

## “EXCLUSIVISM” IN INTERNATIONAL NUCLEAR LAW: THE CONCEPT REVISITED

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**Abstract:** *The concept of “Exclusivism” is considered to represent one of the most characteristic features of International Nuclear Law. This concept is reflected by regulating matters of uses of nuclear energy and ionising radiation exclusively by distinct principles, that govern legal relations arising in these matters. The concept of “Exclusivism” has been widely reflected in the provisions of international conventions, which have been adopted since the 1960s. This article aims to revisit this concept, taking the most recent developments in international and European law into regard. The article is dealing with the reasons and origins of the concept of “Exclusivism” in International Nuclear Law, with reflections of this concept in existing international treaties and at last but not at least, with most recent tendencies, that aim at jeopardising this concept.*

**Keywords:** *international nuclear law, exclusivism, radioactive waste management, nuclear third party liability, transport of radioactive waste*

### I. INTRODUCTION

The concept of “Exclusivism”<sup>2</sup> is considered to represent one of the most distinctive features of International Nuclear Law.<sup>3</sup> Under this concept, relations arising in uses of nuclear energy and ionising radiation are to be regulated exclusively by distinctive principles, which do differ from the usual principles of common law. The objective of these principles is “to provide a legal framework for conducting activities related to nuclear energy and ionizing radiation in a manner which provides a proper balance between the risks and the benefits of the use of nuclear energy and ionising radiation notwithstanding the requirement that in case of conflict the protection against risk shall prevail.”<sup>4</sup> The principles laid down by international conventions gov-

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<sup>2</sup> “Exclusivism” is being defined as “the practice of being exclusive, mentally characterized by the disregard for opinions and ideas other than one’s own” by the *American Heritage Dictionary of the English Language*. 5<sup>th</sup> Edition. Boston: Houghton Mifflin Harcourt, 2016, p. 458.

<sup>3</sup> ALBONETTI, A., BELSER, W., BERGER, R., DEMOURES, Y. *Droit nucléaire européen, Colloque de droit nucléaire européen*. Paris: Presses Universitaires de France, 1966, pp. 100–105; ARANGIO-RUIZ, G. Some International Legal Problems of the Civil Uses of Nuclear Energy. *Recueil des cours de l’Académie de droit international de La Haye*. 1962, Vol. 107, pp. 499–638; BOUSTANY, K. La normativité nucléaire: quelques réflexions. *Bulletin de droit nucléaire*. 1993, No. 51, pp. 7–24; ERLER, G. *Die Rechtsentwicklung der internationalen Zusammenarbeit im Atombereich*. Göttingen: Universität Göttingen, 1963, pp. 35–55; JOIRYSH, A., MENZHINSKII, V., PETROSANTS, A. *Pravovye problemy mirnogo ispol zovaniia atomnoi energii*. Moskva: Nauka, 1985, pp. 33–36; JOIRYSH, A., PETROSANTS, A., PETRIVSKI, V. *Mezhdunarodnoe atomnoe pravo*, Moskva: Nauka, 1987, pp. 33–36; LAMM, V. *Utilisation of Nuclear Energy and International Law*. Budapest: Akadémiai Kiadó, 1984, pp. 12–36; PAC, H. *Droit et politique nucléaire*. Paris: Presses Universitaires de France, 1994, pp. 23–24; PELZER, N. On harmonizing nuclear energy law. In: *Status, prospects and possibilities of international harmonization in the field of nuclear energy law*. Baden Baden: Nomos Verlag, 1985, pp. 39–45; RAINAUD, J. *Le Droit Nucléaire*. Paris: Presses Universitaires de France, 1994, pp. 40–46; REYNERS, P. Accidents nucléaires, urgences radiologiques et responsabilité. In: *Le droit international face aux nouvelles technologies*. Paris: Ed. A. Pedone, 2002, pp. 120–125; VEREYCKEN, A. *Atoomenergie, Atoomrisico, Atoomverzeking*. Anvers: Hogere Handelsavondschool, 1962, pp. 240–256.

<sup>4</sup> DE POMPIGNAN, D. Loi régissant les usages pacifiques de l’énergie nucléaire: concepts clés. *Bulletin de droit nucléaire*. 1995, No. 76, pp. 47–48.

erning the matters of nuclear third party liability (in particular in the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 1960,<sup>5</sup> in the Brussels Convention on the Liability of Operators of Nuclear Ships of 1962,<sup>6</sup> in the Vienna Convention on Civil Liability for Nuclear Damage of 1963,<sup>7</sup> in the Brussels Supplementary Convention of 1963<sup>8</sup> and in the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material of 1971<sup>9</sup>) may serve as salient reflection of this concept.<sup>10</sup> At the same time, a number of international conventions do explicitly declare their inapplicability to radioactive substances, or nuclear installations,<sup>11</sup> leaving the matter to be regulated by special international agreements.

From very early on, the uses of nuclear energy and ionising radiation gave rise to the introduction of special international agreements designed to mitigate the effects of a technology which in many respects involves risks for human beings, and the environment in which they live. Consequently, the international law was called at a very early stage to regulate nuclear technology. However, any international conventions adopted in this field had to reflect distinctive political, economic, technical, scientific and at last but not at least military considerations. Consequently, international conventions adopted in this particular field aim in particular “to tame technology by means of the law, in particular, by establishing new legislation based on mixture of technological imperatives involved and the economic needs and legal requirements of the States and the society.”<sup>12</sup> This ex-

<sup>5</sup> The Convention on Third Party Liability in the Field of Nuclear Energy of 29<sup>th</sup> July 1960, as amended by the Additional Protocol of 28<sup>th</sup> January 1964 and by the Protocol of 16<sup>th</sup> November 1982. The Paris Convention and the Additional Protocol entered into force on 1<sup>st</sup> April 1968. The Protocol of 1982 entered into force on 7<sup>th</sup> October 1988.

<sup>6</sup> The Convention on the Liability of Operators of Nuclear Ships of 25<sup>th</sup> May 1962 has never entered into force.

<sup>7</sup> The Vienna Convention on Civil Liability for Nuclear Damage of 21<sup>st</sup> May 1963 entered into force on 12<sup>th</sup> November 1977.

