].

Nevertheless, negotiations on the FMCT did not start at the 1995 Conference on Disarmament. The most important blocking factor was the position of India, which linked the negotiations on the FMCT with a question of the complete abolition of nuclear weapons accompanied by a time frame, something that the five nuclear states opposed.

The Ad Hoc Committee on the FMCT was established at the Conference on Disarmament in August 1998, but it has not been able to begin its work until now. In accordance with the rules of the Conference at the beginning of every year, it is necessary to re-adopt the agenda and determine the mandates of the relevant special committees for carrying out practical work. However, until today, the states on the Conference on Disarmament cannot agree on either or the other. While the United States, Russia, the United Kingdom, France and some other countries call for the earliest start of the negotiations on the FMCT, other states favor other issues of disarmament, such as preventing the militarization of space, nuclear disarmament, providing security guarantees to non-nuclear-weapon states, etc [Орлова 2002: 321; Тимербаев 2009: 27].

According to some scholars, even if the negotiations on the FMCT move from the "dead point" to solving the above-mentioned problems, it is difficult to believe that India and Pakistan will approach the negotiations positively. The main priority of Pakistan is the manufacture of fissile materials in order to equalize its arsenal with India. India, in turn, considers it necessary to equate with China, which has in its arsenal 3,200 warheads, for the production of which fissile materials are used, what is more, prioritized to the state than the achievement of the FMCT [Izuyam, Ogawa 2003: 86]. According to Russian researcher T. Nikonova, there are three blocks of problems that prevent states from reaching consensus on the adoption of the Fissile Material Cut-off Treaty. Firstly, it is the definition of fissile materials (usually understood as enriched uranium and plutonium used to manufacture nuclear weapons); secondly, the framework of the treaty (the question is whether it will apply to the stockpiles of fissile materials accumulated by some countries); thirdly, the scope of inspections provided for by the Treaty. India is most concerned about the last issue. The state declares that it is ready to agree with the inspections. However, these inspections should be obligatory and non-discriminatory for all state parties of the FMCT. In this case, the verification is intended to serve two purposes: detection and deterrence. The India's Permanent Representative Jayande Prasad at the Conference on Disarmament voiced this position in May 2006. This largely explains India's refusal to act unilaterally and the refusal to impose a moratorium on the manufacture of fissile materials for nuclear weapons or other nuclear explosive devices.

The goal of "minimum restraint" proclaimed by India provides for the possibility of further manufacture of the nuclear weapons. In addition, despite the fact that India officially advocates the support of the FMCT, some groups within the country believe that it can limit national nuclear capabilities and therefore oppose its signing [Никонова 2010: 76].

To sum it up, India's non-alignment with the NPT, the CTBT, the FMCT and other nuclear non-proliferation initiatives is a very serious problem and a destabilizing factor that undermines the entire system of non-proliferation regime in the world. According to the official position of the Government of India, there are a number of reasons why the country prefers to refrain from signing basic non-proliferation instruments. First, according to the representatives of India, the NPT (1968) has a discriminatory character, since it gives more rights and powers to the nuclear states and thus restricts the rights of the non-nuclear states. In addition, India believes that this treaty is not capable to provide the security of the non-nuclear-weapon states in the event of an attack by the nuclear-weapon states. Secondly, India refuses to sign the CTBT (1996), since it does not contain specific time frames for the elimination of nuclear weapons and allows conduction of so-called sub-critical nuclear tests. With regard to the FMCT, many scholars believe that India will not agree to its signing because it is threatened by a member of the nuclear club – China and neighboring Pakistan. Therefore, the only way to ensure the security of its population and strengthen its position in the region is to build up nuclear potential. Another constraining factor is the presence of groups within the country who believe that the signing of the FMCT will significantly limit India's nuclear capabilities. In view of the above-mentioned reasons, which are certainly not without justification, as well as the political and military-technical realities that took

place on the Hindustan peninsula, we consider it a hopeless demand for India to join the NPT as a non-nuclear state, or to sign the CTBT and the FMCT. At the same time, it is necessary to develop and propose a set of interrelated measures aimed to stabilize the situation in the region, mainly between India and Pakistan. In addition, the implementation of these measures will ensure the prospect of improved relations between states and guarantee the international nuclear security.

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