

Zsombor Rezsneki<sup>1</sup>

# The Employment of Nuclear Weapons, Constitution and Society

## Abstract

*The most unanswered question today is whether or not a country will employ the atomic bomb. Could we get the result that we never again have to deal with the question at all? Experts can answer this question with uncertainty by analysing the current wars and the possibility of weaponising outer space. In this study, I collected and analysed the things necessary for a country to use the atomic bomb. These conditions are obstacles rather than opportunities for using the most destructive weapon ever created by humanity. In the course of my conclusions, I looked for the answer of whether it is possible to say with absolute certainty that the nuclear bomb is likely to be used, and whether its use can be ruled out. In the second part of the thesis, I analysed the constitutional regulation of the application of nuclear weapons and the involvement of societies.*

*Keywords: nuclear weapon, treaty, atomic bomb, responsibility, decision mechanism, constitution, rebellion, constituent bodies*

## Preface

My study aims to analyse the newly recurred danger in accordance with the current Ukrainian–Russian conflict. Whether the nuclear bomb could be employed or it always stays on the level of political discussion. Of course, it is a broader question, and the effect of the application of a nuclear bomb as the weapon of weapons goes far beyond the crisis management of a given country with its neighbours.

In the study, I looked for the answer to what circumstances and facts we have to examine regarding applying a destructive nuclear weapon and whether present social fear has a well-established ground or just a superstitious background?

More than a half century, our world has continually been scared of the most powerful weapon humankind has ever made. The world leaders have been trying

<sup>1</sup> University of Public Service, Doctoral School of Military Sciences, e-mail: [drrezsneki@fitlaw.hu](mailto:drrezsneki@fitlaw.hu)

everything to keep nuclear weapons at bay. Far from citizens, having gone through several conversations, governments have signed almost a dozen agreements. These documents and conventions do not seem to have a very long life. By the way, they did not find an adequate binding effect and do not guarantee that the states will keep their word. During the Cold War, the United States and the Soviet Union introduced some solutions, but time after, neither party could believe the other party's words. In this study, I try to outline the possibility of a new strategy based on the people. Since last century, world leaders have wanted to ensure they are not to be attacked and to defend themselves from every warhead which might have launched against them. However, they have never taken into account the people on whose shoulders their power rests.

## Legal background

Characterising the historical overview of the atomic bomb, we can state that the development of the weapon started in the Second World War. In August 1942, the Manhattan Project was established in the USA. Then, on 16 July, 1945, the first test took place in the state of New Mexico. Having succeeded, the newly inaugurated U.S. President, Harry S. Truman, as his first presidential action, issued the order to drop the atomic bomb on the cities of Japan. On 6 August, 1945, it went to the city of Hiroshima, and on 9 August, 1945, it went to Nagasaki. As a result of the two bombs, 200,000 people died.<sup>2</sup>

After that, many countries started developing their nuclear arsenals and created their own nuclear capabilities:

- Russian Federation in 1949
- Great Britain in 1952
- France in 1960
- China in 1964
- India in 1974
- Israel in 1986
- Pakistan in 1998
- North-Korea in 2006

After having dropped the first atomic bomb, many countries and international organisations protested against further developments. At the same time, the leading countries also saw the need for restrictions. The first agreement is the Partial/Limited Test Ban Treaty signed on 5 August, 1963 – in Moscow – by the Soviet Union, Great Britain and the United States of America.<sup>3</sup> The convention banned all nuclear tests. At the same time, the legal text draws attention to the fact that if an underground experiment takes place, the behaviour of the given country would not be condemned by others. The number of signatory countries approached the entire number. However, China,

<sup>2</sup> See: [www.icanw.org/hiroshima\\_and\\_nagasaki\\_bombings](http://www.icanw.org/hiroshima_and_nagasaki_bombings)

<sup>3</sup> See: [www.jfklibrary.org/learn/about-jfk/jfk-in-history/nuclear-test-ban-treaty](http://www.jfklibrary.org/learn/about-jfk/jfk-in-history/nuclear-test-ban-treaty)

France and North Korea did not sign the convention. They continued the experiment to the full extent to develop their own nuclear capability.

In 1974, the Threshold Test Ban Treaty (a treaty on underground nuclear explosions for peaceful purposes) was issued, which tightened up the previous ones to the extent that it forbade the operations of nuclear tests over 150 kilotonnes. Furthermore, the treaty ruled all non-military, single or grouped nuclear explosions underground. It was a bilateral agreement between the United States of America and the Soviet Union.<sup>4</sup>

This was followed by the Nonproliferation Treaty, which was opened for signature for every country on 1 July, 1968. Countries with nuclear capabilities agreed not to help states that are keen to develop nuclear capabilities. However, India, Pakistan and Israel have not signed the convention.<sup>5</sup>

Near the above-mentioned treaties, to check and avoid the nuclear threat, the SALT 1 (Strategic Arms Limitation Talks) treaty on the limitation of military weapons was created and signed in 1972, and the SALT 2 treaty was signed in 1979.<sup>6</sup> These two treaties settled the interests between the Soviet Union and the USA. However, none of the great powers signed the treaty of SALT II, which lapsed in 1985. Nonetheless, the purpose of the parties was shown by the fact that the negotiations were not interrupted, and they decided to prepare a new contract. In 1987, the Intermediate-Range Nuclear Forces Treaty (INF) was concluded but the treaty is no longer in force due to the cancellation of the USA in 2019.<sup>7</sup> The Strategic Arms Reduction Treaty (START I) was signed in 1991, followed by negotiations on the START II Treaty, but the latter was terminated in 2009 without entering into force. At present, only the New START treaty is in force between the two great powers. The treaties fixed the limit and reduction of the number of nuclear weapons, thanks to which thousands of warheads and missiles reduced the world's standard nuclear capability.<sup>8</sup>

Later, a comprehensive regulation containing nuclear provisions (Comprehensive Test Ban Treaty, CTBT) was only released on 24 September, 1996. The convention, established under the remit of the United Nations, was signed by Russia and the USA. The basic condition of the convention is that it prohibits all experiments involving explosions and other activities related to the creation of civil or military use of nuclear energy. It also discusses possible international organisational regulations at length. However, several countries listed in the appendix of the Convention (India, Egypt, China, Israel, USA, Iran, Pakistan, North Korea) have not ratified it, it cannot enter into force until today.<sup>9</sup>

After several other legal regulations affecting nuclear weapons, on 5 July, 2017, within the framework of a conference held under the auspices of the United Nations, the latest legislation (Treaty on the Prohibition of Nuclear Weapons, hereinafter: TPNW) was created, which on 20 September, 2017 was opened for signature by the countries. It could have been entered into force on 22 January, 2021 after a successful

<sup>4</sup> See: [https://en.wikipedia.org/wiki/Threshold\\_Test\\_Ban\\_Treaty](https://en.wikipedia.org/wiki/Threshold_Test_Ban_Treaty)

<sup>5</sup> *North Korea Withdraws from Nuclear Treaty* 2003.

<sup>6</sup> See: [www.nti.org/education-center/treaties-and-regimes/strategic-arms-limitation-talks-salt-ii/](http://www.nti.org/education-center/treaties-and-regimes/strategic-arms-limitation-talks-salt-ii/)

<sup>7</sup> Arms Control Association 2019.

<sup>8</sup> Arms Control Association 2022.

<sup>9</sup> Arms Control Association 2023.

ratification by at least 50 countries.<sup>10</sup> The convention gets a mandatory apply to all countries, but without direct affect and enforcement it could help less than awaited for. Russia and the U.S. have said they will not sign, while North Korea wanted further negotiations on the treaty.

The convention involves elements from previous treaties and prohibits experiments as well as the traffic and stockpiling of nuclear materials or technical assistance to increase the nuclear capabilities of other countries. However, the most important thing is that all countries have an obligation to disarm. Because it was not ratified by the major nuclear powers, the opinions for disarming might have changed in the international environment. There are currently several space projects in which nuclear testing plays a role. Nuclear energy is also needed in the development of certain defence tasks, so it is not acceptable that nuclear armament can be reduced below the desired level.