<sup>8</sup> The Convention of 31<sup>st</sup> January 1963 Supplementary to the Paris Convention of 29<sup>th</sup> July 1960, as amended by the Additional Protocol of 28<sup>th</sup> January 1964 and by the Protocol of 16<sup>th</sup> November 1982. The Brussels Supplementary Convention and the Additional Protocol entered into force on 4<sup>th</sup> December 1974. The Protocol of 1982 entered into force on 1<sup>st</sup> August 1991.

<sup>9</sup> The Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material of 17<sup>th</sup> December 1971 entered into force on 15<sup>th</sup> July 1975.

<sup>10</sup> ARANGIO-RUIZ, G. I principi fondamentali delle convenzioni internazionale in tema di copertura di danni nucleari. *Comunicazioni e Studi*. 1960, Vol. 4, No. 1, pp. 76–86; BELLI, G. Problemi della responsabilità civile per ugli usi pacifici dell’energia nucleare: le azioni di ricorso dell’utilizzatore. *Diritto ed economia nucleare*. 1959, Vol. 1, No. 1, pp. 155–166; DEPRIMOZ, J. Quelques problèmes posés par le droit de la responsabilité nucléaire. *Revue Générale des Assurances Terrestres*. 1974, Vol. 2, No. 2, pp. 169–189; CHENU, C. Preuve et responsabilité civile atomique. *Aspects de droit de l’énergie atomique*. 1965, Vol. 1, No. 1, pp. 31–42; GAUTRON, R. Législations nationales sur les risques nucléaires. *Aspects de droit de l’énergie atomique*. 1965, Vol. 1, No. 1, pp. 41–58; LOPEZ OLACIREGUI, J. Civil liability and nuclear law. *Nuclear Law Bulletin*. 1970, Vol. 5, No. 1, pp. 27–32; PELZER, N. The Hazards Arising out of the Peaceful Use of Nuclear Energy. In: *The Hague Academy for International Law 1993*. Dordrecht: Centre for Studies and Research in International Law, 1994, pp. 207–208; RODIÈRE, R. Responsabilité civile et risque atomique. *Aspects de droit de l’énergie atomique*. 1965, Vol. 1, No. 1, pp. 5–18.

<sup>11</sup> Art. 57 Paragraph 1 of the Convention on jurisdiction and the enforcement of judgements in civil and commercial matters of 1988, Art. 1 Paragraph 3 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989, Art. 2 Paragraph 2 of the Convention on the Transboundary Effects of Industrial Accidents of 1992, Art. 4 Paragraph 3 of the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea of 1996, Art. 3 Paragraph 2 of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade of 1998 etc.

<sup>12</sup> PELZER, N. *The Hazards Arising out of the Peaceful Use of Nuclear Energy*. pp. 207–208.

plains to some extent why International Nuclear Law involves distinctive economic and technical considerations which give them their original character and constitute exceptions to the common law.

Having said this, this article aims at dealing with the concept of "Exclusivism" in International Nuclear Law regarding the question how this concept has been reflected in international agreements. Further, this article aims also to deal with most recent tendencies, aiming either directly or indirectly at jeopardising the concept of "Exclusivism".

## II. TWO FACES OF "EXCLUSIVISM" IN INTERNATIONAL NUCLEAR LAW

### "Absolute Exclusivism"

The issue of military nuclear technologies and installations may serve as perfect example of how the concept of "Exclusivism" has been reflected in International Nuclear Law. It is a matter of fact that international conventions which had been adopted in the field of uses of nuclear energy and ionising radiation in the 1960s, did not address the issue of military technologies explicitly. However, the reference to "peaceful uses of nuclear energy" in those conventions<sup>13</sup> has been interpreted<sup>14</sup> as excluding any military technologies

<sup>13</sup> The Treaty establishing the European Atomic Energy Community of 1957 merely declares in its Art. 2, that in order to perform its task, the Community shall "establish with other countries and international organisations such relations as will foster *progress in the peaceful uses of nuclear energy*" (emphasis added). The Paris Convention on Third Party Liability in the Field of Nuclear Energy of 1960 did not address the issue of military (defence) nuclear technologies in its provisions at all. However, the Brussels Supplementary Convention declares in its preamble the desire of its Contracting Parties to supplement the measures provided in the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 1960 with a view to increasing the amount of compensation for damage *which might result from the use of nuclear energy for peaceful purposes* (emphasis added). The Preamble to the Vienna Convention on Civil Liability for Nuclear Damage of 1963 reads very similar, stating that the Contracting Parties had recognised the desirability of establishing some minimum standards to provide financial protection against damage resulting from *certain peaceful uses of nuclear energy* (emphasis added). The only international convention regulating the issues of nuclear third party liability, which explicitly included military technologies under the scope of its application, was the Brussels Convention on the Liability of Operators of Nuclear Ships of 1962. This Convention explicitly covered also warships, that were defined as "any ship belonging to the naval forces of a State and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the Government of such State and whose name appears in the Navy List, and manned by a crew who are under regular naval discipline." However, in particular due to the intention to cover also these military technologies, the Brussels Convention on the Liability of Operators of Nuclear Ships of 1962 has never been ratified by the required number of Signatories and consequently has never entered into force.

<sup>14</sup> BAUER, R. Les Projets de l'O.E.C.E. et de l'Euratom relatifs à une convention sur la responsabilité civile dans le domaine de l'énergie atomique. *Aspects de droit de l'énergie atomique*. 1965, Vol. 1, No. 1, pp. 81–92; BERMAN, W., HYDEMAN, L. A Convention on Third Party Liability for Damage from Nuclear Accidents. *American Journal of International Law*. 1961, Vol. 55, No. 12, pp. 966–969; KAUFMANN, O. La Convention européenne sur la responsabilité civile dans le domaine de l'énergie nucléaire. *Revue hellénique de droit international*. 1960, Vol. 13, No. 1, pp. 25–50; MEES, M., CHRISTIAENS, L. Fields of application of the third party nuclear liability of the Paris Convention. *Revue énergie primaire*. 1985, Vol. 19, No. 1, pp. 37–44; PELZER, N. Das künftige Atomenergieerecht als Wirtschaftslenkungsrecht. *Atom und Strom*. 1959, Vol. 5, No. 1, pp. 17–18; PICARD, N. La Convention sur la responsabilité civile dans le domaine de l'énergie nucléaire. *Journal de droit international*. 1962, Vol. 12, No. 4, pp. 344–367; SCHMID, F. *Das Abkommen der Europäischen Kernenergieagentur (O.E.C.E.) über die Haftpflicht auf dem Gebiet der Kernenergie*. Wien: Springer Verlag, 1961, pp. 20–25; WOLFF, K. The Vienna International Convention on Civil Liability for Nuclear Damage. In: WEINSTEN, J. (ed.). *Nuclear liability, progress in nuclear energy*. Oxford: Pergamon Press, 1966, pp. 1–22.

