
LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS, ADVISORY OPINION, I.C.J. REPORTS 1996¹

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BENCH

President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins; Registrar Valencia-Ospina.²

QUESTION BEFORE THE COURT

Pursuant to Article 96, paragraph 1, of the Charter of the United Nations, the court requested the International Court of Justice urgently to render its advisory opinion on the following question: *'Is the threat or use of nuclear weapons in any circumstance permitted under international law'?*³

STATES WHICH FILLED THE WRITTEN STATEMENT

Bosnia and Herzegovina, Burundi, Democratic People's Republic of Korea, Ecuador, Egypt, Finland, France, Germany, India, Ireland, Islamic Republic of Iran, Italy, Japan, Lesotho, Malaysia, Marshall Islands, Mexico, Nauru, Netherlands, New Zealand, Qatar, Russian Federation, Samoa, San Marino, Solomon Islands, Sweden, United Kingdom of Great Britain and Northern Ireland, and United States of America. In addition, written comments on those written statements were submitted by the following States: Egypt, Nauru, and Solomon Islands. Upon receipt of those statements and comments, the Registrar communicated the text to all

¹ International Court of Justice. *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, ICJ GL No 95, [1996] ICJ Rep 226, ICGJ 205 (ICJ 1996), 8th July 1996, United Nations [UN]; *International Court of Justice [ICJ]*. 8 July 1996, opil.ouplaw.com/display/10.1093/law:icgj/205icj96.case.1/law-icgj-205icj96. Accessed 28 Aug. 2025.

² *Advisory Opinion, 1996 I.C.J. 226.PDF*, [www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/Advisory Opinion, 1996 I.C.J. 226.pdf](https://www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/Advisory%20Opinion,%201996%20I.C.J.%20226.pdf). Accessed 28 Aug. 2025.

³ Id, at page. 4, para. 1

States having taken part in the written proceedings.⁴

On 20 October 1995, the Republic of Nauru requested the Court's permission to withdraw the written comments submitted on its behalf in a document entitled 'Response to submissions of other States'.⁵

ISSUES RAISED BY THE STATES

1. Does the ICJ have the jurisdiction to issue an advisory opinion?⁶
2. Is the threat or use of nuclear weapons in any circumstance permitted under international law?⁷
3. Is the use of nuclear weapons unlawful by reference to existing norms relating to the safeguarding and protection of the environment?⁸
4. Can the legality or illegality of the use of Nuclear weapons be decided in the light of the provisions of the charter related to the threat or use of force?⁹
5. Is there any prohibition of recourse to nuclear weapons as such? Is there a conventional prescription to this effect?¹⁰
6. Does a prohibition of the threat or use of nuclear weapons as such flow from customary international law? Has the ban become an *opinio juris* of States?¹¹
7. Whether the recourse to nuclear weapons must be considered as illegal in the light of the principles and rules of international humanitarian law applicable in armed conflict and of the law of neutrality.¹²

⁴ Ibid, at para. 5

⁵ Id, at page. 5, para. 7

⁶ Id, at page. 8, para. 10

⁷ Id, at page. 12, para. 20

⁸ Id, at page. 15, para. 27

⁹ Id, at page. 17, para. 37

¹⁰ Id, at page. 20, para. 53

¹¹ Id, at page. 24, para. 63

¹² Id, at page. 26, para. 74

ARGUMENTS ADVANCED

ARGUMENTS BY THE STATES ON ISSUE 1 –

States that argue the ICJ has the jurisdiction to give an advisory opinion - For the Court to be competent to give an advisory opinion, the body requesting the opinion must be authorised by or in accordance with the Charter of the United Nations to make such a request.¹³ The Charter provides in Article 96, paragraph 1, that: “The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question. General Assembly, including those relating to the threat or use of force in international relations, the disarmament process, and the progressive development of international law.”¹⁴

States that argue against it - Some States, which oppose the court giving an opinion, argued that the General Assembly and Security Council are not entitled to request opinions on matters totally unrelated to their work. They suggested that, as in the case of organs and agencies acting under Article 96, paragraph 2, of the Charter, and notwithstanding the difference in wording between that provision and paragraph 1 of the same Article, the General Assembly and Security Council may ask for an advisory opinion on a legal question only within the scope of their activities.¹⁵