The purpose of the TPNW violates one of the most important principle, namely the principle of proportionality. In order to prevent the deployment of nuclear weapons, we cannot renounce the protection secured by nuclear weapons. Nuclear capability is undeniably essential from the point of view of the Earth. 100 years ago, there would have been no possibility for any nation to protect the Earth from any collision with a celestial body or avoid any affect of space circumstances threatening the Earth. The USA already carried out planetary defence experiments in the early 2000s. Since then, physicists regularly examine dozens of meteor impacts bearing the power of an atomic bomb. These impacts are hopefully terminated in the atmosphere. Statistically, it cannot be ruled out that a more serious impact could occur in the future.<sup>11</sup> NASA (National Aeronautics and Space Administration, USA) in collaboration with ESA (European Space Agency), JAXA (Japan Aerospace Exploration Agency) and ASI (Italian Space Agency) has already launched a specific mission in November 2021 to the asteroid Didymos-Dimorphos and its moon. By the impact of a spacecraft, the celestial body was diverted from its orbit directing towards Earth, thus avoiding the expected impact a decade later.<sup>12</sup> The next step in similar missions is the use of nuclear energy to deflect any object approaching the Earth.

Much earlier, the problematic question of the employment of an atomic bomb was also designed by the International Court of Justice. The actuality of the issue remained crucial even after the Cold War as well. In 1996, the International Court of Justice in The Hague (hereinafter: International Court) examined the issue of nuclear weapons and found the use of nuclear weapons to be contrary to international law. The employment of an atomic bomb is clearly contrary to the stipulations of international humanitarian law. The International Court of Justice has identified only one case where its application is acceptable. In an extreme situation where self-defence is needed as the basic existence of a given state is at stake.<sup>13</sup> However, this phrase does not mean a completely new approach. In 1963, since the Limited Test Ban Treaty was entered into force, Article 4 states that any country may withdraw from a signed contract if a special event occurs/has occurred during which a superior interest of the

<sup>10</sup> See: [www.un.org/disarmament/wmd/nuclear/tpnw/](http://www.un.org/disarmament/wmd/nuclear/tpnw/)

<sup>11</sup> BOBÁK 2020.

<sup>12</sup> See: <https://dart.jhuapl.edu/Mission/index.php>

<sup>13</sup> International Court of Justice [s. a.].

country would be/would have been endangered. Furthermore, there is a significant circumstance in trial decision that classifies not only the use of nuclear weapons but also the threat thereof as undesirable action. The wording of the phrase threat is also unknown, since it is also referred to in point 4 of Article 2 of the UN Charter in connection with the violation of territorial integrity of a given country.

In 1967, the Outer Space Treaty promulgated, in Article 4, the individual member states will not deploy nuclear weapons – for military purposes – either in the atmosphere or beyond the atmosphere. All countries with major space capabilities have signed the convention. This presumably needs to be modified for the planetary protection goals defined above. During the analysis of the legislative background, I came to the conclusion that the behaviour of single countries can be interpreted in a similar way. All countries have taken steps to bring nuclear weapons under stricter measures. However, numerous political differences of interest and the cooperation of nearly 200 countries made it difficult to fully adopt the adequate legislation for all. Despite the fact that there was no perfect consensus among the countries in regard to legal regulations, we can state that all countries and international opinions are to take a position against the deployment of the atomic weapons, i.e. there is no offensive intent to use nuclear weapons.

## Possession of nuclear weapons

There are currently more than 13,000 nuclear weapons in the world.  $\frac{3}{4}$  of this are stockpiled by the USA and Russian Federation.

Table 1: Distribution of nuclear power among countries

Country	Deployed warheads	Summary	Summary + dissembled 2022
USA	1 744	3 708	5 428
Russia	1 588	4 477	5 977
UK	120	180	225
France	280	290	290
China		350	350
India		160	156
Pakistan		165	165
Israel		90	90
North Korea		20	20
Summary	3 732	9 440	12 705

Source: SIPRI Yearbook 2022

With the number of warheads, there is an important remark to be set out. Carrying them to the right place, they can be applied to the target in three ways: from a fighter jet as a gravity bomb, by a land-based intercontinental ballistic missile or by a submarine-launched ballistic missile. The static installation of the nuclear mine and the artillery nuclear weapon are not the subject of this study.

Countries with nuclear capability can possess deployed warheads as the followings in Table 2.

Table 2: Branches of nuclear weapons by countries

	Strategical <sup>14</sup>			Tactical + others
	Gravity Bomb + Airforce	ICMB + continental	SLBM + Carrier	
USA	788	800	1920	200
Russian Federation	580	1185	800	1912 (935 naval)
Great Britain			215	
France	40		250	
China	20	172	48	80 others
India	48	70	16	16 others
Pakistan	36	120		4 others
Israel	30	50	10	
North Korea	approx. 30-40			

Source: compiled by the author based on KRISTENSEN–KORDA 2022

Taken into account the number of installed warheads and launch stations based on Table 1 and Table 2, as well as the fact that most warheads were installed in naval warfare, we can draw the conclusion that the main nuclear powers have a wish to shift the battlefield of a possible nuclear war far from their national borders.

Analysing further the location of nuclear weapons, it can be stated that all countries have installed their nuclear arsenals on their territory, except for the United States. U.S. nuclear weapons have also been deployed in Germany, Italy, Belgium and The Netherlands, as well as Turkey.<sup>15</sup> Thus, it can be concluded that the Europeans still do not trust the peace guaranteed by the Russians. At the same time, American decision-makers do not trust Germany, Italy, etc. in self-defence.

In addition to weapons, countries are also interested in building a defence system. However, if we analyse the case of the USA, we can conclude that even after spending 350 billion dollars and 70 years of development, the American defence system cannot provide 100% protection.<sup>16</sup>

Comparing the military expenditures, it can obviously be concluded that no other country has carried out similar research on the construction of the defence system. According to a study by the American Physical Society (APS), the United States also does not have a reliable defence against a real nuclear attack. Analysing the question, let's assume that nuclear warheads could be intercepted with 99% efficiency – an

<sup>14</sup> ICMB: Intercontinental Ballistic Missile, SLBM: Submarine Launched Ballistic Missile.

<sup>15</sup> POMPER–TUGANOV 2022.

<sup>16</sup> HITCHENS 2022.

explosion in airspace is excluded – then 10 out of 1,000 warheads would still hit the target. Dozens of large cities in the United States and in Russia – being able on the number of thousands of warheads possessed – could be destroyed. So, up to 100% protection – will be at disposal a deterrent system or other deterrent measures – diplomatic discussion is the best way to deal with conflicts.

Shedding a blink at conventional military equipment, there are other weapons that can cause serious destruction similar to the atomic bomb. In 1945, a few months before the atomic bombs were dropped on Nagasaki and Hiroshima, the city of Tokyo was bombed to the ground in 2 days by American military forces with an equal number of victims as when the two atomic bombs were dropped. If we look at the most destructive weapons available today, the top four are nuclear capabilities which both superpowers, the United States and Russia possess. Nonetheless, there is the family of intercontinental missiles whose effectiveness reaches a distance of over 10,000 km and can deliver dozens of warheads at the same time.<sup>17</sup> This distance also makes it possible to reach enemy territory between the two farthest points on Earth, which could be the distance between the United States and Iran. Furthermore, the MOAB (Mother of All Bombs, USA) and FOAB (Father of All Bombs, Russia) thermobaric (vacuum bomb) weapons, which follow the nuclear weapons, are not as powerful as the atomic bomb, about a tenth of that, but in terms of their destructive effect can destroy everything in a 150-300 meter radius (circular, in the direction of the underground area).<sup>18</sup> Its secondary effect destroys within a kilometre, and due to the radius of the explosion, it is perfectly suitable for neutralising nuclear points and other bunkers of military leaders situated underground.

Based on the above, we can conclude that existing traditional weapons, which are easier to apply and simpler to produce, can also have a significant destructive effect when used correctly.

## Chain of Command

After what was listed in the previous chapters, we shall examine the responsibility of the persons issuing the order and the persons carrying out the order.

For applying nuclear weapons, different countries have different ways. In most countries, the president decides on the launch; in some countries, he/she has to consult with several persons or bodies. Having national interests and risks, the picture of command is not entirely clear. However, from the point of view of our analysis, the length of the decision-making and execution chain is interesting. The crucial action is revealed after the order is issued by which the decision-making mechanism must go through several levels.<sup>19</sup> In the following, I will examine these levels, so the main emphasis is not on clarifying the whole concept but on explaining the mechanism. The California-based James Martin Center prepared the leading study for Nonproliferation Studies.

<sup>17</sup> Military Today [s. a.].

<sup>18</sup> See: [https://military-history.fandom.com/wiki/Father\\_of\\_All\\_Bombs](https://military-history.fandom.com/wiki/Father_of_All_Bombs)

<sup>19</sup> LEWIS–TERTRAIS 2019: 2–15.