and installations from the scope of these conventions. Regarding the scope of application of the Treaty establishing the European Atomic Energy Community (Euratom) of 1957, this interpretation was later reconfirmed by the Court of Justice of the European Union in its two milestone decisions dealing with this issue.<sup>15</sup>

To avoid any need of further re-interpretation, the issue of applicability to the military nuclear technologies and installations has been addressed explicitly in those international conventions, adopted in the post-Chernobyl period under the auspices of the International Atomic Energy Agency (IAEA). Consequently, the Convention on Nuclear Safety of 1994,<sup>16</sup> the Protocol to Amend the Vienna Convention of 1997,<sup>17</sup> the Protocol to Amend the Paris Convention of 2004<sup>18</sup> and the Amendment to the Convention on the Physical Protection of Nuclear Material of 2005<sup>19</sup> explicitly limit their scope of application to this technologies and facilities, operated for civil use.

Thus, due to implicit or explicit exclusion from the scope of several existing international conventions, the operation of military nuclear technologies and installations remains to fall *exclusively* under the legal framework created by concerned states. Stephen Gorove referred – with respect to the Euratom’s attempts to execute security controls in the French military installation at *Marcoule* site – to this specific phenomenon of International Nuclear Law as to “Absolute Exclusivism”.<sup>20</sup> This reflects the interest of Contract-

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<sup>15</sup> In the case C-61/03 *Commission vs. Great Britain*, the Court of Justice ruled inter alia, that “*in the absence of an express provision excluding activities connected to defence from the scope of the Treaty, it is necessary to have regard to other factors in order to determine whether the Treaty is intended also to govern, at least in certain spheres, the use of nuclear energy for military purposes. The evidence on interpretation to be taken into consideration cannot be limited to the historical background to the drawing up of the Treaty, or to the contents of the unilateral declarations made by the representatives of certain States who took part in the negotiations which led to the signature of that Treaty. As the Advocate General rightly pointed out in points 80 and 81 of his Opinion, it is clear from that background and certain declarations mentioned in the travaux préparatoires of the Treaty that its possible application to the military uses of nuclear energy was envisaged and discussed by the representatives of the States who took part in those negotiations. However, it is also apparent that they held differing opinions on that issue and that they decided to leave it unresolved. Consequently, the guidance provided by that evidence is not sufficient for it to be asserted that the framers of the Treaty intended to make its provisions applicable to military installations and military applications of nuclear energy. (...)*” Further, in the case C-65/04 *Commission vs. Great Britain*, the Court of Justice stressed, that that “*the application of such provisions to military installations, research programmes and other activities might be such as to compromise essential national defence interests of the Member States. On the basis of those considerations, the Court concluded that, in view of the absence in the Treaty establishing the European Atomic Energy Community of any derogation laying down the detailed rules according to which the Member States would be authorised to invoke and protect those essential interests, activities falling within the military sphere are outside the scope of that Treaty.*” Decisions are well analysed by ANDRES-ORDAX, B. Radiological protection and military activities: recent European case law. In: *Nuclear Inter Jura 2007. Proceedings*. Bruxeller: Ed. Bruylant, 2008, pp. 537–559.

<sup>16</sup> The Convention on Nuclear Safety of 17<sup>th</sup> June 1994 entered into force on 24<sup>th</sup> October 1996.

<sup>17</sup> The Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage of 12<sup>th</sup> September 1997 entered into force on 4<sup>th</sup> October 2003.

<sup>18</sup> The Protocol to Amend the Convention on Third Party Liability in the Field of Nuclear Energy of 29<sup>th</sup> July 1960, as amended by the Additional Protocol of 28<sup>th</sup> January 1964 and by the Protocol of 16<sup>th</sup> November 1982. The Protocol has not entered into force until now.

<sup>19</sup> The Amendment to the Convention on the Physical Protection of Nuclear Material of 8<sup>th</sup> July 2005 entered into force on 18<sup>th</sup> June 2001.

<sup>20</sup> GOROVE, S. Lessons from the Control of the Peaceful Uses of Atomic Energy in Euratom. *American Society of International Law Proceedings*. 1964, Vol. 58, pp. 136–140.

ing Parties to various international conventions to restrain control over this very sensitive area and to eliminate adoption of any supra-national binding frameworks concerning minimal standards in the areas above mentioned (third party liability, nuclear safety, nuclear security).

At the same time, the concept of "Absolute Exclusivism" reflects the intention of Contracting Parties to reach certain minimal standards regarding issues of trans-boundary importance, while restricting such minimal standards exclusively to peaceful uses of nuclear energy and ionizing radiation. Consequently, the concept of "Absolute Exclusivism" represents a delicate compromise between the desire of sovereign states to establish internationally binding rules for certain aspects of uses of nuclear energy on one hand and their endeavour to restrain rule-making powers regarding distinctive issues of state interest.<sup>21</sup> The example of military nuclear technologies and installations shows the concept of "Exclusivism" as a *negative* concept of International Nuclear Law, i.e. the respective international conventions do regularly exclude certain installations from their scope of application, while they cover the installations operated for civilian purposes.