ARGUMENTS BY THE STATES ON ISSUE 2 –

The States which argued on the illegality of use of Nuclear Weapons - Some of the proponents of the illegality of the use of nuclear weapons have argued that such use would violate the right to life as guaranteed in Article 6 of the International Covenant on Civil and Political Rights, as well as in specific regional instruments for the protection of human rights. Article 6, Paragraph 1 of the International Covenant.¹⁶

The State that argued the legality of the use of nuclear weapons - The states contended that the International Covenant on Civil and Political Rights made no mention of war or weapons, and it had never been envisaged that that instrument regulated the legality of nuclear weapons. It

¹³ *Advisory Opinion, 1996 I.C.J. 226.PDF*, [www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/Advisory Opinion, 1996 I.C.J. 226.pdf](http://www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/Advisory%20Opinion,%201996%20I.C.J.%20226.pdf). Accessed 28 Aug. 2025.

¹⁴ *Ibid.*

¹⁵ *Id.*, at page. 8, para. 11

¹⁶ *Id.*, at page. 14, para.24

was suggested that the Covenant was directed to the protection of human rights in peacetime, but that questions relating to unlawful loss of life in hostilities were governed by the law applicable in armed conflict.¹⁷

ARGUMENTS BY THE STATES ON ISSUE 3 –

States that argued that the use of Nuclear weapons is catastrophic for the Environment - Specific references were made to various existing international treaties and instruments. These included Additional Protocol I of 1977 to the Geneva Conventions of 1949,¹⁸ Article 35, paragraph 3, of which prohibits the employment of methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment and the Convention of 18 May 1977 on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, which prohibits the use of weapons which have widespread, long-lasting or severe effects on the environment (Art. 1).¹⁹ Also cited were Principle 21 of the Stockholm Declaration of 1972²⁰ and Principle 2 of the Rio Declaration of 1992²¹ which express the common conviction of the States concerned that they have a duty to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. These instruments and other provisions relating to the protection and safeguarding of the environment were said to apply at all times, in both war and peace, and it was contended that they would be violated by the use of nuclear weapons, whose consequences would be widespread and have transboundary effects.²²

States that argued against this - Other States questioned the binding legal quality of these precepts of environmental law; or, in the context of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques denied that it was concerned at all with the use of nuclear weapons in hostilities; or, in the case of Additional

¹⁷ Ibid.

¹⁸ Treaties, States Parties and Commentaries, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977., <https://ihl-databases.icrc.org/en/ihl-treaties/api-1977> (Last accessed on 30.08.2025)

¹⁹ Ibid.

²⁰ “Declaration of the United Nations Conference on the Human Environment - Main Page.” *United Nations*, legal.un.org/avl/ha/dunche/dunche.html. Accessed 30 Aug. 2025.

²¹ Unit, Biosafety. “Rio Declaration on Environment and Development.” *Convention on Biological Diversity*, Secretariat of the Convention on Biological Diversity, 13 Nov. 2006, www.cbd.int/doc/ref/rio-declaration.shtml. Accessed 30 Aug. 2025.

²² Supra, note. 2, at page. 15, para. 27

Protocol I,²³ denied that its terms generally bound them, or recalled that they had reserved their position in respect of Article 35, paragraph 3, thereof.²⁴ It was also argued by some States that the principal purpose of environmental treaties and norms was the protection of the environment in time of peace it was said that those treaties made no mention of nuclear weapons. It was also pointed out that warfare in general, and nuclear warfare in particular, were not mentioned in their texts and that it would be destabilising to the rule of law and to confidence in international negotiations if those treaties were now interpreted in such a way as to prohibit the use of nuclear weapons.²⁵

