



Advisory Opinion: Legality of the Threat or Use of Nuclear Weapons (Historical Case)

ARGUED: 20 November 2017

DECIDED: 21 November 2017

1 The Majority Opinion was signed by and agreed to by Justice Stogin, Justice Amlani, Justice Fuller, Justice
2 Santos, Justice Hardin, Justice Pederson, Justice Taoreed, Justice Kennedy, Justice Eness and Justice Caine.

3 The Court was asked to deliver an advisory opinion on the question, "*Is the threat or use of nuclear weapons*
4 *in any circumstance permitted under international law?*" set forth by the United Nations General Assembly in GA
5 Resolution 49/75K.

6 The Court has jurisdiction over this case based on Article 96(a) of the United Nations Charter which states,
7 "The General Assembly or the Security Council may request the International Court of Justice to give an advisory
8 opinion on any legal question." Jurisdiction is also established in Article 65(1) of the Statute of the International
9 Court of Justice, which states that "the Court may give an advisory opinion on any legal question at the request
10 of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a
11 request."

12 The advocates from the General Assembly have demonstrated conclusive evidence that the issues surrounding
13 the legality of the use and threat of nuclear weapons under international law are sufficiently complex and cannot be
14 resolved via discussion within the General Assembly. Specifically this evidence includes the United Nations Charter,
15 the Rules of War, the Geneva Convention, the Hague Convention, and the Universal Declaration of Human Rights.

16 The opinion and explanation of reasons of the court is as follows:

17 First, the court considers the present international law surrounding the principle of precaution in war. The
18 first protocol of the Geneva Conventions, adopted in 1977, establish soundly the need to take all possible measures to
19 reduce civilian harms. Article 57, paragraph 1 reads as follows: "In the conduct of military operations, constant care
20 shall be taken to spare the civilian population, civilians and civilian objects." By their very nature, nuclear weapons
21 cannot be considerate of civilian life. The precautionary principle states maximum effort be made to spare civilian
22 populations. Nuclear weapons, with their deleterious environmental impacts and their ability for total destruction
23 of a geographic location, cannot be used in a way that takes constant care to spare civilian populations, both in the
24 borders of the target countries and third parties to the conflict. Ecuador's presentation on harms to growing seasons
25 via climate change, as well as increases in cancer as impacts of nuclear weapons is duly noted, and forms the basis for
26 the court's ability to consider nuclear attacks as in violation of the precautionary principle. Therefore, alternatives
27 to nuclear attacks must always be used in response to a previous nuclear strike. Furthermore, any preemptive or
28 preliminary strike is highly illegal, as it both violates Article 1 of the United Nations Charter, as well as the need
29 for precaution in attacks stated above.

30 Second, the court finds the application of the proportionality principle referred to in the *I.C.J. Reports*
31 *of 1986* to be applicable in the use of nuclear weapons in all cases, including actions that are deemed "necessary
32 to maintain international peace and security" (Article 51 of the United Nations Charter) by Member States. The
33 proportionality principle signifies a dual responsibility by States to follow international humanitarian law even after
34 Article 51 of the United Nations Charter has been invoked. The range and effects of nuclear weapons, as well as the
35 effects that it has in neighbouring countries and the world as a whole (non active parts of the conflict), make the use
36 of nuclear weapons never be a proportional measure.

37 We the United Nations International Court of Justice advise:

38 The use and threat of Nuclear Weapons be considered illegal from this point further. The use of Nuclear
39 Weapons being determined in two facets: (1) the offensive attack with any device internationally defined as a "Nuclear
40 Weapon" even under aggravating circumstances and (2) an attack done in self-defense and retaliatory to a preceding
41 attack by another state. The Court, in the matter of the first facet, affirms the decision made by prior bodies of the
42 United Nations that any use of Nuclear Weapons in conflict be illegal. In the secondary facet, that of self-defense,
43 found within the principle of proportional retaliation, the Court found dispute. The sovereignty of all members of the
44 United Nations is respected by the Court in times of war and conflict. However, it is within our understanding the
45 use of nuclear weapons, even with the perception of proportionality, is in essence illegal and not to be permitted by
46 rule of international law. This is outlined above through nuclear weapons' intrinsic effect as an infringement on the
47 international rules of war and the inevitable escalation of retaliatory self defense by any acting states. It is the right
48 of a state to determine the proportionality of acts for retaliatory self defense, but we further claim the difference in
49 the use of nuclear weapons for this right. The perception of harm is not always clear and the second and subsequent
50 strike will always increase exponentially in its disproportionality.

51 The Court will not rule on whether or not the possession of nuclear weapons constitutes a threat to use
52 nuclear weapons. This is because the Court was not asked to issue an advisory opinion on whether the possession of
53 nuclear weapons is illegal. In addition, the Court recognizes the practicalities of international politics and the role that
54 countries who possess nuclear weapons play in promoting international peace. However, the Court finds it beneficial
55 to define what constitutes a threat because its interpretation is directly associated with ascertaining whether or not
56 nuclear weapons are legal. A nuclear threat is any action by an entity that uses its nuclear assets to persuade, coerce,
57 or intimidate a country into acting a certain way. This also includes direct or indirect nuclear threats in the realm
58 of international politics and economics. Any nuclear proliferation violates the Nuclear Proliferation Treaty because
59 it undermines efforts to move toward the complete abolition of nuclear weapons. Thus, under the language of the
60 NPT, as well as Article II Section 4 of the United Nations Charter, countries must work in good faith towards the
61 reduction of nuclear stockpiles, but the possession of the weapons itself is not illegal in the Court's ruling.

62 Therefore, the Court rules that under no circumstances is the use or threat of use of nuclear weapons
63 permitted under international law.

Signed By

Justice Pederson

Justice Hardin

Justice Amlani

Justice Kennedy

Justice Eness

Justice Fuller

Justice Stogin

Justice Santos

Justice Caine

Justice Taoreed