In this respect, it is interesting to refer to the text of the Joint Convention on the Safety of Radioactive Waste Management of 1997.<sup>22</sup> On one hand, this Convention explicitly declares its inapplicability to "the safety of management of radioactive waste within military and defence programmes."<sup>23</sup> Thus, this provision of the Joint Convention integrates the concept of "Absolute Exclusivism" into the legal framework of radioactive waste management. At the same time, the Contracting Parties to the Convention referred to military programmes in the preamble, when stating that "the spent fuel and radioactive waste excluded from the present Convention because they are within military or defence programmes should be managed in accordance with the objectives stated in this Convention." Consequently, this unique declaration serves a double purpose: On one hand, it does not jeopardise the concept of "Absolute Exclusivism" and therefore fits the interests of those Contracting Parties, operating military nuclear installations.<sup>24</sup> On the other hand, it accommo-

<sup>21</sup> FLEURY GRAFF, T. Les modulations des principes du droit international face à la menace nucléaire. In: GUÉZOU, O., MANSON, S. (eds.). *Droit public et nucléaire*. Bruxelles: Éditions Bruylant, 2013, pp. 122–125; GANGL, W. The Jus Cogens dimensions of Nuclear Technologies. *Cornell International Law Journal*. 1980, Vol. 13, No. 1, pp. 63–87; JOIRYSH, A. *Koncepcija atomnogo prava*. Moskva: Juniti-Dana, 2008, pp. 65–75; HARDY, M. International protection Against Nuclear Risks. *International and Comparative Law Quarterly*. 1961, Vol. 10, No. 4, pp. 739–761; SUPATAEVA, O. *Pravovoe regulirovanie gosudarstvennogo nadzora za bezopasnost' atomnoj energetiki: Sbornik statej*. Moskva: Institut gosudarstva i prava Rossijskoj akademii nauk, 1992, pp. 15–16.

<sup>22</sup> Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management of 5<sup>th</sup> September 1997 entered into force on 18<sup>th</sup> June 2001.

<sup>23</sup> "Unless declared as spent fuel or radioactive waste for the purposes of this Convention by the Contracting Party. However, this Convention shall apply to the safety of management of spent fuel and radioactive waste from military or defence programmes if and when such materials are transferred permanently to and managed within exclusively civilian programmes." See Art. 3 Paragraph 3 of the Joint Convention.

<sup>24</sup> VIDELIN, J. Droit public et activités nucléaires militaires. In: GUÉZOU, O., MANSON, S. (eds.). *Droit public et nucléaire*. Bruxelles: Éditions Bruylant, 2013, pp. 44–46.

dates the interests of other Contracting Parties<sup>25</sup> and aims at accession of other states to the treaty.

### “Relative Exclusivism”

Despite the reluctance of sovereign states to enter binding international obligations in the sensitive field of peaceful uses of nuclear energy and ionizing radiation, there is an interest of states to create an international framework, addressing the issues of transboundary nature and based on reciprocity. The legal framework governing the nuclear third party liability may serve as stringent example of this approach. Here, the international conventions (the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 1960 and the Vienna Convention on Civil Liability for Nuclear Damage of 1963) do provide distinctive liability principles. These liability principles were later re-confirmed in the provisions of the amendments to these conventions: in the Protocol to Amend the Vienna Convention of 1997 and in the Protocol to Amend the Paris Convention of 2004.<sup>26</sup>

Each nuclear installation must have a person in charge: *the operator*. In the legal framework of the conventions, the operator is the person “designated”<sup>27</sup> or “recognised”<sup>28</sup> as the operator of a nuclear installation by the competent public authority. The operator of a nuclear installation is exclusively liable for nuclear damage.<sup>29</sup> No other person may be held liable, and the operator cannot be held liable under other legal provisions. Subsequently, liability is legally channelled solely to the operator of the nuclear installation and is absolute. In relation to this, the conventions provide for very limited liability relief. The operator will be exonerated from liability only if he proves that the nuclear incident was directly due to armed conflict, hostilities, civil war, insurrection or a grave natural disaster, or that

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<sup>25</sup> Several Contracting Parties were convinced that the management of spent fuel and radioactive waste arising in the military sector should be subject to the same safety rules as the management of such material arising in the civilian sector and to the control of countries’ radiation protection and safety authorities. This approach was promoted in particular by Sweden, which in various international forums had repeatedly urged governments to ensure that their countries’ military activities conformed to strict environmental standards. Accordingly, his delegation believed that the envisaged convention should cover military spent fuel and radioactive waste, with reporting requirements designed to preclude the disclosure of classified information. Consequently, the final wording of the respective provisions, drafted by the legal and technical experts under the chairmanship of Professor Alec Baer, had resulted in a well balanced text which reflected a widespread spirit of compromise. See IAEA (ed.). *Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management of 1997*. Vienna: IAEA Law Series No. 1, 2006, pp. 76–77.

<sup>26</sup> DUSSART-DESART, R. The Reform of the Paris Convention on Third Party Liability in the Field of Nuclear Energy. In: OECD (ed.). *International Nuclear Law in the Post-Chernobyl Period*. Paris: OECD, 2006, pp. 215–241, SOLJAN, V. Modernization of the International Regime on Civil Liability for Nuclear Damage. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*. 1998, Vol. 58, pp. 733–745.

<sup>27</sup> In this respect, the liability regime established by the international conventions is being interconnected with the national public law, regulating nuclear safety, in particular with the permit issued by the competent authority in order to operate the installation.

<sup>28</sup> Consequently, the liability regime would be applicable even to those nuclear installations, being operated illegally on the territory of the Contracting Party.

<sup>29</sup> The Vienna Convention provides (Art. X) that the operator has a right of recourse only if this is expressly provided for by a contract in writing, or – in case a nuclear incident results from an act or omission done with intent to cause damage – against the individual who has acted or omitted to act with such intent. The Paris Convention contains a similar provision (Art. 6/c).

it resulted wholly or partly either from gross negligence of the victim or from an act or omission of the victim with intent to cause harm.<sup>30</sup> As a *quid pro quo* for the very strict conditions of the operator's liability, the Contracting Party may limit the operator's liability by the national legislation. However, the conventions do provide for a minimum possible liability limit.<sup>31</sup> Further, the conventions require for congruence between operators' liability and mandatory insurance.<sup>32</sup> At the same time, the conventions provide that courts of the Installation State where the nuclear incident occurred will have exclusive jurisdiction over all actions brought for damages caused by a nuclear incident occurring in their territory.<sup>33</sup> In a case where nuclear material in transport causes damage within the territory of an Installation State, the court where the nuclear material was situated at the time of damage will be exclusively competent. Consequently, in a strict contrast to the above described *negative* concept of "Absolute Exclusivism", we face a *positive* concept here, i.e. establishing distinctive legal rules by means of binding international conventions.