In the United States, it is the president who alone has the authority to issue the order to deploy a nuclear weapon. The right to do so is inalienable from the president. There is no clear position among the experts in the rest of the process. According to one practice, the president issues the command directly through the operational commander, while the other practice considers the Minister of Defence's intervention as the basis of the procedure. The authentication process and the actual launch depend on additional persons belonging to the process. The president's authentication key, as well as its encrypted password and message itself, will be sent to two more people. At this level, the message could be identified and the fact that authorisation really comes from the president can be assured. After that, for land-based nuclear weapons and submarine-based nuclear weapons, four more people with authentication keys provide the actual launch.

In Russia, the presidential decision is prepared together with the defence minister and the chief of staff, but the reigning president makes the final decision. The command is also authenticated at the next level, and the order is delivered to the Air Force and Navy. In Russia, at every level, two people must jointly participate in a given level of the process, and two people carry out the direct launch.

In China, issuing an order is not a one-person decision, contrary to the cases we have seen in the USA and Russia. It must be a joint decision of the president, the general secretary of the party and the chairman of the Central Military Commission. After that, the order goes to the seven-member Central Military Committee, which is composed of representatives of all branches of the armed forces. The common command goes on to the Chief of Staff and then to the local launching units.

The practice in North Korea insists on the absolute power of the supreme leader, but all military leaders, such as the army chief, the chief of operations, the chief of intelligence and the commander of strategic forces, are involved in the final decision-making.

It is not necessary to conduct a separate analysis of Great Britain and France, as the rules partially reinforce the American and Russian practices, i.e. the system expects two-person confirmation at all levels. Since the USA and these two countries are in a federal system, they do not pose a geopolitical challenge from the point of view of the study. In the case of Israel, India and Pakistan, similar to China, a body makes the decision on the use of nuclear weapons.

With staff members assigned to manage the launch stations and warheads, the number of people carrying out the order can even reach hundreds or thousands. Thus, we can conclude that the power of the person or decision-giving body authorised to issue the order does not really matter in the process of each country due to thwarting the execution of the order at many levels. In addition, it is sufficient even if partial disobedience is at present since in the case of the lack of employment of the entire arsenal – or the deployment of a smaller number of the planned tactical weapons –, the result will not reach the wish formulated at the military level.

Countries with different cultural backgrounds regulate the conditions for the deployment of nuclear weapons with very similar care. In conclusion, it can be deduced that a democratic or dictatorial system could not affect particularly the regulation of a given country in the field of nuclear weapons. At the same time, it can be stated

that there must necessarily be a counterweight and brake in a given country and party. Consciously or implicitly.

## Personal liability

All persons participating in the decision-making mechanism must act as cautionary as possible when carrying out the order. Modern penal codes punish certain forms of behaviour even in a situation of war. If the person issuing the order or executing the order commits a crime, he or she can be liable for the aftermath.

After mapping the executive staff, I examined the fact of the deployment of the nuclear weapon, abstracting from all other circumstances and focusing exclusively on the deployment and its legal consequences. As previously defined in the section on legal background above, if a nuclear weapon is deployed, the person responsible acts contrary to international law. Any use of nuclear weapons violates international law. This results in legal liability. The International Court of Justice will presumably investigate the circumstances of the case, and if the weapon was used not just to prevent a direct attack on an essential part of the country, the persons directly involved in the decision-making will declare to be guilty and then condemn their behaviour.

Nonetheless, waiting for the procedure of the International Court of Justice, there is another legal obstacle to the applicability of nuclear weapons, which protects against the violation of basic moral principles (as a fundamental base established for the creation of the legal system), by fulfilling the legal fact set out in the penal code of the given country.

In this study, I examine Russian and American criminal law regulations. The legal fact of defying an order is known in all countries when a member of the executive staff fails to comply with the instruction given by the superior. However, the subject of my investigation is the legal base of defying the order.

Chapter XII of the Hungarian Act C of 2012 on the Penal Code in force – namely, Provisions relating to soldiers – § 130. based on the followings:

(1) A soldier may not be punished for an act carried out on an order, unless he knew that by carrying out the order he was committing a crime.

(2) For a crime committed on the order, the person giving the order is also liable as a perpetrator if the soldier knew that by executing the order, he was committing a crime, otherwise, the person giving the order is responsible as an indirect perpetrator.

According to Article 42 of the Penal Code currently in force in the Russian Federation – namely execution of an order or instruction – are the followings:

(1) Violation of a legally protected interest cannot be classified as a crime if it was caused by a person who acted in order to implement a provision or instruction that is binding on him. The criminal liability for such injury rests with the person who gave the unlawful order or instruction.

(2) A person who willfully committed a violation of the rules during the execution of an order or instruction known to be illegal shall be liable according to the usual conditions. Failure to carry out an order or instruction known to be illegal precludes criminal liability.

The above-mentioned legal units clear out the obligation for the fulfillment of the order unless the inferior is aware that he is committing a crime. Therefore, anyone who knows that their activity is a crime has the right to refuse it. In this study, I will not analyse the consciousness since it is a judicial question, and from the circumstances it can be concluded that the person was able to recognise the consequences of his action. However, it is certain in principle that the deployment of nuclear weapons does not require special expertise or comprehension from the user. It rarely happens that the person who orders the use of them or just handles the nuclear weapons is at fault hypothesis. He or she must clearly know that his or her behaviour is regarding to a weapon of mass destruction aimed at his or her own intentional launch.

The third legal-related analysis is connected to the practical procedure of the USA. The United States has a federal structure governing criminal law, and each member state has its own Penal Code. Therefore, we can look from a practical point of view at the commitment to refuse an order.

I deliver a legal case as an example which reflects those used in practice. In March 1968, Lieutenant William Calley exercised an order from his superiors in the Vietnam War and shot and killed hundreds of civilians. In its judgment, the court referred to the fact that it is not enough to invoke the obligation of obedience to the order set out in the field manual, considering that everyone is primarily responsible for the provisions of the constitution and the laws. American law has stipulated the killing of unarmed civilians as a murder crime since the 19<sup>th</sup> century. The lieutenant must have known that the order to kill the civilians was illegal and that he was committing a crime.<sup>20</sup>

Further, such legal fact was observed in the conviction of Nazi criminals when it was claimed that they were only following orders. The court emphasised in the judgment brought down at the trial that killing civilians is not a legal order, as obeying an illegal order could not be a part of legal defence.<sup>21</sup>

According to Article 90 of the Uniform Code of Military Justice (UCMJ) in force in the USA, whoever deliberately defies a lawful order is punishable, and according to Article 332 of the Russian Penal Code cited above, a subordinate who fails to execute a lawful order issued by his superior is punishable either. During the interpretation of these legal facts, we can establish that the legislator places the order under legal protection as a value to be protected. In the case of an illegal command, it imposes an obligation not to authorise it on the subordinate.

Closely related to the above is the fact of the Protection of the Civilian Persons in Time of War in Geneva Convention IV of 12 August, 1949, has since been ratified by 194 countries, including Russia and the United States. The convention clearly prohibits the killing of civilians and many other atrocities committed against them.<sup>22</sup>

Related to the topic, emphasising of reasonable and patriotic behaviour was at the end of World War II, when Hitler's final order to destroy Germany, known as the "Nero Decree", was not carried out. His inner circle resisted it.<sup>23</sup>

<sup>20</sup> FORD 2017.

<sup>21</sup> WALKER DONALDSON 2020.

<sup>22</sup> See: <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/preamble/commentary/1958?activeTab=undefined>

<sup>23</sup> See: [https://ghdi.ghi-dc.org/sub\\_document.cfm?document\\_id=1590](https://ghdi.ghi-dc.org/sub_document.cfm?document_id=1590)

Based on the above, we can conclude that during the deployment of a nuclear weapon, each person in the execution chain has an individual responsibility that obliges them to balance the situation. In all countries, the deployment of nuclear weapons is carried out by professional staff, so during training everyone has generally received training on the legal institution of “refusal to obey a lawful command”.

## Dictators and democracies – disorders in leadership

Before I reach the end of my conclusions, let's say a few words about the official performance of the president. All administrative positions are based on a legal basis. In general, the labour code is in force in every country. However, the legal relationship between governmental officials and other members of the public administration are differently regulated. This is mostly a country's highest level of legislation or law system. The public administration forms the core of the state, so it cannot be allowed that the activities of its employees are not organised at the highest level. This is the social interest.

However, the presidential and other governmental positions are even more fundamental. The activities and duties of the person who represents the unity of the nation must be regulated in the country's constitution. The most significant nuclear powers are the United States and the Russian Federation, unanimously.