ARGUMENTS ADVANCED BY THE STATES ON ISSUE 4 –

Arguments by the states that suggest that it can be decided - The Charter contains several provisions relating to the threat and use of force. In Article 2, paragraph 4,²⁶ the threat or use of force against the territorial integrity or political independence of another State or in any other manner inconsistent with the purposes of the United Nations is prohibited.²⁷ This prohibition of the use of force is to be considered in the light of other relevant provisions of the Charter. In Article 51, the Charter recognises the inherent right of individual or collective self-defence if an armed attack occurs. A further lawful use of force is envisaged in Article 42, whereby the Security Council may take military enforcement measures in conformity with Chapter VII of the Charter.²⁸ These provisions do not refer to specific weapons. They apply to any use of force, regardless of the type of weapon employed. The Charter neither expressly prohibits nor permits the use of any specific weapon, including nuclear weapons. A weapon that is already unlawful per se, whether by treaty or custom, does not become lawful by reason of its being used for a legitimate purpose under the Charter.²⁹ As the Court stated in the case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America) (I.C.J. Reports 1986, p. 94, para. 176).³⁰ There is a specific rule whereby self-defence would

²³ Supra, note. 19

²⁴ Ibid.

²⁵ Supra, note. 2 at page. 15, para. 28

²⁶ “International Law, Codification, Legal Affairs, Legal, Committee, Terrorism, Charter, Criminal Accountability, Administration of Justice, Jurisdictional Immunities, Cloning, Safety of United Nations and Associated Personnel, Ad Hoc, Diplomatic Conferences, Reports of International Arbitral Awards, Summaries of International Court of Justice Judgments and Advisory Opinions, Legislative Series, Juridical Yearbook, Repertory of Practice of United Nations Organs, Books.” *United Nations*, legal.un.org/repertory/art2.shtml. Accessed 30 Aug. 2025.

²⁷ Supra, note.2 at page. 17, para. 38

²⁸ Ibid.

²⁹ Id, at page. 18, para.39

³⁰ *Oxford Public International Law: Military and Paramilitary Activities in and against Nicaragua, Nicaragua v United States, Merits, Judgment, (1986) ICJ Rep 14, ICGJ 112 (ICJ 1986), OXIO 88, 27th June 1986, United*

warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law. This dual condition applies equally to Article 51 of the Charter, whatever the means of force employed.³¹

Arguments by the states that suggest that it can't be decided. - Those States asserted that the use of nuclear weapons in the conduct of reprisals would be lawful. The Court does not need to examine, in this context, the question of armed reprisals in time of peace, which are generally considered unlawful. Nor does it have to pronounce on the question of belligerent reprisals save to observe that in any case, any right of recourse to such reprisals would, like self-defence, be governed inter alia by the principle of proportionality.³² To lessen or eliminate the risk of unlawful attack, States sometimes signal that they possess certain weapons to use in self-defence against any State violating their territorial integrity or political independence.³³ Thus, it would be illegal for a State to threaten force to secure territory from another State, or to cause it to follow or not follow certain political or economic paths.³⁴ The notions of threat and use of force under Article 2, paragraph 4, of the Charter stand together in the sense that if the use of force itself in a given case is illegal for whatever reason, the threat to use such force will likewise be illegal. In short, if it is to be lawful, the declared readiness of a State to use force must be a use of force that is in conformity with the Charter. For the rest, no State whether or not it defended the policy of deterrence, suggested to the Court that it would be lawful to threaten to use force if the use of force contemplated would be illegal.³⁵

ARGUMENTS BY THE STATES ON ISSUE 5

Arguments by States which say that there is a prohibition on recourse to nuclear weapons - The argument advanced by the states is that nuclear weapons should be treated in the same way as poison weapons. In that case, they would be prohibited under: (a) The Second Hague Declaration of 29 July 1899, which prohibits The use of projectiles the object of which is the diffusion of asphyxiating or deleterious gases; (b) Article 23 (a) of the Regulations respecting

Nations [Un]; International Court of Justice [ICJ], opil.ouplaw.com/display/10.1093/law-icgj/112icj86.case.1/law-icgj-112icj86. Accessed 30 Aug. 2025.

³¹ *Supra*, note. 2 at page. 18, para. 41

³² *Id.*, at page. 19, para 46.