It is a matter of fact that these principles of nuclear third party liability do differ considerably from the principles of the ordinary tort law.<sup>34</sup> It is a matter of fact that the international conventions do establish a sort of exclusive legal framework of nuclear third party liability. However, the conventions fail to establish a completely comprehensive liability framework, when explicitly referring to the right of the Contracting Party to lay down a specific rule in the national framework.<sup>35</sup> In contrast to the above-mentioned concept of "Ab-

<sup>30</sup> Art. 9 of the Paris Convention, Art. IV of the Vienna Convention.

<sup>31</sup> The Paris Convention provides (Art. 7) a minimal liability limit of not less than 5 million SDR. At the same time, the maximum liability limit of 15 million SDR has been established by this convention. The Vienna Convention provides (Art. V, Par. 1 and 3) that the liability of the operator may be limited by the Contracting Party to not less than US \$ 5 million for any one nuclear incident. The US \$ referred to in this Convention is a unit of account equivalent to the value of the United States dollar in terms of gold on 29 April 1963, that is to say US \$ 35 per one troy ounce of fine gold.

<sup>32</sup> The Paris Convention provides (Art. 10) that the operator shall be required to have and maintain insurance or other financial security of the amount established pursuant to Article 7 and of such type and terms as the competent public authority shall specify. The Vienna Convention provides (Art. VII, Par. 1) that the operator shall be required to maintain insurance or other financial security covering his liability for nuclear damage in such amount, of such type and in such terms as the Installation State shall specify. The Installation State shall ensure the payment of claims for compensation for nuclear damage which have been established against the operator by providing the necessary funds to the extent that the yield of insurance or other financial security is inadequate to satisfy such claims, but not in excess of the limit, if any, established pursuant to Article V. However, in this regard, the Convention also provides that Contracting Party or any of its constituent sub-divisions, such as States or Republics, are not required to maintain insurance or other financial security to cover their liability as operators.

<sup>33</sup> Art. 13 of the Paris Convention, Art. XI, Par. 1 of the Vienna Convention.

<sup>34</sup> GOURRIER, J. La responsabilité civile dans le domaine de l'énergie nucléaire. *Revue Critique de Droit International Privé*. 1966, Vol. 66, No. 1, pp. 19–28; HARDY, M. Nuclear Liability: The General Principles of Law and Further Proposals. *British Yearbook of International Law*. 1960, Vol. 36, pp. 223–249; JARLIER-CLÉMENT, C. Les évolutions récentes des régimes internationaux de responsabilité civile nucléaire. *Revue juridique de l'économie publique*. 2002, Vol. 58, pp. 357–369; LOPEZ OLACIREGUI, J. Civil liability and nuclear law. *Nuclear Law Bulletin*. 1970, Vol. 5, No. 1, pp. 27–32; PIERARD, J. *Responsabilité civile, énergie atomique et droit comparé*. Brussels: Bruylant, 1963, pp. 35–45; ROMANOVA, V. *Problemy i tendencii pravovogo regulirovaniya v oblasti ispolzovaniya atomnoj energii*. Moskva: Izdatelstvo "Jurist", 2017, pp. 32–46; TREVOR, J. Principles of civil liability for nuclear damage. In: IAEA (ed.) *Nuclear Law for a Developing World*. Vienna: IAEA, 1969, pp. 109–115.

<sup>35</sup> E.g. the Vienna Convention provides, that the liability of the operator may be limited by the Installation State to not less than US \$ 5 million for any one nuclear incident. Consequently, the Contracting Party has right to provide for a specific amount of liability in the limits established by the Convention. Also, the Contracting Party is free to establish for unlimited liability of the operator.

solute Exceptionalism”, we face another concept of International Nuclear Law, which may be described as “Relative Exceptionalism”.<sup>36</sup>

The concept of “Relative Exceptionalism” reflects a compromise between two contradictory interests of sovereign states.<sup>37</sup> On one hand, the concept reflects the interest to create certain binding rules by the means of binding international conventions, covering the issues of transboundary risk arising from the operation of nuclear installation for peaceful purposes. On the other hand, the concept of “Relative Exceptionalism” also reflects the interest of sovereign states to maintain law-making powers in this sensitive area of national economy. Consequently, the concept of “Relative Exceptionalism” has been reflected also in other international conventions, which either do establish distinctive framework for certain aspects of peaceful uses of nuclear energy, or do explicitly exclude their applicability on those aspects.<sup>38</sup>

### Reconciliation of both concepts by non-binding instruments

Taking account of the above described tensions between contradictory interests, the sovereign states often choose cautiously those obligations that they desire to make legally binding. In this respect, we may refer to Charles Lipson,<sup>39</sup> who generally suggests four reasons why states may opt for choosing non-binding instruments rather than legally binding hard law: (1) to avoid formal and visible pledges; (2) to avoid ratification; (3) to be able to renegotiate or modify as circumstances change; and (4) to achieve a result. In International Nuclear Law, states often make use of soft law (*les normes sauvages* or *para droit*) for a variety of reasons, such as when legally binding commitments are unwanted or unavailable. Due to the non-binding nature of these instruments, soft law can be adopted more rapidly and when it fails to meet the current challenges, it can be quickly amended or replaced.

<sup>36</sup> JOIRYSH, A. *Koncepcija atomnogo prava*. pp. 22–24; PELZER, N. Concepts of Nuclear Liability Revisited. In: CAMERON, P. (ed.). *Nuclear Energy Law after Chernobyl*. London: Graham and Trotman, 1988, pp. 97–110; REYNERS, R. Le droit nucléaire confronté au droit de l’environnement: autonomie ou complémentarité. *Revue québécoise de droit international*. 2007, Vol. 20, hors-série, pp. 149–186.

<sup>37</sup> JOIRYSH, A. *Koncepcija atomnogo prava*. pp. 24–26.