Article 92 of the Constitution of the Russian Federation recognises the possibility of temporarily or permanently impeding the president or of taking action against him in the event of a medical condition or in charge of a crime. The 25<sup>th</sup> Amendment to the United States Constitution also provides temporary or permanent restraint or replacement of the president in case of any injury or impaired judgment.<sup>24</sup>

Incorporating the above provisions in the legal text guarantees the most basic measure against monopoly. If the number one leader of the nation struggles with obstacles – be they external, physical, or internal mental – then it is possible to take the means of executing power out of his hands. The importance of this is highlighted in terms of the area analysed by the present study. Of course, during the order to deploy a nuclear weapon, there are other persons in the execution chain, as explained above, but their disorder does not require constitutional regulation. Their role is secondary in the execution chain.

For clear judgment, the regulation of the president's ability was set out as a prominent role in the Russian and American structures. Based on this, if the president's mental limitation arises due to health reasons, the people around him must respond. However, assessing it is an objective medical question in which personality distortion influences the president's judgment. The question was summarised by the medical profession, using the FFM (Five Factor Model) model as a basis, a system was set up

<sup>24</sup> Section 4: Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

in which personality distortions are identified through neuroticism, agreeableness, openness, outward expression and conscience having listed at low and high risk levels. Based on this, it is possible to prepare for the observation of the pathological state of mind of the given person and the consequences of his actions. At the same time, psychology has been explicitly dealing with deviations from normality for decades, on the basis of category IV in DSM (mental disorders, mental deviations).<sup>25</sup> The explanation of this is not the subject of the study, but it is essential to mention it in order to be aware that the governmental management is continuously aware of a possible personnel obstacle.<sup>26</sup>

We shall conclude the mathematical chance when deploying the most destructive weapon, everyone involved in the execution chain will have limited ability to judge and not be able to assess the consequences of the immediate destruction of the Earth.

The distinction between democracy and dictatorship has no significance for the present study based on what was explained earlier. We can state that dictatorships or hybrid regimes regulate the nuclear issue similarly to democracies.

On the basis of the annual Swedish report which measures the index of democracy, signs of a threat to democracy can be noticed significantly earlier.<sup>27</sup> The leading causes of fall of democracy stem from the lack of fundamental rights, government checks, impartial administration, elected parliament and participation. I will not analyse these items further in this study. However, some steps of the transition from democracy to dictatorship are visible if we place some social behaviours among them. The dictatorship always tries to curtail the powers of the elected parliament or the effectiveness of the administrative procedures and shape them by interests of the dictatorship. At the same time, it allows less basic rights for society. It always tries to increase the scope of the dictatorship as a government body, especially by breaking down the factors that prevent it and by obstructing local and national social steps.

This is how we get to the question of deploying nuclear weapons. It is the most rational thing humanity has ever come up with. The primary goal of a dictator (and all dictators in history) is to oppress his own people. The nuclear issue is not a domestic political factor. In a society, the desire to acquire the territory of the other country cannot be equal to the deployment of a devastating weapon having immediate physical, mental and social effects of which are felt by every individual, including the individuals and citizens of the aggressor party. When a dictator decides to deploy it, he must consider facts that lead to the final weakening of his power and the next day will be controlled by reasons beyond his power.

The economic, health, environmental and all other damages caused by deployments of nuclear weapons are not fully understood by society, but state leaders – including dictators and their inner circles – are fully aware of the aftermaths. We cannot calculate human reactions because there are too many factors to count with. Thus, based on the statement of the 18<sup>th</sup> century philosopher Thomas Malthus, "all living creatures are seeking to survive by nature". Comparing this and the unconditional rational thinking of the dictator, we can say for a dictatorship in relation to nuclear

<sup>25</sup> ATKINSON–HILGARD 2005.

<sup>26</sup> WIDIGER 2016.

<sup>27</sup> International Institute for Democracy and Electoral Assistance 2021: IX.

weapons, it is impossible to act differently than a democracy. We can see that the dictatorships continuously improve their countries' economic and social results in cooperation with the democratic countries. Retaining power always depends on strong relationships. These dependencies cannot be destroyed by a single decision. Such as the deployment of the atomic bomb.

Furthermore, dozens of people are involved in the process of using nuclear weapons. In what situation can everyone agree, within half an hour of starting, to destroy the environment, the future of ourselves and our families, and the achievements of the economy we built for ages? Finally, perhaps the most important question as rationality of a dictatorship can be proved is that one person never exercises complete control over nuclear weapons. In a democracy, the leaders are held accountable during the voting, which is missing in the case of dictatorship, but at the same time the dictator must also be accountable to his supporters.<sup>28</sup> If the use of nuclear weapons were exclusivity to the dictator's decision, it cannot be ruled out that he could also use it against his own political rivals. Furthermore, we can state that the leading strata of all dictatorial countries are trained and educated people. In fact, they follow the Western ideal in their way of getting rich, but they are spiritually attracted to their people because that is how they can control them. Nonetheless, most of their lives are spent in the Western system.<sup>29</sup>

Based on the above, it can be concluded that the deployment of nuclear weapons necessarily involves the question of dubious victory. If one of the parties deploys nuclear weapons but is defeated by it or any conventional force in turn, impeachment is inevitable. If the party deploying nuclear weapons emerges as the victor, it must gain certainty that its victory does not suffer from shortcomings, i.e. no nuclear strike took place on its territory. The victor's society will not tolerate the damage caused by a possible counter-attack. This is how we get to the point where the issue of victory is not the same as being intact. The winning country can also suffer serious (unforgivable towards the leader) damages. We can realise that in the case of a losing war in a democracy, the leaders do not lose as much as they do in a dictatorship. At the same time, we accept that dictators always win more by winning than leaders of democracy.<sup>30</sup> Then we have to come to the conclusion that the dictator shall wage war if one is sure of victory and guarantees minimal damage in their territory. Otherwise, one may lose everything, including its power and its life. Following this idea, we proved once again that the dictatorship must take much more consideration for the sake of serious things not to lose in waging nuclear war. Thus, we can rightly conclude that the question of deploying nuclear weapons puts such a weight on the shoulders of the leader(s) of the dictatorship that they cannot necessarily bear, and the person in the decision-making position may lose his or her confidence. At the same time, the leaders around him or her are able to assess the situation and are aware of comprehension. They do not lose as much with the fall of the dictator as with the acceptance of irrationality.

<sup>28</sup> DEBS 2010: 23.

<sup>29</sup> General Agreement on Tariffs and Trade, GATT; United Nations; World Trade Organization.

<sup>30</sup> DEBS 2010: 23.

## In practice

The application of nuclear weapons was investigated by many people in many ways. Its relatively simple application is capable of causing complete destruction in a 20-30 km radius. Nonetheless, the radioactive and electromagnetic consequences will have been radiating for a longer time. Nuclear weapons can be used in two directions. Based on what was mentioned in the previous chapters, it can be deployed strategically or tactically depending on the area to be destroyed and the effect to be previously planned. The essential difference lies in the application of the two types. The strategic way causes more destruction and is deployed not for partial advantages on the battlefield. For the highest military-level strategies, the use of nuclear weapons as the final solution is the apparent goal.

By comparing the effect of the tactical nuclear weapon and the other "conventional" weapons analysed earlier, we can conclude that the use of tactical nuclear weapons does not achieve the goal that the aggressor could not achieve with other weapons. A tactical nuclear weapon cannot cause such a level of destruction that the other party is unable to continue the fight. However, some nuclear warheads may be destroyed in the attacker's area. It could be why the installation of such weapons is so close to opponents' countries. At the same time, the aggressor also suffers from the counter-attack of the tactical nuclear weapon. In some cases, thanks to traditional firepower, it can be assumed that e.g. in the case of a nuclear weapon deployed against the United States, the United States does not have to answer the aggression with an equal nuclear strike. In the following, I will present a few examples that relate to the fact that in practice, there have been several cases of nuclear emergencies and their absence gives a hope to a rational assessment of the situation existing in humanity.

Never again in history will there be a situation as clear as in 1945. The USA and its allies have been at war for years, with huge casualties. The principle of proportionality and expediency no longer worked and the USA possessed no more nuclear weapons. At the same time, it was fully convinced that no one else, especially Japan, had either. Escalation was not an option. The international press has since evaluated it as an act against humanity. At the same time, looking at the decades of continuous cooperation between Japan and the USA, it is certain that they have settled the situation between themselves, even if the details are not open to the public.