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ *Ibid.*, para. 47

the laws and customs of war on land annexed to the Hague Convention IV³⁶ of 18 October 1907, whereby it is especially forbidden: To employ poison or poisoned weapons; and (c) The Geneva Protocol of 17 June 1925 which prohibits The use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices.³⁷ In their view, these treaties bear witness, in their own way, to the emergence of a rule of complete legal prohibition of all uses of nuclear weapons.³⁸

Arguments by the states that say that there is no prohibition on the recourse to nuclear weapons - Those States that defend the position that recourse to nuclear weapons is legal in certain circumstances see a logical contradiction in reaching such a conclusion. The very logic and construction of the Treaty on the Non-Proliferation of Nuclear Weapons, they assert, confirm this. This Treaty, whereby, they contend, the possession of nuclear weapons by the five nuclear-weapon States has been accepted, cannot be seen as a treaty banning their use by those States; to accept the fact that those States possess nuclear weapons is tantamount to recognising that such weapons may be used in certain circumstances. Nor, they contend, could the security assurances given by the nuclear-weapon States in 1968, and more recently in connection with the Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons in 1995, have been conceived without its being supposed that there were circumstances in which nuclear weapons could be used in a lawful manner. For those who defend the legality of the use, in certain circumstances, of nuclear weapons, the acceptance of those instruments by the different non-nuclear-weapon States confirms and reinforces the evident logic upon which those instruments are based.³⁹

ARGUMENTS BY THE STATES ON ISSUE 6 -

Arguments by the States that say prohibition on nuclear weapons is a part of customary international law - States which hold the view that the use of nuclear weapons is illegal have endeavoured to demonstrate the existence of a customary rule prohibiting this use. They refer to a consistent practice of non-utilisation of nuclear weapons by States since 1945, and they

³⁶ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907., <https://ihl-databases.icrc.org/en/ihl-treaties/hague-conv-iv-1907> (Last accessed on 30.08.2025)

³⁷ Supra, note. 2 at page. 20, para. 54

³⁸ Id, at page. 23, para. 60

³⁹ Ibid, para.61

would see in that practice the expression of an *opinio juris* on the part of those who possess such weapons.⁴⁰

Arguments by the States that say the prohibition on nuclear weapons is not a part of customary international law - Some other States, which assert the legality of the threat and use of nuclear weapons in certain circumstances, invoked the doctrine and practice of deterrence in support of their argument. They recall that they have always, in concert with certain other States, reserved the right to use those weapons in the exercise of the right to self-defence against an armed attack threatening their vital security interests. In their view, if nuclear weapons have not been used since 1945, it is not on account of an existing or nascent custom, but merely because circumstances that might justify their use have fortunately not arisen.⁴¹

ARGUMENTS ADVANCED BY THE STATES ON ISSUE 7 -

Arguments by the state that says that nuclear weapons are illegal during armed conflicts - Another view holds that recourse to nuclear weapons could never be compatible with the principles and rules of humanitarian law and is therefore prohibited.⁴²

Argument by the state's which says that nuclear weapons are legal during armed conflicts - According to one point of view, the fact that recourse to nuclear weapons is subject to and regulated by the law of armed conflict does not necessarily mean that such recourse is, as such, prohibited.⁴³

DECISIONS OF THE COURTS ON THE ISSUES

Court's decision on Issue 1 - In view of what is stated above, the Court concludes that it has the authority to deliver an opinion on the question posed by the General Assembly, and that there exist no compelling reasons which would lead the Court to exercise its discretion not to do so. A different question entirely is whether the Court, under the constraints imposed upon it as a judicial organ, will be able to provide a comprehensive answer to the question posed to it. However, that is a different matter from a refusal to answer at all.⁴⁴

⁴⁰ Supra, note. 2 at page. 25, para 65

⁴¹ Ibid, para. 66

⁴² Id, at page. 31, para. 91

⁴³ Ibid, para. 92

⁴⁴ Supra, note. 2, at page. 12, para. 19

Court's Decision on Issue 2 - The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant, whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, a provision of this kind. In principle, the right not to be arbitrarily deprived of one's life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict, which is designed to regulate the conduct of hostilities. Thus, whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.⁴⁵