<sup>38</sup> In this regard, the concept of “Relative Exclusivism” has been reflected also in the EU law. E.g. the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters provides (Art. 67), that it shall not prejudice the application of provisions governing jurisdiction and the recognition and enforcement of judgments in specific matters which are contained in Community instruments or in national legislation harmonised pursuant to such instruments. This exclusion applies in particular to the rules on recognition and enforcement as provided by the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 1960 and by the Vienna Convention on Civil Liability for Nuclear Damage of 1963. Also the Directive 2004/35/CE on environmental liability with regard to the prevention and remedying of environmental damage stipulates (Art. 4), that it shall not apply to such nuclear risks or environmental damage or imminent threat of such damage as may be caused by the activities covered by the Treaty establishing the European Atomic Energy Community or caused by an incident or activity in respect of which liability or compensation falls within the scope of any of the international instruments listed in Annex V, including any future amendments thereof. The Annex V refers to following international conventions: the Paris Convention on Third Party Liability in the Field of Nuclear Energy of 1960, the Vienna Convention on Civil Liability for Nuclear Damage of 1963, the Convention relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material of 1971, the Joint Convention relating to the Application of the Vienna Convention and the Paris Convention of 1988 and the Convention on Supplementary Compensation for Nuclear Damage of 1997.

<sup>39</sup> LIPSON, C. Why are Some Agreements Informal? *International Organisation*. 1991, Vol. 45, No. 4, pp. 495–538.

Thus, soft law can be said to respond the challenges of contradictory interests being present in the field of International Nuclear Law, when there is no animosity to establish binding rules among the concerned states but there is an urgent need to take some action.<sup>40</sup> At this place, two interesting examples of such non-binding instruments issued by the IAEA can be mentioned:

The "Code of Practice on the International Transboundary Movement of Radioactive Waste"<sup>41</sup> was issued in relation to the adoption of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989. During this negotiation process, a difference of opinion emerged between those states which thought that international law did not ensure adequate surveillance of radioactive waste<sup>42</sup> movements and those that were reluctant for the convention to cover also the nuclear field. This confrontation was to result in exclusion of "wastes which, as a result of being radioactive, are subject to other international control systems, including international instruments, applying specifically to radioactive materials."<sup>43</sup> The issue raised by this compromise is in fact, that no such instrument existed at the time of the adoption of the Basel Convention.<sup>44</sup> Development of the "Code of Practice" does therefore go some way towards filling that gap.<sup>45</sup> It was at a later stage that the Joint Convention on the Safety of Radioactive Waste Management of 1997 would, in its Art. 27 on transboundary movements convert the principles set out in the "Code of Practice" into binding hard law.

The "Code of Conduct on the Safety and Security of Radioactive Sources" was developed in two stages. A first version of the "Code" was approved in 2000. Subsequently, a group of experts conducted a review of the "Code", to verify its effectiveness and to consider of the increased concerns about the problem of the safety of radioactive sources in light of the events of 11<sup>th</sup> September 2001. This work was to culminate in the current text of the "Code".<sup>46</sup> Also here, the choice of a non-binding instrument reflected "tensions between the desire to harmonise the practice of states and their reluctance to be legally bound by texts which are both complex and ambitious."<sup>47</sup> As a delicate *quid pro quo*, the member states of the IAEA were asked by the General Conference to notify support of the IAEA s efforts to enhance the

<sup>40</sup> WETHERALL, A. Normative Rule Making at the IAEA: Codes of Conduct. *Nuclear Law Bulletin*. 2005, No. 1, pp. 75–76.

<sup>41</sup> Adopted by the General Conference of the International Atomic Energy Agency on 21<sup>st</sup> September 1990 by Resolution GC(XXXIV)/RES/530.

<sup>42</sup> REYNERS, R. Le droit nucléaire confronté au droit de l'environnement: autonomie ou complémentarité. pp. 149–186.

<sup>43</sup> Art. 1 Paragraph 3 of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal of 1989.

<sup>44</sup> At this time, illegal disposal of hazardous waste (including radioactive waste) was being alleged in certain states of the third world and the stir caused by these allegations led to the banning of such activities under the Fourth ACP-EEC Convention of 1989 ("Lomé IV. Convention") and subsequently under the Bamako Convention on the ban on the Import into Africa and the Control of Transboundary Movement and Management of Hazardous Wastes within Africa of 1991.

<sup>45</sup> REYNERS, P. Three International Atomic Energy Agency Codes. In: *International Nuclear Law: History, Evolution and Outlook*. Paris: OECD, 2010, pp. 176–177.

<sup>46</sup> Adopted by the General Conference of the International Atomic Energy Agency on 19th September 2003 by Resolution GC(47)/RES/7.B.

<sup>47</sup> REYNERS, P. Three International Atomic Energy Agency Codes. p. 180.

safety and security of radioactive sources and to comply with the requirements of this “Code”.<sup>48</sup> The Director General is then responsible for publishing a list of states that have agreed to make this “political commitment”. At the same time, perhaps worried by the boldness of this approach, the General Conference did feel it necessary to specify, that this procedure would remain “exceptional”, with no legal force and could not constitute a precedent for other non-binding instruments. It is a matter of fact, that it remained *unique* to date.

The efforts to reconcile the divergent interest by the means of the soft law remain to be subject of contradictory evaluations by the scientific literature. Katia Boustany was critical towards the unclear nature of obligations arising from this type of instruments, which – per her opinion – “raises the question of what such a tool could add to the normative setting.”<sup>49</sup> In this regard, she considered the adoption of non-binding instruments in peaceful use of nuclear law to represent a kind of “legal evasion.”<sup>50</sup> However, other authors were less sceptical by evaluating the impact of soft law. “On the one hand, it is true that a code is not technically legally binding and the rules are not rules of law; but on the other hand, it cannot be denied that such rules have practical or legal effect - a code can still have a significant impact on state action. Although the norms are not adopted as law, and are of a non-binding form, they frequently are intended to alter the behaviour of their targets.”<sup>51</sup> “The subtlety of the processes by which contemporary international law can be created is no longer adequately captured by reference to the orthodox categories of custom and treaty. The role of soft law as an element in international law-making is now widely appreciated, and its influence throughout international law is evident.”<sup>52</sup> “Soft legalization has a number of significant advantages, including that it is easier to achieve, provides strategies for dealing with uncertainty, infringes less on sovereignty, and facilitates compromise among differentiated actors.”<sup>53</sup> The mechanism established by the “Code of Conduct on the Safety and Security of Radioactive Sources” shows a rather more positive picture. Until most recently, 134 states have made the notification envisaged in the “Code” to the Director General of the IAEA.

