

THE NUCLEAR WEAPONS' DISARMAMENT AS A TOOL FOR HUMANITY FLOURISHING: AN ANALYSIS OF THE REASON AND THE COMMON GOOD OF THE NATURAL LAW THEORY IN INTERNATIONAL LAW SYSTEM OF HUMAN RIGHTS

O DESARMAMENTO DAS ARMAS NUCLEARES COMO FERRAMENTA PARA O FLORESCIMENTO DA HUMANIDADE: UMA ANÁLISE DA RAZÃO E DO BEM COMUM DA TEORIA DO DIREITO NATURAL NO SISTEMA INTERNACIONAL DE DIREITOS HUMANOS

EL DESARME DE LAS ARMAS NUCLEARES COMO HERRAMIENTA PARA EL FLORAMIENTO DE LA HUMANIDAD: UN ANÁLISIS DE LA RAZÓN Y EL BIEN COMÚN DE LA TEORÍA DEL DERECHO NATURAL EN SISTEMA INTERNACIONAL DE DERECHOS HUMANOS

SUMÁRIO:

Introduction; 1. The principles of reason and the common good in the natural law theory in International System Of Human Rights; 2. A moral need 's of an International Policy of nuclear disarmament; 3. Conclusion; References.

ABSTRACT:

It 's presented the nuclear proposal disarmament at the light of principles of natural law in International Legal System of Human Rights. It relates the natural law precepts of reason and the common good with the principles of the peaceful resolution of disputes. It 's demonstrated the incongruity of the nuclear weapons argument as a mean of defense. The research is a

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qualitative bibliography with a doctrinal analysis of international law. It's concluded that the sovereign's self-defense with an atomic arsenal violates international treaties, prevents the development of the common good, and is a constant threat to the flourishing of humanity.

RESUMO:

Apresenta-se a proposta de desarmamento nuclear à luz dos princípios do direito natural no Sistema Jurídico Internacional dos Direitos Humanos. Relacionam-se os preceitos do direito natural da razão e do bem comum com os princípios da resolução pacífica de controvérsias. Demonstra-se a incongruência do argumento das armas nucleares como um meio de defesa. A pesquisa é uma bibliografia qualitativa com uma análise doutrinária do direito internacional. Conclui-se que a legítima defesa do soberano com um arsenal atômico viola tratados internacionais, impede o desenvolvimento do bem comum e é uma ameaça constante ao florescimento da humanidade.

RESUMEN:

Se presenta la propuesta de desarme nuclear a la luz de los principios del derecho natural en el Sistema Jurídico Internacional de Derechos Humanos. Los preceptos del derecho natural de la razón y el bien común están relacionados con los principios de solución pacífica de controversias. Se demuestra la incongruencia del argumento de las armas nucleares como medio de defensa. La investigación es una bibliografía cualitativa con un análisis doctrinal del derecho internacional. Se concluye que la defensa legítima del soberano con un arsenal atómico viola los tratados internacionales, impide el desarrollo del bien común y es una amenaza constante para el florecimiento de la humanidad.

KEYWORDS:

Nuclear Weapons'; Disarmament; Humanity Flourishing; Human Rights; Natural Law.

PALAVRAS-CHAVE:

Armas Nucleares; Desarmamento; Florescimento da Humanidade; Direitos Humanos; lei Natural.

PALABRAS CLAVE:

Armas Nuclear; Desarme; Floración de la Humanidad; Derechos humanos; Ley natural.

INTRODUCTION

This research starts from the perspective of the International Law System of Human Rights and it is presented in which ways conflicts with atomic weapons violate the principles of practical reasonableness and the common good, hindering the integral human fulfillment, and consequently, violate the matter of the John Finnis' New Natural Law Theory together with Cançado Trindade's universal juridical conscience.

In the first place, it will be explained the influences of the natural law tradition on the origins of the international law. Also, it will be analyzed the concepts of basic goods, practical reason, law, authority, complete community, human rights, with the incorporation of the moral validity in the principle of the peaceful resolution of disputes, that means a prohibition of nuclear weapons in armed conflicts in order to ensure the flourishing of humanity, because it harms to the common good of the international community.

Then, it will be demonstrated the danger of an international law based only in the will of the States and in their sovereignty. In doing so, it will be defended an incongruity of the nuclear weapons argument as a self-defense with an analysis of the instabilities in international relations of the States that have nuclear stocks, and their level of adherence to the international policy of nuclear disarmament. In the recent years, the nuclear disarmament policies are weakening, next to this, there is a crisis in world's diplomacy. For those reasons, many countries are investing in their nuclear war arsenal as a self-defense. It will be articulated the instability of international relations with the use of such weapons by the states' sovereignties.