During the Cold War, Kissinger advised President Nixon to play the madman strategy during which a plane – pretending preparation for a nuclear attack – circled the Asian border for 3 days to scare the Soviet leadership from sending weapons to Afghanistan. However, Brezhnev did not deal with the thrill, he was not afraid of an American nuclear strike.<sup>31</sup>

In 1983, Soviet Colonel Stanislav Petrov and his team decided not to report incoming missiles, believing that his 5 launches were inadequate for a pre-emptive strike by the U.S. (later, it turned out that the satellites detected the reflection of the sun on the clouds and the Soviet system was malfunctioning). Petrov later said

<sup>31</sup> BURR-KIMBALL 2015.

that when he should have signalled the “attack”, “the image of him sitting in a hot pan came to life”.<sup>32</sup>

Arkipov (1962), when the U.S. Navy bombed his nuclear submarine off Cuba, decided not to launch a nuclear strike. All three leaders should have agreed and the other two were in favour of the launch.<sup>33</sup>

In 1995, Yeltsin received the bag containing the codes and in consultation with his defence minister, they activated the launch key. Minutes later, it turned out that the missiles were heading in the other direction. (It was a U.S.–Norwegian research rocket studying the northern lights).

The above-mentioned cases provide more examples of during a (cold) war, the parties are not necessarily afraid of suffering a nuclear strike. Nevertheless, the defender does his best to assess the situation properly. Based on the assessment of the previous decades, we can state that the deployment of nuclear weapons causes a doubtful attitude rather than an aggressive attitude in all authorised representatives.

Moving away from specific conflicts, let's examine the issue from the point of view of a nuclear power and a losing war. There are several examples in recent history of a country developing nuclear weapons after losing a war, including territory loss.

In 1958, China did not take kindly to Kinmen Island and the Matsu Archipelago which were located near its maritime borders, giving a fundamental threat to Taiwan namely the second Taiwan Strait crisis. As the leader of the Communist Party, Mao Tse-Tung was right to trust Soviet defences – and soviet atomic bomb capabilities – mainly, since the U.S. which had nuclear weapons, supported Taiwan and threatened to intervene.<sup>34</sup> Because Mao had to be disappointed in the Soviet Union, he supported the development of China's own nuclear weapons with much greater care. After that, the third Taiwan crisis took place in 1995 and the fourth in 2022 but neither China nor the USA threatened to use nuclear weapons.

In 1961, during the Berlin crisis, where the East German policy began to build the Berlin Wall, american and soviet tanks faced each other and the American army put its nuclear-capable weapons on standby. However, Nikita Khrushchev did not reverse down and American nuclear power did not bring the deterrence that President Kennedy expected from its presence.<sup>35</sup> The American and Soviet troops eventually withdrew but the Berlin Wall divided the city and the world from 1961 until 1989.

India and Pakistan fought a bloody war in 1971, as a result of which East Pakistan became an independent nation called Bangladesh. Pakistan lost half of its population and a fifth of its territory.<sup>36</sup> Both countries have nuclear weapons but there was no reason to use them in order to restore territorial unity.

In addition to the above, we can perhaps understand the situation of North and South Korea without special reference. In each case, it can be established that these countries now have an independent nuclear program and can launch a serious blow to restore the past situation. However, this did not happen in decades. In conclusion,

<sup>32</sup> AKSENOV 2013.

<sup>33</sup> DAVIS 2017.

<sup>34</sup> GURTOV 1976: 54.

<sup>35</sup> CARMICHAEL 2011: 7.

<sup>36</sup> FAIR 2021.

it can be clearly stated that responsibility and rationality will not be taken away from state leadership over a long period, regardless of the political system and the current geopolitical situation.

## People on atomic weapons through constitution

Based on my hypothesis, we, as democratic states, should trust much more in our people. For so much effort we have made to find peace, we have to conclude that we failed to solve the problem. Since the Cold War, every government had to face the fact that more and more countries would develop their own nuclear arsenal. Nonetheless, the nuclear energy this weapon is based on is indispensable for our modern world. In the future, we shall use it to reach things beyond the atmosphere or only as a weapon to protect our planet and other celestial bodies from harmful effects. The atomic bomb is a military weapon. Like every military issue, it is under the remit of the country's armed forces. It means that the use of it or the holder's right at its disposal is up to the government.

The question is as follows: if we seriously think that we do not want to use atomic bomb against another country, why would not we set out it in the constitution directly? And, if we could not set out the phrase in the constitution, how can we derive the right to regulate nuclear issues from the constitution?

The basis of my hypothesis dates back to the year 1983 to the story of Soviet colonel Stanislav Petrov. Reiterated the above, Petrov was responsible for noticing any nuclear attack against the Soviet Union. After having had his sign, the counter-attack could be launched within a few minutes. However, in 1983, after detecting some flying objects and identifying them as rockets, he did not report them. Later, it was revealed that the flying objects were not rockets misidentified by computers.

Nevertheless, he had to report it. After the collapse of the Soviet era, in an interview, he said: "All I had to do was to reach for the phone; to raise the direct line to our top commanders – but I couldn't move. I felt like I was sitting on a hot frying pan."<sup>37</sup> I conclude it as an adequate answer. It means that every single person can understand and is able to feel the difference between the situation in question and the situation in about an hour.

## History before the constitutional question

Too many countries of the world let the rules not be set out uniformly. Primarily, the United States and the Soviet Union concluded bilateral agreements, and there were enough multilateral agreements for the world to feel safe. On 5 August, 1963, an agreement on Limited Test Ban Treaty (LTBT), on 1 July, 1968, an agreement on Non-Proliferation Treaty (NPT) and in the year 1974, the Threshold Test Ban Treaty

<sup>37</sup> AKSENOV 2013.

was signed. In 1979, Strategies Arms Limitation Treaties as SALT I and SALT II were undersigned. In this study, we do not describe the content of these contracts, it is enough to know that all of the above-mentioned treaties served to reduce and limit the number of warheads and of launching rockets in accordance with nuclear capabilities of different countries. The list is neither taxative nor exhaustive. Based on the numbers of treaties, we can conclude that every country was tirelessly seeking the solution for not being destroyed by another state.

In the years 1970's, only the United States and the Soviet Union had the capability to defend themselves and attack back in accordance with a nuclear arsenal. Nevertheless, they were the main representatives of the two worlds that were fighting each other. During the Cold War the United States and the Soviet Union tried to figure out the steps of the other party, and they could never have been sure of a number of nuclear arsenal possessed by the enemy. This is the reason why both of them have had many talks and put themselves under the effect of the above-mentioned agreements.

First, having felt the superiority in the field of nuclear power, the United States President John F. Kennedy declared that every attack against the United States is to follow with an answer of nuclear counter-attack. Years later, the doctrine of the United States administration changed into a proportional countermeasure. It meant that the nuclear power could not be used first but the conventional military forces. Before the end of the Cold War, both parties realised that nobody can win a war using nuclear power. Who uses it first can be sure that the other can launch a counter-attack before its first rockets reach the targets. It was the MAD (Mutual Assured Destruction) doctrine. After the 1970's, the MAD was the reference point. The great power had no choice but to accede the limitations and reductions of the number of their own nuclear arsenal. The great powers and those who possess nuclear ability can defend themselves and deter an attack from a hostile country. It means that every country that has nuclear weapons has the possibility to detect hostile rockets and has enough time to launch its own. It is based not only on the ability of self-defence but on deterrence, meaning the other party has to scare from a sure counter-attack.

We can conclude that world leaders have not been able to find the optimal solution to create a calm situation. Every country that uses or only threatens with nuclear weapons has to face with escalation and with its own destruction, too. Nobody can use an atomic bomb without harming themselves.

Accepting the argumentations of the International Court of Justice,<sup>38</sup> the use of atomic bomb may be accepted if the defending party is in an extreme situation in which the very survival of it would be at stake. It is not the total solution of the problem, so we must find a proportionate use of nuclear weapons. Throughout history we made agreements and conventions to sustain stability, although not in the most successful way.

<sup>38</sup> International Court of Justice [s. a.].

## How can it be sure?

After 70 years, the time and the question are given. At least we should find out how our society can be secured. What is the chance of finding the optimal solution on being secured knowing nobody is going to use nuclear weapons first? If nobody uses it, nobody can launch a countermeasure. Otherwise, if we are not sure that nobody uses it first, then everybody resorts to a nuclear arms race. One in a thousand atomic weapons will be used intentionally or accidentally.