### III. “EXCLUSIVISM” IN INTERNATIONAL NUCLEAR LAW JEOPARDISED

The concept of “Exclusivism”, i.e. establishing distinctive rules by means of binding international conventions, is considered to represent a very specific feature of International Nuclear Law. Consequently, these rules represent certain generally accepted standards

<sup>48</sup> Pursuant to the Operative Paragraph (4) of the resolution GC(47)/RES/7.B., the General Conference urged “each State to write to the Director General that it fully supports and endorses the IAEA’s efforts to enhance the safety and security of radioactive sources, is working toward following the guidance contained in the IAEA Code of Conduct on the Safety and Security of Radioactive Sources, and encourages other countries to do the same.”

<sup>49</sup> BOUSTANY, K. A Code of Conduct on the Safety of Radioactive Sources and the Security of Radioactive Materials: A New Approach to the Normative Control of a Nuclear Risk? *Nuclear Law Bulletin*. 2000, No. 1, p. 7.

<sup>50</sup> BOUSTANY, K. The Development of Nuclear Law-Making or the Art of Legal “Evasion”. *Nuclear Law Bulletin*. 1998, No. 1, pp. 39-56.

<sup>51</sup> WETHERALL, A. *Normative Rule Making at the IAEA: Codes of Conduct*. pp. 75–76.

<sup>52</sup> BOYLE, A. Some Reflections on the Relationship of Treaties and Soft Law. *International & Comparative Law Quarterly*. 1999, Vol. 48, No. 4, pp. 901–902.

<sup>53</sup> ABBOTT, K., SNIDAL, K. Hard and Soft Law in International Governance. *International Organisation*. 2000, Vol. 54, No. 3, pp. 421–422.

adopted by the community of sovereign states, and reflect their agreement to fulfil these standards.<sup>54</sup> However, it is a matter of fact that very recently, the international community of states faces certain tendencies, aiming either directly or indirectly at jeopardising the concept of “Exclusivism”. In this regard, two examples of such efforts can be mentioned:

In the first place, proposals concerning a prospective harmonisation of nuclear third party liability by means of EU law are to be mentioned. There is no legal framework on nuclear third party liability at the EU level. The liability framework is basically governed by the existing multilateral treaties in this field and by legislation that differs from one member state to the next, depending on which treaty or treaties, if any, it has signed and ratified.<sup>55</sup> Consequently, the European Commission published a legal study<sup>56</sup> in 2009, proposing various options how to approach the issue, *inter alia* by a directive providing for some minimal standards of nuclear third party liability.<sup>57</sup> Regarding this option, it is important to note that the Union most recently decided to also target liability matters through a directive in other fields that were traditionally governed by international treaty.<sup>58</sup> In the aftermath, the Commission addressed

<sup>54</sup> STROHL, P. The Originality of Nuclear Law and its Future. In: *Le Droit nucléaire du XXe au XXIe Siècle*. Paris: LDGJ, 1998, pp. 573–574.

<sup>55</sup> The Paris Convention on Third Party Liability in the Field of Nuclear Energy of 1960, the Vienna Convention on Civil Liability for Nuclear Damage of 1963, the Joint Convention relating to the Application of the Vienna Convention and the Paris Convention of 1988, the Convention on Supplementary Compensation for Nuclear Damage of 1997, the Protocol to Amend the Vienna Convention of 1997, the Protocol to Amend the Paris Convention of 2004.

<sup>56</sup> “Accession of Euratom to the Paris Convention on Third Party Liability in the Field of Nuclear Energy”, TREN/CC/01 – 2005. However, this Report was not approved in any way by the European Commission and should not be relied upon as a statement of Commission views.

<sup>57</sup> WATHELET, M. Clarification de la base légale pour une intervention au niveau de l’UE dans le domaine de la responsabilité nucléaire. In: *Prospects of a civil nuclear liability regime in the framework of the European Union*. Bruxelles: Bruylant, 2012, pp. 171–182.

<sup>58</sup> This is the case with the liability for maritime claims, which are currently governed by a framework of international conventions under the aegis of the International Maritime Organization. As the European Commission stated in its proposal for a directive on ship-owner civil liability and financial guarantees (COM (2005) 593 final, sub paragraph 120): “A number of international conventions on the civil liability of ship owners have been adopted. These conventions all have limitations, starting with the fact that most have not entered into force, and that those which have entered into force have done so only in some countries... For this reason the Commission is herewith proposing to follow a pragmatic two-step approach. As a first step, it is proposed that all member states become contracting parties to the umbrella international convention on liability for maritime transport, which is the 1996 Convention on the Limitation of Liability for Maritime Claims. The directive would also incorporate this convention into Community law in order to ensure its full and uniform application all over the EU... It is to be noted that, in parallel to this directive, member states are preparing to ratify the above-mentioned conventions on hazardous and noxious substances and bunker oil. As a second step, the Commission will seek a mandate for negotiating, within the IMO, the revision of the above-mentioned 1996 Convention, in order to review the level at which ship-owners lose their right to limited liability.” The Commission also had to deal with whether to rely exclusively on the framework created by existing international conventions and the future development of this framework, or to address existing problems with an initiative under EU law: “The two options are: to promote the implementation of international conventions. The relatively slow pace of national ratification processes makes the date of entry into force and the geographical scope of these conventions uncertain. This directive would be the most proper binding instrument under which these conventions can be swiftly and uniformly applied at EU level... In addition, it should be noted that this approach would presuppose that the member states which are contracting parties to the 1996 Convention denounce it in good time and, at the latest, by the end of the transposition period for this Directive... Action at the level of the International Maritime Organization has limitations... In addition, the objectives of the conventions may not correspond to citizens’ current expectations and do not follow the trends of modern law... The approach is therefore to establish a new, uniform legal framework at European Union level, which will fully enforce the internationally recognized principles and will adapt them where necessary” (COM (2005) 593 final, sub paras. 230, 324 and 325).

the member states with a questionnaire in 2013, identifying the introduction of unlimited liability of operators as one of the options of the prospective harmonisation. Obviously, such a step would be in strict contradiction with the legal regime established under the Vienna Convention on Civil Liability for Nuclear Damage of 1963, which provides expressly that the liability of the operator may be limited by the Contracting Party.