This article is divided in two parts: first, to explain an ethical, moral, philosophy that justifies the principles of reason and common good with a moral content to create laws that allow the integral humanity fulfillment; and the second one is a practical demonstration of the need of an international policy of nuclear disarmament. For this, it will be used a qua-

litative bibliography from “Natural Law and Natural Rights”, and others texts by John Finnis, with the “A Humanização do Direito Internacional” by Cançado Trindade and “Natural Law, International Law, and Nuclear Disarmament” by Mark Searl for the doctrinal analysis, and of the legal dogmatics analysis, documents from the UNODA (United Nations Office for Disarmament Affairs) with the U.N. Charter and the Treaty On The Non-Proliferation Of Nuclear Weapons (NPT), 1968 on the subject.

1. THE PRINCIPLES OF REASON AND THE COMMON GOOD IN THE NATURAL LAW THEORY IN INTERNATIONAL SYSTEM OF HUMAN RIGHTS

First of all, the principles of reason and the common good have emerged with a philosophy originated from the natural law of Aquinas, that defined law as an ordinance of reason for the common good, made by him who has care of the community, and promulgated, so, this notion was articulated with the early doctrines of international law. For example, the philosopher Suarez, from the modern age’s, considers that the human race, into many different peoples and kingdoms it may be divided, always preserves a certain unity, not only as a species, but also a moral and political unity.

Likewise, Grotius describes the *jus gentium* as a function of man’s rational nature, the man has an impelling desire for society peacefully and organized, the *jus gentium* is binding on all men because it’s reasonable, and it’s reasonable because it reflects and promotes the common good (SEARL, 2001, p. 275).

Those philosophers agreed that the need of organization in society stems from human reason and for these reasons there is the development of the Society of States, where each State regulated their relations with each other by means of mutually agreed-upon laws. Therefore, the peaceful resolution of international disputes is an international principle whose enforcement validates that above the force is the law, just as above the will is the conscience (TRINDADE, 2015, p. 722). Thus, even if individuals live in different legal systems, a common principle is the law of nations, as well as the genesis of public international law.

In this regard, Grotius, demonstrates that the State is constructed by the laws of nations, formed by mutual consent and the law of nature,

arising from the rational expression of the social character of man. This idea is important to demonstrate that the sovereign will of States cannot be taken as an exclusive source of international law, passing over the law of nations (SEARL, 2001, 276). For us, it's clear that exist two levels of responsibilities for the States, the regional's one and the international's one, with a double jurisdiction, all concerned with the human fulfillment.

With international cooperation there is a relativization of sovereignty due to the fact that the State is not the main subject of international law, but the individual. Thus, Trindade argues that there is no way to separate international law from its foundations, since Cicero the *recta ratio* prescribes that which is good leads to the cogent principles emanating from human consciousness (like justice and good faith), it is the inevitable relation between law and ethics, where natural law, with the dictates of the *recta ratio*, ground justice (TRINDADE, 2015, p. 8).

According to Vitoria, the international Community, *totus orbis*, takes precedents over the will of each individual State, the law of nations regulates the international community of socially organized human beings in States where reparation of human rights violations reflects the international need fulfilled by the rights of the people through principles of justice adduced by the *recta ratio* (TRINDADE, 2015, p. 9). That principles of justice derived – by implementation – of the basic human good of the practical reasonableness, which possesses the requirements form the first principle of morality. Therefore, the principles of justice of the law (Peaceful Settlement of disputes and a renunciation to a resort of War) must respect the natural law, which confers a universal morality that makes it possible to speak in a common good of the international Community for the integral human flourishing. The idea will be better addressed throughout this topic.

In the contemporary conception of natural law, positive law assists in the division of basic human goods. In a diversified world, the new *jus gentium* assures the unity of *gentius* society, since it can not be based on mere “wills” of the subjects of rights, but on the *lex praeceptiva* apprehended by human reason (TRINDADE, 2015, p. 9). Then, International Law became the ultimate recipient of the norms of protection in the execution of justice. Besides that, the new *jus gentium* has a broad spatial and temporal dimension, comprising humanity in present and future generations

(TRINDADE, 2015, p. 799). This is important to demonstrate because the common good, that is the object of that research, depends of the humanity fulfillment for the present and the future generations.

The State currently has responsibility for its acts of management and empire (*jure gestionis* and *jure imperii*) in cases of omissions of any of its powers or agents; it is an entity created by humans, composed of them, and for them exists in function of the common good (TRINDADE, 2015, p. 16). In the meantime, Trindade addresses the emergence and consolidation of the *corpus juris* of international human rights law (dynamic interpretation of treaties) as a result of the reaction of the universal legal conscience (considered as the material source of such right), derived from universal morality, in the face of frequent abuses against human beings validated by positive law. Then, International Law became the ultimate recipient of the norms of protection (TRINDADE, 2015, p. 18) in the execution of justice.

Therefore, that common good led what it came to be United Nations General Assembly. In that sense, the common good is understood as a condition that enables members of a community to engage in the pursuit of integral human fulfillment, so the political's perfect community not end in itself, but has to promote the welfare of its citizens. For those reasons, it's necessary a co-existence with harmony, because the International Society has to promote the flourishing of States, and those States emerged to permit the flourishing of humanity (SEARL, 2001, 277). So, this interpretation is based on the assumption in a natural law theory.