The first of my two hypotheses is the constitutional review incorporating a new constitutional phrase. The question is whether a constitution may allow changing the way and involve the "atomic bomb" issues.

I analysed the constitutions of the United States and the Russian Federation. Both of them are really democratic, which is not surprising because they were written by Western scholars educated in democracy. Presumably, if democratic countries declared that they have no intention of being the first to use nuclear warheads, they could write this into the constitution. The phrase "First Use" is not unknown in history. China and India already declared it by a governmental statement. Other states think and say the same without ratification. Nonetheless, for many countries around the globe, the main obstacle of declaring the phrase „No First Use" is the doctrine of pre-emptive nuclear strike. Every nuclear power is afraid of acting too late. They are committed to the pre-emptive strike if they detect any suspicious activity by a hostile government. The question is evolving: what if the pre-emptive strike of a pre-emptive strike is on? (*Quis custodiet ipsos custodes*). Instead of lining up all of the scenarios to begin an atomic war, we have to exclude the worst. If one state launches a strike, the other state can do the same. But using atomic power is harmful for the environment. Humanity has no right to destroy itself and the ecological environment in particular. Imagine that Brazil has an atomic arsenal and has a debate with a smaller country over a base in the Antarctic. Brazil has the green head of Earth and the other country has a few neighbouring states near to it. Some warheads can reach their targets in other countries, Brazil or the Antarctic. Some warheads will either be destroyed on their way, falling back to different places or back to the launching country itself, or simply a small number of warheads will be defused before launching. Without further thought and thorough explanation, every single person can understand the effect of the example above. Humanity, over money, destroys Amazonas, mineral sources and ice reserves, every living conditions within a few hours. Which country is not affected?

My argument about constitutions is supported by the example above. I analysed the constitutions of both the United States and the Russian Federation. The former's constitution is shorter and concentrates on basic definitions, letting its Congress and its judiciary elaborate them. The latter's constitution is more detailed getting its citizens not to think the interpretation of constitution.

The Preamble of the Constitution of the United States starts with the main issues it wants to defend. Through the constitution, the people of the United States shall protect the values of domestic tranquility, general welfare and posterity. These phrases set out that the people's and the reigning government's actions own the

constitution need to meet with these expectations.<sup>39</sup> Having given the power into the hands of Congress, Article I, Section 8 of the Constitution claims these values to be defended. Article IV, Section 3 of the Constitution claims that the Congress, during legislative procedure, shall respect territorial integrity and property rights belonging to the United States itself. This article regulates the mutual protection of states against foreign invasion.<sup>40</sup>

The Constitution of the Russian Federation details literally the proverb “territorial integrity” itself and the inviolability of the motherland in accordance with Article 4, Section 3. However, the Article 7, Section 3 declares the protection of health of the people and Article 9, Section 2 of sets out the protection of land and natural resources. The constitution presses the human rights and freedom in Article 17, Section 3 in general. The Constitution of the United States refers to human rights and freedom, deducing from definitions as “free” and “freedom of” written in different places. In the Russian Federation, the state protection and the right of citizens are general clauses.<sup>41</sup>

By the way, if we have already used Brazil as an example, we can mention that the constitution in Brazil sets out its own regulation for Environment in Title VIII under Chapter VI and regulates the foundations of society in Chapter VII. Nevertheless, Brazil is committed to a stable climate, which is the foundation of the protection of future generations.<sup>42</sup>

All three constitutions mentioned above have a commitment to the international community. They consider themselves as of being a substantial part of the international structure. The U.S. constitution talks about the Treaties (including bilateral and multilateral conventions) in Article 2, Section 2 in general. The Russian constitution sets out the international law as an integral part of its legal system in Article 15, and the Brazilian constitution regulates the principles of its international relations under Article 4.

These constitutions protect the life of humanity and the life of ecological environment as a whole. Continuing my argumentation, there is no option for mankind to launch and to defend a strategical nuclear attack without harming these values. If we analyse the study of the American Physical Society<sup>43</sup> we can conclude that there is no hope for everyone to avoid a nuclear attack. The United States and the Russian Federation have more than 1000 warheads, and no one can present a defence system to deter more than 90% of them. It means that more than 100 warheads out of the total of 1000 warheads will reach its target. Beyond 1000 warheads launching to the targets, at least 100 big cities in the United States can be destroyed. Waging a nuclear war, there is no option for proportional loss, we must not measure the minimum acceptable loss.

However, we shall accede that every single country will struggle to create nuclear power; it is the only option to put itself into the circulation of autonomous states. If we declare our commitment into a phrase and when “No first use” works, every country

<sup>39</sup> See: <https://constitutioncenter.org/the-constitution/preamble/interpretations/37>

<sup>40</sup> See: <https://constitutioncenter.org/the-constitution/preamble/interpretations/37>

<sup>41</sup> See: <https://studycorgi.com/the-russian-federation-constitutions-features/>

<sup>42</sup> SETZER – WINTER DE CARVALHO 2021: 197–206.

<sup>43</sup> HITCHENS 2022.

that possesses nuclear weapons has time to prepare for proliferation of nuclear arms and they can slow down the activity in this field. For newcomers, peaceful behaviour is fully regulated. We shall exclude the worst scenario to keep the future of the next generations safe.

We can conclude that no single state has the right to employ atomic bomb for first use. No state can guarantee the lack of counter-attack, so every decision on using atomic power means a partial or total self destruction in compliance with its own territory, people and ecological integrity. Based on this argument, the right of counter-attack or the right of pre-emptive strike has a questionable function too. The optimal regulation could be the constitutional level committing to it and with responsibility, we can start the negotiations on nuclear disarmament or appease the desperate approach of having fatal weapons like these. In a risky situation, we must not trust that we will not find a new area that we overestimate or exaggerate, and in doing so, we will explicitly destroy the world we have spent so long creating.

My second hypothesis exists together with the first. People are key players in this. The people has the right to know the imminent danger. The question is whether the people can take part in the decision-making procedure on launching nuclear attack.

If we think about a common solution to the first hypothesis, including 'No First Use', we could regulate the use of nuclear weapons, and thus the legislative power could establish a channel to keep the people informed. From the perspective of the individual, if we decided that the use of nuclear weapons should not be regulated at constitutional level, then an independent part of the legislature should establish a system deprived from constitution in accordance with the persons concerned. Nuclear weapons are not just weapons of mass destruction. No other chemical, biological or powerful weapons cause as much direct harm to the people as nuclear weapons. The affect refers to physical destruction and the mental health of mankind or small groups. Their use or threat of use can harm the integrity of our society. So we cannot leave people out of the decision-making process.

At present, due to constitutional regulation, the application of the atomic bomb is under the remit of the president who is the Commander in Chief of the Army and Navy according to the United States Constitution in Article II, Section 2 and the Supreme Commander in Chief of Armed Forces on the Russian Federal Constitution in Article 87. It means that the people has no power on nuclear issues. The Presidency decides the apply of nuclear weapons without the active consent of the people. Based on my hypothesis, the people should get more rights to take part in using a weapon which is capable of killing every known living creature within one hour after its launch. These rights also involve the knowledge of the situation step by step, which are leading to dangerous circumstances like this. The only thing that immediately affects every people is decided only by a few people.

The logical way the constitution delegates the use of nuclear weapon to the president is the question of the military aspect. In a democracy, everything is for the people and by the people. So, every single citizen have the right to know the integrity of the environment where they live. The Russian Federation Constitution involves it in Article 42 saying "[...] have the right to [...] reliable information on the state of the environment". And the United States Constitution can not secure the achievements

set out in Preamble without the security of environment itself. Both constitutions are committed to protect human rights, particularly involving setting the right to life. By the way, it is not possible for the leader of any state to use nuclear weapons in the knowledge that a counter-attack could destroy lives and cause ecological catastrophe. The need for special knowledge possessed only by governments can no longer be supported by the militarian aspect of understanding the atomic bomb. Based on the above, the aftermath of a nuclear strike is the most trivial outcome for everyone. There is no excuse for leaving out those most affected. The use of a nuclear strike needs no tactics or consideration if the consequence is lethal. At present, I do not have in mind a direct referendum or anything like that, but the constitution should set out regulations on how to inform the people concerned.