In this respect, the Court of Justice stressed that “*the Member States have a choice as to the appropriate steps to be taken, they are nevertheless under an obligation to eliminate any incompatibilities existing between a pre-Community convention and the EC Treaty. If a Member State encounters difficulties which make adjustment of an agreement impossible, an obligation to denounce that agreement cannot therefore be excluded. (...) As regards the argument that such denunciation would involve a disproportionate disregard of foreign-policy interests of the (...) Republic as compared with the Community interest, it must pointed out that the balance between the foreign-policy interests of a Member State and the Community interest is already incorporated in (...) the Treaty, in that it allows a Member State not to apply a Community provision in order to respect the rights of third countries deriving from a prior agreement and to perform its obligations thereunder. That article also allows them to choose the appropriate means of rendering the agreement concerned compatible with Community law.*”<sup>59</sup> Member states thus have the obligation to align their international treaty commitments and as *ultima ratio* terminate their participation in treaties that conflict with EU law.<sup>60</sup>

Consequently, any legislative action establishing obligatory unlimited liability will jeopardise the distinctive liability rules, established by means of international law.

While the above-mentioned ideas have never been submitted by the European Commission as an official draft, the provisions of the directive 2011/70/Euratom<sup>61</sup> do provide for other obligations, establishing potential conflict with the framework established by international conventions. The Directive provides that a shipment of radioactive waste from a member state to a third state is possible only if a bilateral agreement has entered into force between the member state concerned and a third country to use a disposal facility in one of them. Such an agreement must “take into account the criteria established by the Commission.” It is a matter of fact that these “criteria” have to take “due account of, *inter alia*, relevant safety standards of the IAEA, facilitating Member States to evaluate whether requirements for exports are met.”<sup>62</sup> However, this requirement opens the doors for establishing much stricter rules than those provided by the safety standards of the IAEA. Further, the Directive stipulates that shipment of radioactive waste from a member state to a third state is possible only when the country of destination has radioactive waste management and disposal programmes with objectives representing a high level of safety equivalent to those established by this Directive.

<sup>59</sup> Case 62/98 *Commission v Portugal*, ECR I – 5171, para. 49–52.

<sup>60</sup> MANZINI, P. The Priority of Pre – Existing Treaties of EC – Member States within the Framework of International Law. *European Journal of International Law*. Vol. 12, No. 4, pp. 790–792.

<sup>61</sup> Council Directive 2011/70/Euratom of 19 July 2011 establishing a Community framework for the responsible and safe management of spent fuel and radioactive waste, OJ L 199, 2.8.2011, pp. 48–56.

<sup>62</sup> Here, the Directive 2011/70/Euratom refers in its Art. 4 Paragraph 4 to the criteria established by the Commission in accordance with Article 16(2) of Directive 2006/117/Euratom on the supervision and control of shipments of radioactive waste and spent fuel, OJ L 337, 5.12.2006, pp. 21–32.

In this respect, the provisions of the Directive may serve as a salient example of a tendency which is described as "European Exceptionalism" in scientific literature.<sup>63</sup> Consequently, we face "the expanding legislative activity of the European institutions reaches out beyond the borders of the European legal system and incidentally affects the EU Member States' autonomous relations with third parties."<sup>64</sup> In this respect, it was also stressed that "since European integration is designed to administer and regulate an increasing number of issues, the autonomous international obligations of the EU Member States may become an obstacle."<sup>65</sup> In other words, the "European Exceptionalism" means exporting of own standards and rules into the binding obligations of the member states. Such a tendency can be acceptable only to the extent in which the EU law does reflect the standards established by the existing international conventions, governing the peaceful uses of nuclear energy and ionizing radiation.<sup>66</sup> However, the tendencies to supersede these distinctive rules by own standards and principles may have negative impact on universally accepted obligations and may potentially harm the legal regime established by international community of states.

#### IV. CONCLUSIONS

The concept of "Exclusivism" in International Nuclear Law reflects the efforts of the international community of states to address risks arising from peaceful uses of nuclear energy and ionizing radiation. These risks are addressed by a unanimous agreement on establishment of distinctive rules by means of the international conventions. Due to a very special nature of the risk potentially arising, these distinctive rules do considerably differ from the ordinary rules of the common law. Consequently, the concept of "Exclusivism" may be considered as a particular manifestation of "Universalism" in international law.<sup>67</sup> At the same time, the concept of "Exclusivism" represents an outcome of a delicate compromise between interests of sovereign states to create certain binding rules, covering the issues of transboundary risk and the interest of sovereign states to maintain law-making powers in this sensitive area of national economy. Consequently, the distinctive set of rules, as provided by existing international conventions do represent a valuable outcome of long-lasting developments and are worth to preserve and maintain.

<sup>63</sup> The term "European Exceptionalism" refers to the extent to which the EU's special constitutional characteristics shape its aims, needs, and behaviour on the international stage. For a descriptive account of the accommodations the EU and its member states have sought and received under international law owing to the EU's distinctive features as a non-sovereign regional entity, see LICKOVA, M. European Exceptionalism in International Law. *European Journal of International Law*. 2008, Vol. 19, No. 3, pp. 463–490. For a critical assessment of these accommodations, see NOLTE, G., AUST, H. European Exceptionalism? *Global Constitutionalism*. 2013, Vol. 2, No. 3, pp. 407–436 and CORTES, J. European Exceptionalism in International Law? The European Union and the System of International Responsibility. In: RAGAZZI, M. (ed.). *The Responsibility of International Organizations: Essays in Memory of Sir Ian Brownlie*. Leiden: Martinus Nijhoff Publishers, 2013, pp. 222–256.

<sup>64</sup> LICKOVA, M. European Exceptionalism in International Law. *European Journal of International Law*. pp. 463–464.  
<sup>65</sup> *Ibid.*

<sup>66</sup> In this respect, the Directive 2011/70/Euratom correctly refers in its Art. 4 Paragraph 4 to "an agreement (concluded) with the Community covering spent fuel and radioactive waste management" or (alternatively) to obligations arising from the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management of 1998.

<sup>67</sup> JOIRYSH, A., FATJANOV, A. Mezdunarodnoe pravo i atomnaja energija. *Prostranstvo i vremja*, 2014, Vol. 17, No. 3, pp. 231–240.