For the contemporary philosopher of the New Natural Law Theory John Finnis, the normativity of law, international law also, is justified because every obligation must be considered from the practical reasonableness, a norm is obligatory if it presents to the man a good reason for action (FINNIS, 2007, p. 263), the bond between the legal obligation and the fulfillment of this obligation lies in morality and the link between morality and law is in practical reasonableness. The reason why natural law has law's quality of being preceptive, imperative, mandatory, obligatory, compelling in conscience, and so forth, is because it directs us to common good in the measure prescribed by the requirements of practical reasonableness (FINNIS, 2015, p. 222).

Finnis identifies the basic forms of good that are life, knowledge,

play, aesthetic experience, sociability (friendship), practical reasonableness, religion, they are all equally fundamental, aside from that, it is not an exhaustive list and they are not taken in a moral sense. The basic value of life means everything done by man to preserve his life like a social organization by law, so a humanitarian law system based on the prohibition of the use of force and that promotes a peaceful settlement of disputes are the ground of a law that prohibits nuclear weapons in armed conflicts to preserves the first basic good of life in any community.

In this sense, practical reasonableness is the integrating good, whose content is the integration of the pursuit of any and all of the basic goods and corresponding practical principles. The good of practical reasonableness as standing in a hierarchical relationship to all the other basic human goods (FINNIS, 2015, p. 206), because of its importance in the act of making choices of every kind of generality, specificity or particularity, so its content is the goodness of pursuing intrinsic human goods in a reasonable way.

Those human goods have been seen in the light of a community of human beings, which begins at the lowest end in physical need for the other, at higher levels develops into a sense of community and unity with a rich sense of friendship and disinterestedness (RENTON, 1981, p. 43). On this way, the concept of justice is interpreted as the object of all community judgments of the practical reason, is the common good which means the flourishing of all the members of the community.

For Finnis there are human goods and rights that only institutions can secure since justice is related to the common good, which is fundamentally the good of individuals related to all as well as the guarantee of a set of conditions for human flourishing in the community (DAOU, 2017, p.33).

The tradition of natural law, here rescued, is intended to determine what are the requirements of reasonableness on a rational basis to authorize the activities of legislators, judges, and citizens (FINNIS, 2007, p. 282). But how do we know if a decision is reasonable in practice? For making practical decisions in that pursuit of the seven human goods it is necessary a rational plan of life, with an harmonious set of purposes and orientations, as effective commitments, without arbitrary preferences among the basic human goods and persons; an detachment from the vicissitudes

of life; commitment to whatever we have set our hand to; consequences are relevant, it means that one must try to do actions which are efficient for their purpose, is neither utilitarianism nor consequentialism; a respect for every basic value must be preserved in every act; there is a requirement favoring the common good; one must follow one's conscience (RENTON, 1981, p. 42). The product of these requirements is morality, they will direct what one must do or must not do.

Consequently, an international norm that preserves the basic human good of life worthy of both present and future generations under humanitarian law, which encourages complete nuclear disarmament, is in accordance with the practical reasonableness in the development of human fulfillment, and is accepted as a just norm with a moral validity.

In this context, justice is the necessary instrument for the promotion of the good of individuals in the community, being considered just the person who foments it, and the authority of the law depends on that justice or that capacity of ensure the common good (FINNIS, 2007, p. 344).

All aspects of justice are particularizations of General Justice, and that one is defined as precisely a disposition of the soul, is a practical willingness to favor and foster the common good of one's communities, so the theory of justice is the theory of what in outline is required for that common good (FINNIS, 2015, p. 208).

Finnis considers that there are relations that transcend the borders of all poleis or States, in multiple forms:

For there is physical, biological, and ecological independence, a vast pool of knowledge (including mutual knowledge of one's existence, concerns and conditions) and a vast stock of technologies, intercommunication systems, ideological symbolisms, universal religions [...] Therefore, there is no reason to deny the good of the international community in the fourth order, the order of reciprocal interactions, mutual commitments, collaboration, friendship, competition, rivalry [...] If it now seems that the good of individuals can only be totally international community, we must conclude that the national state's claim to be a complete community is unjustifiable, and the postulate of the national legal order, which is supreme, comprehensive, and an exclusive source of legal obligation, is increasingly plus what lawyers would call 'legal fiction' (own translation) (FINNIS, 2007, p. 150).

According to Finnis, the whole community, in this case, is a global association in which the initiatives and activities of individuals, families and the vast network of intermediary associations would be coordinated with the purpose of guaranteeing a set of material conditions and forms of collaboration that promote the realization of the personal development of each individual (FINNIS, 2007, p. 150). In doing so, the whole community is relative to the international Community (which is bigger than the international Community of States).

For Finnis, the concept of law has four characteristics: form, source, purpose and recipient (FINNIS, 2007, p. 264). It means, that a law refers to rules made by a determinate and effective authority (itself identified and constituted as an institution by legal rules) for a complete community, supported by sanctions in accordance with the rule-guided stipulations of adjudicative institutions, in minimization of arbitrariness, and maintenance of a quality of reciprocity between the subjects of the law both amongst themselves and in their relations with the lawful authorities (TAN, 2002, p. 199). For that reason, it is important to have an international system of law for coordination international humanitarian problems for promoting the common good of the Community, an limiting the international use of the force with the prohibition of the use of nuclear weapons.