On my second hypothesis, forged with the first hypothesis, I suppose that if the constitution regulates the launching issues of nuclear bombs such as "No First Use", then the people automatically has the right to enforce the conditions of fulfilment of these issues. If the constitution concludes that the nuclear issues belong to the Presidency or to military decisions, the legislation has to ensure the people letting their own local agencies to be created to help the collection of informations on it. In the Amendment X of the Constitution of the United States and the Section 2 in Article 3 of the Russian Federal Constitution, local governments might be established. It means that every small group has the right to merge into their own self governments. The constitutions must be amended with the phrase of "people who has a right to know the state of situation which can escalate the use of nuclear weapons as totally suicide". The people in a country or peoples interconnected among countries can maintain a channel to inform each others. I concluded that the secondary application, 'individually' of my second hypothesis, is more consultative than the primer application 'together' of my second hypothesis. Latter's means on constitutional regulation the people can ask and interpret the leaders on federal and state levels. However, the decision remains to Presidency as right of exclusivity. Former's means the people can intervene into the decision making procedure of military. The question of nuclear arsenal will be a shared competency.

We have to clarify why the leaders should introduce the people into the decision-making procedure. To a further extent, we have to check the constitutions which establish the fundamentals of rebellion. The First Amendment to the U.S. Constitution gives people the right to peaceably assemble and petition governments to redress their grievances. The Russian Federal Constitution sets out the same on peaceful assembly in Article 31. People have the opportunity to express their concerns about nuclear weapons. They can also take actions against their government if it makes a decision with disastrous consequences.

People generally behave peacefully, but they are able to protest if their patience runs out. It causes instability, damages, casualties, and destroys trade and the infrastructure of economic growth. The main triggers of rebellion are economic decline, political change and internal or regional instability.<sup>44</sup> If we analyse the indicators, we can conclude that any discrepancies in economic or political structures lead slowly

<sup>44</sup> *Why people rebel?* Economic Research Department 2012.

to rebellion. Internal and regional conflicts with political instability mean that the country has exceptionally long-standing problems, and these cause rebellion rather than sudden change.<sup>45</sup> Nonetheless, we can see some suddenly erupted rebellions. A good example for it are the Arab Spring, the Iranian insurgency or China's Covid policy. These sudden rebellions are based on a death of an innocent man or woman after a permanent social suffering. The counterstrike of the people is based on solidarity. If we check the protests against nuclear weapons, we can realise that societies in many countries do not support the secretive government and military approach. Since the first use of nuclear weapons, we have seen protests in both developed and developing countries. In addition to dozens of protests in Western countries, the Soviet Union also had its own rebellion in 1989.<sup>46</sup> The Soviet member state Kazakhstan defied the Soviet nuclear tests in Semipalatinsk. More the 5000 men and women gathered and protested against the test site. It means that every single person can understand the mechanism of nuclear issues and realise its harmful effect, regardless of the democracy or autocracy they live in. The key element is experiencing the incident. People are irrational actors and led by desires. Regarding the atomic bomb, leaders in democracy and in autocracy are very rational, because dictators are also responsible for their actions.<sup>47</sup>

In 1945, before the United States started to bomb Tokyo, leaflets were dropped over the Japanese cities warning them to evacuate their city and try to talk to their leaders.<sup>48</sup> The act could be the very first of modern media warfare. It is known since Karl von Clausewitz that the trinity of war is composed by the people, the commanders of the army and the government.<sup>49</sup> It means that there has to be a balance among the conditions. My study refers to this imbalance bias when people can influence their thinking about their needs. In the modern era, leaflets have been replaced or complemented by space devices such as satellites and cyber technology. The more people know, the less influence the government has.

## Summary

In the first part, examining the examples and historical cases and the consciousness of the leaders of the dictatorial system allows us to conclude that the strategic deployment of nuclear weapons cannot necessarily be realised. On the tactical side, it cannot produce the effect that its user wants to achieve. The international opinion is on the side of the suffering country, and even if there is sympathy for the aggressor state, the international community cannot condone an attack that destroys the Earth or part of it. In the event of a tactical deployment, there will be plenty of economic sanctions (not just a quasi-sanctions policy but an isolationist one), commercial,

<sup>45</sup> FEARON-LAITIN 2003: 75–90.

<sup>46</sup> See: <https://nvdatabase.swarthmore.edu/content/kazakhs-stop-nuclear-testing-nevada-semipalatinsk-antinuclear-campaign-1989-1991>

<sup>47</sup> DEBS 2010: 23

<sup>48</sup> Atomic Heritage Foundation [s. a.].

<sup>49</sup> VILLACRES-BASSFORD 1995: 9–19.

political and other consequences. By investigating these in advance, the horrible idea of deploying nuclear weapons can be avoided.

In each case mentioned, the participating persons considered their role independently and did what was necessary. In the continuation of the study – in addition to explaining the further legal and other relations –, I analysed the role of the people during the deployment of nuclear weapons, as I have concluded that the burden of social responsibility during the deployment of the nuclear bomb, thus the possibility of using nuclear weapons as a social phenomenon, is worth further research. In dictatorial, semi-dictatorial and representative democracies, nuclear weapons do not form the basis of knowledge in the everyday behaviour of the people to such an extent that we do not really know how they would react on a social level. It is a big decision for any leader to use such weapons in a way that people would accept. In fact, this brings us back to the judgment of the International Court of Justice.

Having followed the process of delivering the command, it seems more appropriate to reverse the chain of thoughts. If we know the conditions under which nuclear weapons cannot be deployed, then this should be the preferred course of action, and the circumstances should be steered in that direction from the initial stage of the conflict.

The actuality of the topic is shown during the current armed clashes between Ukraine and Russia, and in the near future, more and more countries will be able to produce nuclear weapons and to launch these into outer space which will make the geopolitical situation even more fragmented and uncertain. Answering the question is necessary, since in a future where anyone can threaten with the use of nuclear weapons just two things can be the result. If we know for sure that such a weapon will not be used or if we give no reason for such a weapon to be used, I have already started to analyse the first hypothesis in this study, and will continue it in the next. My second hypothesis, based on the Copenhagen school of Barry Buzan, answered with the theory of regional power divisions, which means that the world will be separated into 4-5 pieces due to countries' distrust of each other.<sup>50</sup> This means that the regions of the world will be separated for the sake of security, and will maintain a much more limited connection with each other. This naturally entails economic inequalities and different social developments, however, these cannot be the goal of the responsible Western philosophy today.

In conclusion of the second part, we can establish that the most dangerous challenge remains the nuclear arsenal of different countries. In my study, I showed that the nuclear era is being handled at minimum level. The society is not conscious regarding the one and only weapon which can destroy the whole living ecosystem within 1 hour after its launch. I concluded that the society needs a governmental encouragement in line with self-informed local bodies. These local bodies have all the information on which everyone can decide where the situation is going. The governments have their own interest in establishing these intermediary local bodies to transfer the questions and the answers between the governments and the people. With these methods, societies could be calmed down, and their governments could consider their opinions. By the way, hostile governments can be convinced that the people of

<sup>50</sup> BUZAN-WÆVER 462. oldal

another country does not support the conflict and their government above a certain level. It is a similar issue as Doomsday Clock in history.<sup>51</sup> But not only among scientists or leaders it is working, the people can inform each other, too. Not so correctly and not so profoundly but more frequently and more directly.

The constitutional level gives the right for people to collect information and to know how situations can go wrong. Another way, the governments have to face the sudden rebellion which can harm the whole internal and external stability of the country regarding their power. If the people can understand that they have to face with an indispensable nuclear attack, they will act in a rush and in a decisive way. Everyone is capable of understanding what Petrov understood.

In this study, I tried to analyse and find the solution how people can take part in the decision-making procedure, and I had to conclude that people can actively prevent the catastrophe if they can fully or partially monitor the movements of the entitled leaders. I am convinced that one well-intentioned country is enough to set an example by changing its constitution.

The rare situation in the Russian–Ukrainian war shows us the basic stability of my hypothesis. Time will show the fulfilment of my findings. A few days ago (in February, 2023), *The Moscow Times* wrote about the fear and frustration in Moscow. The people are frightened by the defence systems installed around Moscow. This frustration can be derived from one year of conflict since, supporting the occurrence of disobedience and diverting the government's will. At any time, it could be helped by private space companies who can use their space capabilities penetrating into a territory of another state through the atmosphere to show people up some leaflets. Like in Gaza (leaflets) happened, as well.