Court's Decision on Issue 3 - The Court recognises that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The Court also recognises that the environment is not an abstraction, but rather represents the living space, the quality of life, and the very health of human beings, including generations yet to be born. The existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national jurisdiction control is now part of the corpus of international law relating to the environment.⁴⁶ The Court thus finds that while the existing international law relating to the protection and Safeguarding of the environment does not explicitly prohibit the use of nuclear weapons, it indicates crucial environmental factors that are appropriately taken into account in the context of implementing the principles and rules of the law applicable in armed conflict.⁴⁷

Court's Decision on Issue 4 - Having dealt with the Charter provisions relating to the threat or use of force, the Court will now turn to the law applicable in situations of armed conflict. It will first address the question whether there are specific rules in international law regulating the legality or illegality of recourse to nuclear weapons *per se*; it will then examine the question put to it in the light of the law applicable in armed conflict proper, i.e. the principles and rules of humanitarian law applicable in armed conflict, and the law of neutrality.⁴⁸

⁴⁵ Id, at page. 14, para. 25

⁴⁶ Id, at page. 15, para. 29

⁴⁷ Id, at page. 16, para. 33

⁴⁸ Id, at page. 20, para. 51

The Court notes, by way of introduction, that international customary and treaty law does not contain any specific prescription authorising the threat or use of nuclear weapons or any other weapon, in general or in certain circumstances, particularly those of exercising legitimate self-defence. Nor, however, is there any principle or rule of international law which would make the legality of the threat or use of nuclear weapons or of any other weapons dependent on a specific authorisation. State practice shows that the illegality of the use of certain weapons as such does not result from an absence of authorisation but, on the contrary, is formulated in terms of prohibition.⁴⁹

The Court's Decision on the Issue - The Court observes that the Regulations annexed to the Hague Convention IV do not define what is meant by poison or poisoned weapons and that different interpretations exist on the issue. Nor does the 1925 Protocol specify the meaning to be given to the term "analogous materials or devices". The terms have been understood, in the practice of States, in their ordinary sense as covering weapons whose prime, or even exclusive, effect is to poison or asphyxiate. This practice is clear, and the parties to those instruments have not treated them as referring to nuclear weapons.⁵⁰

The Court notes that the treaties dealing exclusively with acquisition, manufacture, possession, deployment, and testing of nuclear weapons, without specifically addressing their threat or use, certainly point to an increasing concern in the international community with these weapons; the Court concludes from this that these treaties could therefore be seen as foreshadowing a future general prohibition of the use of such weapons, but they do not constitute such a prohibition by themselves.⁵¹

Court's Decision on Issue 6 - The Court does not intend to pronounce here upon the practice known as the "policy of deterrence". It notes that it is a fact that a number of States adhered to that practice during the greater part of the Cold War and continue to adhere to it. Furthermore, the Members of the international community are profoundly divided on the matter of whether non-recourse to nuclear weapons over the past fifty years constitutes the expression of an *opinio juris*. Under these circumstances, the Court does not consider itself able to find that there is such an *opinio juris*.⁵²

⁴⁹ Ibid, para. 52

⁵⁰ Ibid, para. 55

⁵¹ Id, at page. 24, Para, 62

⁵² Id, at page. 25, para. 67

Court's Decision on Issue 7 - The Court shares that view. Indeed, nuclear weapons were invented after most of the principles and rules of humanitarian law applicable in armed conflict had already come into existence; the Conferences of 1949 and 1974-1977 left these weapons aside, and there is a qualitative as well as quantitative difference between nuclear weapons and all conventional arms. However, it cannot be concluded from this that the established principles and rules of humanitarian law applicable in armed conflict did not apply to nuclear weapons. Such a conclusion would be incompatible with the intrinsically humanitarian character of the legal principles in question, which permeates the entire law of armed conflict and applies to all forms of warfare, including those of the past, present, and future. In this respect, it seems significant that the thesis that the rules of humanitarian law do not apply to the new weaponry, because of the newness of the latter, has not been advocated in the present proceedings.⁵³ Finally, the Court cites the Martens Clause, whose continued existence and applicability are not to be doubted, as an affirmation that the principles and rules of humanitarian law apply to nuclear weapons.⁵⁴

⁵³ Id, at page. 29, para. 86

⁵⁴ Ibid, para. 87