The set of laws are adaptable to the needs of the empirical characteristics of the human condition. Every natural law theory seeks to understand the relation of specific laws of society to the principles of practical reasonableness, for example a law prohibiting the use of nuclear weapons in armed conflicts is related to the requirements of practical reasonableness and the basic good of life.

It is noteworthy that for Finnis there are rules derived directly from natural law “by deductions” from general principles, as already quoted, and those derived from natural law as “implementations” (FINNIS, 2007, p. 277) of general directives are merely human laws which are controlled by the general principle. These are those used in the judiciary (the creative role of the legal operator), are guided by principles in the process of applying positive or customary law on particular issues (second order principles).

These second-order maxims express the objective of stability and predictability in the relations between people and things (formalism of

law) to the content of the rule of law, practice, customs and the force of authority (FINNIS, 2007, p. 280). Second-order principles are general principles of law, either of which can be derogated from by another component of the common good, but there are principles of justice that correspond to the absolute rights of man (non-derogable), such as the principle of international humanitarian law and the limited use of force that are the basis of the ban on the use of nuclear weapons in armed conflict.

Finnis includes as law those cases which lack something of the central case, like customary international law (TAN, 2002, p. 196), like the principles of humanitarian law, that are not made in the sense that law in the central case, but would be considered law under his definition, the law refers to any State act from the executive's public policies, laws to judicial judgments.

The point of natural law is to determine the degree and manner of incorporation of morals into law (TAN, 2002, p. 200), the authority of the law depends on its ability to secure justice. So, in the international law, there will an authority valid if that laws (treaties) respect the universal morality from the practical reasonableness of the natural law theory.

Meanwhile, the international law needs to apply the matter of the natural law in some way, so the determinatio is an activity of the practical intellect which natural law precepts are concretized in specific forms in human law (SEARL, 2001, p. 279). The authority of the ruler stems from his ability to promote the common good, balancing the benefits and responsibilities in a community (FINNIS, 2007, p. 344), solving the problems of coordination, and such authority is designated by a rule.

In comparison with international law, there is no unitary legislator who is responsible for implementing natural law precepts, it is made by a plurality of actors, international norms are originated by the states' practices and treaties creations. These choosing, for creation of international law, are influenced by general principles of law, the international jurisprudence and individuals and groups (the international community is more than the international community of States).

In this tradition of natural law, rights mean basic aspects of human flourishing; these human rights are a dismembered statement of the common good, and some of them are absolute and cannot be overridden for any purpose whatsoever. Finnis condemns all use of force to effect good

purposes: the bombing of civilians, the unleashing of nuclear warfare, the preparation for such warfare and the diplomacy based upon the possession of weapons that will involve the destruction of the innocent, as also the taking of hostages, terrorism, and threats or reprisals against those who are defenseless (RENTON, 1981, p. 46). All these acts are prohibited for a natural law interpretation because they are in conflict with the absolute human rights of civilian populations.

The rights that are absolute are claims related to the duties entailed by the requirements of practical reasonability (FINNIS, 2007, p. 220). So, it is unjust to deny absolute human rights to a person, thus the basic human good of life analyzed in light of the principle of practical reasonableness, in the sphere of the positive law of international law is incompatible with the authorization of the use (acts or laws) - at any time - of a nuclear weapon in armed conflicts as a threat to the existence and flourishing of humanity.

Human rights can only be enjoyed safely in environments of mutual respect, trust and understanding (FINNIS, 2007, p. 212), thus inciting hatred, wars, bombing, threatening everyone in the community of a future of violence and other violations of rights, this is a harm to the common good as they are harmful to the dead, wounded and all who have to live in this community.

The new natural law theory of Finnis is according to Augustine's definition of *concordia* and *societas*; concord is agreement and harmony in willing, that is, in deliberating, choosing, and acting; and community is fellowship and harmony in shared purposes or coordinated activities (FINNIS, 2011, p. 184). For those reasons, peace is the fulfillment which is realized most fully in the active neighborliness of willing cooperation in purposes which are both good in themselves and harmonious with the good purposes and enterprises of others. Peace is every attitude, act or omission damaging to a society's fair common good, by dispositions and choices which more or less directly damage a society's concord.

In the case of war, the we and the they are both political communities, acting as such a complete or self-sufficient (*perfectae*) communities, but any State is a complete community. The tradition says that a choice of means which involves such a negation of peace (of concord, neighborliness and collaboration) can be justified if the choice of such means in-

cludes the restoration of peace as constitutive of the common good of the imperfect community constituted by any two interacting human societies (FINNIS, 2011, p. 185). However, a requirement of a pacific intention is, for the tradition, a real implication of morality.

The early international law scholars all defined a resort to war only if there isn't a tribunal to which States could submit their disputes or renounce a resort to war in exchange for arbitration's resolutions (SEARL, 2001, p. 278). For Finnis, peace is materially synonymous with the ideal condition of integral human fulfillment, the flourishing of all human persons and communities (FINNIS, 2011, p. 185).