## References

- AKSENOV, Pavel (2013): Stanislav Petrov, The Man Who may have Saved the World. *BBC*, 26 September, 2013. Online: [www.bbc.com/news/world-europe-24280831](http://www.bbc.com/news/world-europe-24280831)
- Arms Control Association (2019): *The Intermediate-Range Nuclear Forces (INF) Treaty at a Glance*. Online: [www.armscontrol.org/factsheets/INFtreaty](http://www.armscontrol.org/factsheets/INFtreaty)
- Arms Control Association (2022): *New START at a Glance*. Online: [www.armscontrol.org/factsheets/NewSTART](http://www.armscontrol.org/factsheets/NewSTART)
- Arms Control Association (2023): *Comprehensive Test Ban Treaty at a Glance*. Online: [www.armscontrol.org/factsheets/test-ban-treaty-at-a-glance](http://www.armscontrol.org/factsheets/test-ban-treaty-at-a-glance)
- ATKINSON, Richard C. – HILGARD, Ernst (2005): *Pszichológia*. Budapest: Osiris.
- Atomic Heritage Foundation [s. a.]: *Warning Leaflets*. Online: <https://ahf.nuclearmuseum.org/ahf/key-documents/warning-leaflets/>
- BOBÁK, Áron (2020): Előbb vagy utóbb jön egy aszteroida, ami tömegek halálát okozza. Mit tehetünk, hogy ez mégse következzen be? *Rakéta.hu*, 30 June, 2020. Online: <https://raketa.hu/vedekezes-a-foldet-fenyegeto-aszteroidak-ellen>

<sup>51</sup> See: <https://thebulletin.org/doomsday-clock/>

- BURR, William – KIMBALL, Jeffrey P. (2015): Nixon, Kissinger and the Madman Strategy during Vietnam War *The National Security Archive*, 29 May, 2015. Online: <https://nsarchive2.gwu.edu/nukevault/ebb517-Nixon-Kissinger-and-the-Madman-Strategy-during-Vietnam-War>
- BUZAN, Barry – WÆVER, Ole (2003): *Regions and Powers*. Cambridge: Cambridge University Press. Online: <https://doi.org/10.1017/CBO9780511491252>
- CARMICHAEL, Neil (2011): *A Brief History of the Berlin Crisis of 1961*. Online: [www.archives.gov/files/research/foreign-policy/cold-war/1961-berlin-crisis/overview/berlin-wall-overview.pdf](http://www.archives.gov/files/research/foreign-policy/cold-war/1961-berlin-crisis/overview/berlin-wall-overview.pdf)
- DAVIS, Nicola (2017): Soviet Submarine Officer Who Averted Nuclear War Honoured with Prize. *The Guardian*, 27 October, 2017. Online: [www.theguardian.com/science/2017/oct/27/vasili-arkhipov-soviet-submarine-captain-who-averted-nuclear-war-awarded-future-of-life-prize](http://www.theguardian.com/science/2017/oct/27/vasili-arkhipov-soviet-submarine-captain-who-averted-nuclear-war-awarded-future-of-life-prize)
- DEBS, Alexandre (2010): Economic Theories of Dictatorship. *The Economics of Peace and Security Journal*, 5(1), 20–25. Online: <https://doi.org/10.15355/epsj.5.1.20>
- FAIR, C. Christine (2021): Pakistan Lost the 1971 War But Its Project of Islamist Violence Won the Larger Conflict. *The Print*, 14 December, 2021. Online: <https://theprint.in/opinion/pakistan-lost-the-1971-war-but-its-project-of-islamist-violence-won-the-larger-conflict/781070/>
- FEARON, James D. – LAITIN, David D. (2003): Ethnicity, Insurgency, and Civil War. *The American Political Science Review*, 97(1), 75–90. Online: <https://doi.org/10.1017/S0003055403000534>
- FORD, John (2017): When can a Soldier Disobey on Order? War On The Rocks, 24 July, 2017. Online: <https://warontherocks.com/2017/07/when-can-a-soldier-disobey-an-order>
- GURTOV, Melvin (1976): The Taiwan Strait Crisis Revisited: Politics and Foreign Policy in Chinese Motives. *Modern China*, 2(1), 49–103. Online: <https://doi.org/10.1177/009770047600200104>
- HITCHENS, Theresa (2022): No U.S. Missile Defense System Proven Capable against 'Realistic' ICBM Threats: Study. *Breaking Defense*, 22 February, 2022. Online: <https://breakingdefense.com/2022/02/no-us-missile-defense-system-proven-capable-against-realistic-icbm-threats-study>
- International Court of Justice [s. a.]: *Legality of the Threat or Use of Nuclear Weapons*. Online: [www.icj-cij.org/en/case/95](http://www.icj-cij.org/en/case/95)
- International Institute for Democracy and Electoral Assistance (2021): *The Global State of Democracy 2021*. Stockholm: IDEA. Online: <https://doi.org/10.31752/idea.2021.91>
- KRISTENSEN, Hans – KORDA, Matt (2022): Nuclear Notebook: How Many Nuclear Weapons does the United States Have in 2022? *Bulletin of the Atomic Scientist*, 10 May, 2022. Online: <https://thebulletin.org/premium/2022-05/nuclear-notebook-how-many-nuclear-weapons-does-the-united-states-have-in-2022/>
- LEWIS, Jeffrey G. – TERTRAIS, Bruno (2019): *The Finger on the Button*. Monterey, CA: James Martin Center for Nonproliferation Studies. Online: <https://nonproliferation.org/wp-content/uploads/2019/02/Finger-on-the-Nuclear-Button.pdf>

- PANOVIC, Aleksandra (2020): The 15 Most Powerful Weapons in the World. *Yahoo! Finance*, 23 December, 2020. Online: [https://finance.yahoo.com/news/15-most-powerful-weapons-world-164134118.html?guccounter=1&guce\\_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce\\_referrer\\_sig=AQAAAGrCtTwXT9hjXrTnJfqrI6EODin3HyYmch88G0En23WyhsXvwk-japiEOQGpMofViMeaVldCk38sYheLWjY4XSNGk4X4iz9QiVVrs\\_9y5kcVJlXeC2F-MawUkRCfI0ETxge9yp3xGawka9yNZaZT5HEOkCth7JRnX7N0Gdf31u7REG](https://finance.yahoo.com/news/15-most-powerful-weapons-world-164134118.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAGrCtTwXT9hjXrTnJfqrI6EODin3HyYmch88G0En23WyhsXvwk-japiEOQGpMofViMeaVldCk38sYheLWjY4XSNGk4X4iz9QiVVrs_9y5kcVJlXeC2F-MawUkRCfI0ETxge9yp3xGawka9yNZaZT5HEOkCth7JRnX7N0Gdf31u7REG)
- POMPER, Miles A. – TUGANOV, Vasilii (2022): What Countries have Nuclear Weapon, and Where are They? *The Conversation*, 1 April, 2022. Online: <https://theconversation.com/what-countries-have-nuclear-weapons-and-where-are-they-180382>
- SETZER, Joana – WINTER DE CARVALHO, Délton (2021): Climate Litigation to Protect the Brazilian Amazon: Establishing a Constitutional Right to a Stable Climate. *Review of European, Comparative Environmental Law*, 30(2), 197–206. Online: <https://doi.org/10.1111/reel.12409>
- SIPRI Yearbook 2022. Online: [www.sipri.org/yearbook/2022](http://www.sipri.org/yearbook/2022)
- Top 10 Intercontinental Ballistic Missile. *Military Today*, [s. a.]. Online: [www.military-today.com/missiles/top\\_10\\_icbms.htm](http://www.military-today.com/missiles/top_10_icbms.htm)
- WIDIGER, Thomas A. ed. (2016): Five-Factor Model and Personality Disorder. Oxford: Oxford University Press. Online: <https://doi.org/10.1093/oxfordhb/9780199352487.013.4>
- North Korea Withdraws from Nuclear Treaty. *The Guardian*, 2003. január 10. Online: [www.theguardian.com/world/2003/jan/10/northkorea1](http://www.theguardian.com/world/2003/jan/10/northkorea1)
- Why people rebel? Economic Research Department (2012). Online: [https://economics.rabobank.com/contentassets/d978bed7bba64398b63e6696d3a201ed/sp1203esa\\_why\\_people\\_rebel.pdf](https://economics.rabobank.com/contentassets/d978bed7bba64398b63e6696d3a201ed/sp1203esa_why_people_rebel.pdf)
- VILLACRES, Edward J. – BASSFORD, Christopher (1995): Reclaiming The Clausewitzian Trinity. *Parameters*, 25(1), 9–19. Online: <https://doi.org/10.55540/0031-1723.1730>
- WALKER DONALDSON, Rebecca (2020): The Risk of Obeying an Unlawful Order. *Multibriefs*, 29 June, 2020. Online: <https://exclusive.multibriefs.com/content/the-risk-of-obeying-an-unlawful-order/civil-government>