Seeing it, the concept of war is incongruent with a system of international law based on principles of reason and common good. It's unreasonable a resort to war because it has a destructiveness physical and psychological impact on persons and communities. The integral human fulfillment is a fundamental guiding principle of morality, this means that the prohibition on the use of atomic weapons, provided for in U.N Charter, is universal and its violation of human law between States implies a failure to observe the matter of natural law.

So, the openness to that ideal is the first condition of moral reasonableness which means the tradition's classic treatments of war founded in the treatises precisely on love of neighbor. That is an implication of the Golden Rule (principle) of fairness, for that reason it is unfair not only to the enemy, but also to one's own people to initiate or continue a war which has no reasonable hope of success, or to initiate a war which could be avoided by alternatives short of war, such as negotiation and non-violent actions (FINNIS, 2011, p. 195).

Thereby, the general renunciation of war in inter-States relations was a decision by the community of nations in a process of reasoning to conclusions based on principles concerned on human nature and human fulfillment. This demonstrates the importance of conciliation and mediation mechanisms', because even with the development of the international society, there is the growth of the nuclear technologies on weapons, that laid aside the principle of the peaceful resolution of disputes stated as an absolute norm (SEARL, 2001, p. 282).

The paradoxes of nuclear deterrence are one exemplary sign of the unreasonableness of every prudence which falls short of the requirements

of morality's first principle (FINNIS, 2011, p. 200). All things considered, it was demonstrated that all the competent authorities must to guarantee, using the practical reasonableness, absolute human rights based on basic human good of life, in the international law system, that means a prohibition of nuclear weapons in armed conflicts for allow the flourishing of humanity, the use of the force with a nuclear weapons harms to the common good of the international community.

2. A MORAL NEED'S OF AN INTERNATIONAL POLICY OF NUCLEAR DISARMAMENT

In accordance with the respect of basic human good of life, the absolute human rights will origins law that will make possible the international prohibition of the use of nuclear weapons in armed conflicts for allow the flourishing of humanity in the common good of the international Community. For those reasons, in this chapter it will be make an analysis about the contemporary policy of nuclear disarmament besides the States' international relationship and the International understanding of that tool in the International Courts.

Nuclear weapons have been used in war only twice, by the United States in Hiroshima and Nagasaki during World War II, but as long as such weapons continue to exist, the potential for their use, whether intentional or accidental, by States remains and they continue to be central to the security doctrines of those States that possess them.

Over the past two years, it has often been highlighted in the world media that nuclear disarmament policies are weakening, and in addition to this particular issue, there is a growing rise in instability in international relations, a crisis of diplomacy. Relating the two phatic phenomena above, many countries are investing in their nuclear war arsenal with the self-defense argument. The current international context is experiencing the instability of international relations and the danger of the threat of damage from the use of such weapons at the hands of state sovereignties: China, France, Russian Federation, United Kingdom, India, Israel, Iran, South Asia, North Korea and Pakistan. Their disobedience to international treaties has intensified as the US situation has not renewed with Russia the bilateral non-investment agreement on such war technology; thus, as the recent exit of the US from the agreement with Iran in 2015,

JCPOA (Joint Comprehensive Plan of Action), which has destabilized the relationship between countries and that is why Iran has been investing in uranium enrichment.

Nuclear-weapon States, nearly 50 years after the Nuclear Non-Proliferation Treaty entered into force, have not held up their end of the nuclear bargain to pursue “in good faith” negotiations on nuclear disarmament. The art. VI of the NPT (UNODA, 1968) requires all States parties to negotiate in good faith on effective measures related to the cessation of the nuclear arms race and to nuclear disarmament, as well as on a treaty on general and complete disarmament under strict and effective international control.

There are fewer nuclear weapons, but those that exist are more modern. There are a massive military spending and investments in modernizing nuclear weapons which leaves the world over-armed and peace underfunded. In 2016, global military spending reached nearly \$1.7 trillion to modernize nuclear arsenals (UNODA, 2017, p. 8). So, all these investments and all this production have a purpose: to be used, someday.

Countries are increasing their atomic arsenal with the justification of self-defense. In total, there are an estimated 15,395 nuclear warheads (UNODA, 2017, p. 26). In 2016, nuclear-weapon States possessed nearly 15,400 nuclear warheads, more than 4,100 of which were deployed and ready for use; approximately 1,800 of these were kept on high alert, ready to be launched within minutes (UNODA, 2017, p. 56). Most of the thermonuclear weapons in today’s arsenals have an explosive yield roughly 8 to 100 times larger than the bombs dropped on Hiroshima and Nagasaki, which averaged the equivalent of 18,000 tons of TNT (UNODA, 2017, p. 34).

According to Albert Einstein, the scientist, nuclear weapons are the most destructive weapons on Earth, because no other weapon poses an existential threat to humanity. A single bomb has the potential to destroy an entire city, kills millions and contaminates air, land and water for many kilometers around the original blast site for thousands of years. In the event of a major nuclear war, all of civilization would be threatened by the direct effects of the nuclear blasts, the resulting radiation and the nuclear winter that could potentially result when enormous clouds of smoke, fine dust and soot are thrown into the atmosphere. So that destruction could

not be limited to military combatants.

Currently, the United States nuclear arsenal consists of intercontinental ballistic missiles (ICBM), nuclear submarine launches ballistic missiles (SLBM), and nuclear weapons of the heavy bomber group. The United States ratified the NPT in 1968, on the other hand, did not ratify the Test Ban Treaty in 1999. In spite of not having tested them since then, it is estimated that they spend about \$30 billion for year just to maintain its stocks. The United States Congressional Budget Office estimates that the total cost to modernize the country's nuclear forces will be more than \$1.2 trillion over the next 30 years (UNODA, 2017, p. 45).

In 2010 (UNODA, 2017, p. 55), the Russian Federation and the United States signed the Treaty on Measures for the Further Reduction and Limitation of Strategic Offensive Arms (New START), where both countries take responsibility for reducing their nuclear arsenals. However, Russia's parliament, in 2019, passed the law to suspend the Intermediate-Range Nuclear Forces Treaty (INF), signed with the United States in 1987, during the Cold War. This shows the instabilities of the international relations and the danger of the nuclear weapons on the hands of the sovereign of each State.

António Guterres, United Nations Secretary-General, defines five States as nuclear-weapon States: China, France, the Russian Federation, the United Kingdom and the United States. An additional three countries, India, Israel, South Asia and Pakistan, never joined the NPT (UNODA, 2017, p. 58). They are parts of the Nuclear-Weapon-Free Zones (NWFZ), which is a regional approach to strengthening global nuclear non-proliferation and disarmament norms and to consolidate international efforts for peace and security.

Besides that, the Democratic People's Republic of Korea (DPRK), which withdrew from the Nuclear Weapons 27 NPT in 2003, is estimated to have approximately 16 nuclear warheads until 2017 and has conducted five nuclear explosive tests. They are expanding their nuclear program conducted five nuclear test explosions beginning in 2006 and continuing into 2016. The Russian Federation and the United States, with a combined total of more than 3,700 deployed warheads, possess the vast majority of the world's nuclear arsenal (UNODA, 2017, p. 179). Some of these countries do not provide accurate information about their arsenal.

In the midst of, the NPT is an international treaty whose objective is to prevent the spread of nuclear weapons and technology, to promote cooperation in the peaceful uses of nuclear energy and to further the goal of achieving nuclear disarmament and a general complete disarmament (UNODA, 2017, p. 55). The NPT is a “grand bargain” between the nuclear-weapon States and the non-nuclear-weapon States; all of them recognized the right to develop nuclear energy for peaceful purposes, in conformity with the basic non-proliferation obligations of the Treaty. In 2010, at a Review Conference of NPT, there was an achievement at which States parties agreed to a final document which included conclusions and recommendations for follow-on actions (UNODA, 2017, p. 58). In fact, the NPT was ineffective in preventing the increase in the stockpiles of the nuclear superpowers.

For the purpose of verifying the obligations under the Treaty, it was created the International Atomic Energy Agency (IAEA), responsible for certifying that non-nuclear-weapon States parties to the Treaty have not diverted nuclear material from peaceful purposes for use in nuclear weapons. It establishes a safeguards system under the responsibility of the IAEA, used for verify compliance with the Treaty through inspections.

In recent years, transnational advocacy networks have sought to place the issue of disarmament more forcefully on the international agenda, because of the international policy to still developing a “Global Civil Society” (ICJ, 1996, p. 200). For that reason, there is a range of actors seeking to shape international law on the issue of nuclear warfare that has irreversibly expanded beyond the exclusive sphere of sovereign States. This means an expression of solidarity with the sentiment of the anti-nuclear weapons groups.

The International Court of Justice (ICJ), in the Nuclear Weapons case, was being asked by the General Assembly whether it was permitted to have recourse to nuclear weapons in every circumstance and concluded that the unique characteristics of nuclear weapons is their destructive capacity to cause untold human suffering, and their ability to cause damage to generations to come, the object of their destruction is human life (ICJ, 1996, p. 264), and the use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict.

The destructive power of nuclear weapons cannot be contained in

either space or time, they have a potential to destroy all civilization and the entire ecosystem of the planet. So, is it moral to use such weapons if no response capacity exists that would adequately respond to the human suffering and humanitarian harm that would result?

In international law, the fundamental dignity of the human person is applicable on principles of international humanitarian law to armed conflict, which means a prohibition to infliction unnecessary suffering in innocents civilians, and, the use of nuclear weapons is a disproportionate force (ICJ, 1996, p. 245), which all the conditions to promoting integral human fulfillment would be permanently damaged. So, the prohibition of the use of force in international law, and the general renunciation of war in inter-State relations were decisions arrived at by the community of nations in a process of reasoning to conclusions based on prior principles concerning human nature and human fulfillment.

The ICJ had an opinion in attention to the growing awareness of the need to liberate the community of States from the dangers resulting from the existence of nuclear weapons, on the will of the global civil society beyond the sphere of sovereign States. The Court understand that in time of peace, this use of nuclear weapons are considered to be unlawful. But the Court recognizes an exception permitting the use of nuclear weapons in extreme circumstances of self-defense (ICJ, 1996, p. 245). This paradox led Court missed to confirm the absolute illegality of nuclear weapons (SEARL, 2001, p. 292).

In art. 51 from the UNC, these provisions do not refer to specific weapons, they apply to any use of force, this Charter neither prohibits, nor permits the use of any specific weapon, including nuclear weapons. So, the Court understands that a weapon that is already unlawful per se does not become lawful by reason of its being used for a legitimate purpose under the Charter.

The right of self-defense has to obey to the conditions of necessity and proportionality as a rule of customary international law and the Court not having found a conventional rule of general scope, nor a customary rule specifically proscribing the use of nuclear weapons per se. In the case *Nicaragua v. United States of Arnerica*, the Court concluded that there is a specific rule whereby self-defense would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule

well established in customary international law (ICJ, 1996, p. 245).

However, customary rules of war have been developed by the practice of States, with the Hague Convention of 1899, 1907, the St. Petersburg Declaration of 1868 and the Brussels Conference of 1874. The first one fixed the rights and duties of belligerents in their conduct of operations and limited the choice of methods and means of injuring the enemy in an international armed conflict, there is, also, the Geneva Law (Conventions of 1864, 1906, 1929, 1949), which protects the victims of war and aims to provide safeguards for disabled armed forces personnel and persons not taking part in the hostilities. They formed one complex system, an international humanitarian law with the Additional Protocols of 1977.

With all those new means of combat it is necessary some specific prohibitions of the use of certain weapons. So, the art. 22 of the Hague Regulations demonstrates the right of belligerents to adopt means of injuring the enemy is not unlimited. In according with the laws and customs of war on land, annexed to the art. 23 of Hague Convention IV of 1907, which prohibits the use of arms, projectiles, or material calculated to cause unnecessary suffering, these principles are the Martens Clause of the humanitarian law.

For those reasons, the Court appreciated the art. VI of the NPT and considered each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race and a complete disarmament under strict and effective international control, this means, an obligation to achieve a precise result - nuclear disarmament in all its aspects. In its resolution 984 (1995), the Security Council reaffirmed that idea: a complete disarmament as a universal goal.

Finally, the Court had decided unanimously that the use of force by means of nuclear weapons that is contrary to art. 2, §4, of the UNC and to art. 51, is unlawful, and also, that a threat or use of nuclear weapons should be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law (ICJ, 1996, p. 260). Moreover, it was unanimously the understanding that exists an obligation to pursue in good faith and bring to a conclusion negotiation leading to nuclear disarmament in all its aspects under strict and effective international control.

However, by seven votes to seven (ICJ, 1996, p. 266), the Court could not conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense.

The argumentation against the use of nuclear weapons as a self-defense is unreasonable because it represents a disregard with the respect to common good, it is a tool of destruction that represents a denial of human dignity justified by an international order subordinated by the interests of States.

It may, thus, be seen that the prohibition in Article 2, §4 of the UNC against the threat or use of force among States is a human law that is simultaneously derived from the natural law as a conclusion logically derived from prior reasonable principles. The words of this article derive its force from its articulation in human law and from natural law. So, this prohibition is universal in application, and also, even if the human law prohibition is violated by States, the essential validity of a prohibition against the use of force, it would violate a matter of natural law.

A natural law in the international law shows that a consensual law created by States must to be judged in the light of ethics and reason, that justified the need for a legitimacy beyond the States practices. For a long time, International law has treated the sovereign will of States as the ultimate source of international norms. Actually, that is unreasonable for norms. The Court granted a decision subordinating the argument against nuclear weapons based on humanitarian law principles to the argument in favor of nuclear weapons based on States' right of self-defense, art. 51 of the UN. Charter.

After all, the good faith incorporates more than the principle of *pacta sunt servanda* to the goal of complete disarmament. According a natural law analysis, the possession of nuclear weapons represents the violation to the common good. Any State has to respect the general renunciation of war for promotes a human fulfillment, in a process of reasoning, they have to invest in policies of conciliation and mediation mechanisms', with elements of international cooperation, that demonstrate an international community of States committed to achieving the disarmament goal: in flexibility their sovereign, in pursuit a time-bound disarmament scheme would requires respect to good faith, in submits their nuclear stoke to a disarmament verification schemes'.

Overall, it was demonstrated that international relations are volatiles, with instabilities, and they impact on international policy of nuclear disarmament, which is in crisis, like it was confirmed with the analysis of the recent studies from UNODA about the consequences of the NPT. So, the means adopted by the States are a violation to a moral conception to absolute human right of life, and it is only without the use of the force with a prohibition of nuclear weapons in armed conflicts that could exist the flourishing of humanity to the common good of the international community.

3. CONCLUSION

All things considered, the principles of reason and the common good from the natural law defined law as an ordinance of reason for the common good, made by him who has care of the community was articulated with the early doctrines of international law, which agreed that the *jus gentium* assures the unity of *gentius* society on the law apprehended by human reason.

The State is constructed by the laws of nations and by the law of nature. The normativity of international law is based in obligation considered from the practical reasonableness as the first principle of the morality, which is the integration of the pursuit of any and all of the basic goods. Those human goods are needed in a Community of human beings, the international's one. After that, rules derived from natural law by "implementations" are the judiciaries' one, that corresponds to the absolute rights of man, like the limited use of force. In the international law, the authority of the law has to respect the universal morality from natural law theory.

So, in this sense, the International Law is a norm which protects the execution of justice, and the notion of common good wins sense as a condition that enables members of a community to engage in the pursuit of integral human fulfillment, for this the political perfect community has to promote the welfare of its citizens. Here, the whole community is a global association in which the initiatives and activities of individuals, families and associations would be coordinated with the purpose to ensure a set of material conditions of collaboration that promote the realization of the personal development of each individual.

After that, it was demonstrated that rights are aspects of human flourishing. So, the human rights are statements of the common good which some of them are absolutely related to the duties entailed by the requirements of practical reasonability. One of these rights are bound to a condemnation of all use of force which involves nuclear warfare, because it is in conflicts with the absolute human rights of civilian populations.

Therefore, the basic human good of life when analyzed in light of the principle of practical reasonableness is incompatible with the use of nuclear weapons in armed conflicts because is unjust to deny absolute human rights, so the positive law of international law is incompatible with the authorization to use a nuclear weapon in armed conflicts. That is essential for the concept of peace as a fulfillment which is realized in the active neighborliness of willing cooperation purposes which requires a pacific intention, as a real implication of morality.

The integral human fulfillment is a fundamental guiding principle of morality, this means that the prohibition on the use of atomic weapons, provided for in U.N Charter, is universal, as an implication of the Golden Rule of fairness, which could avoid war with negotiation and non-violent actions.

In the midst of the policy of nuclear disarmament, it was created an international system of humanitarian law which has some treaties, like the NPT that is a recognizing to the right to develop nuclear energy for peaceful purposes in a Global Civil Society, so the issue of nuclear warfare shows the expansion of the institutions beyond the exclusive sphere of sovereign States (responsibilities, moral duties, authority, law). In the recent years, the world media shows that nuclear disarmament policies are weakening and the instability of international relations are rising.

For all the instabilities, here demonstrated, between the States in international relationship, the fundamental dignity of the human person is applicable on principles of international humanitarian law to armed conflict. So, the international community has a moral need of a law that prohibits, with no exception, the infliction of unnecessary suffering of nuclear weapons, which damages permanently all the conditions to promoting integral human fulfillment. Their unique characteristics of nuclear weapons is their destructive capacity to cause untold human suffering to generations to come for that reason the use of nuclear weapons is contrary

to the rules of international law based on a natural law theory.

The provision of the art. 51, from the UNC, as the right to a self-defense, do not refer to specific weapons, it applies to use of force that is proportionality to the threat, but the nuclear weapons are not proportionality of any circumstance. Because of that, it is necessary to a specific creation of standards prohibiting the use of nuclear weapons in armed conflicts, which may be interpreted in conjunction with the art. 2, § 4 of the U.N. Chart and the art. VI of the NPT, there is a need for the implementation of the existing policies of the disarmament program, the prohibition to use of force among States is an human law that is simultaneously derived from the natural law as a conclusion logically derived from prior reasonable principles. This fact, however, will only be possible through the idea that a consensual law created by States must be judged in the light of ethics of practical reasonableness and the common good of the international community, that justified the need for a legitimacy beyond the States practices.

The prohibition of nuclear weapons in armed conflicts is universal by the idea of the human rights derived from the first principle of morality, practical reasonableness, to the natural law tradition, that enables the complete human fulfillment in the common good of the international Community.

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'Notas de fim'

(1) Defect of intention, where the intent of promulgator was improper but the law may be just in content; defect of author, which includes those cases where the authority in question acted ultra vires where the statute or other authoritative rule was concerned; defect of form, where the exercise of authority was contrary to the rule of law as commonly understood; substantial injustice, where the law was either distributivity unjust in appropriating some aspect of the common stock (TAN, 2002, p. 201).

(2) United Nations Office for Disarmament Affairs (UNODA) was originally established in 1982 to promotes the goal of disarmament and non-proliferation and the strengthening of disarmament regimes in the areas of nuclear weapons, as well as conventional weapons, especially landmines and small arms. It promotes an organizational support for the General Assembly, the Disarmament Commission, the Conference on Disarmament

and other bodies; encourages regional disarmament efforts; and provides information, outreach and education on United Nations disarmament efforts.

(3) Article 51: Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defense shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.

(4) UNODA. The Treaty On The Non-Proliferation Of Nuclear Weapons (NPT), 1968. Department for Disarmament Affairs, United Nations.