

## Advisory Opinion: Legality of the Threat or Use of Nuclear Weapons (Italy, Marshall Islands, Netherlands, Qatar)

**ARGUED: 20 November 2023**

**DECIDED: 21 November 2023**

1 The Majority Opinion was signed and agreed to by President Patel of Mexico, Vice President Kalla of  
2 the Netherlands, Justice Avva of Venezuela, Justice Cox of Cyprus, Justice Damron of Ecuador, Justice Dorsch of  
3 Costa Rica, Justice Farooqi of Qatar, Justice Gomez of Mozambique, Justice Hakim of Russia, Justice Koziolk of  
4 Australia, and Justice Lercher of Namibia.

5 The Court has the jurisdiction to issue an Advisory Opinion on the legality of the threat or use of nuclear  
6 weapons. Article 65(1) of the Statute of the International Court of Justice states that “The Court may give an  
7 Advisory Opinion on any legal question at the request of whatever body may be authorized by or in accordance with  
8 the Charter of the United Nations to make such a request.”

9 Likewise, the United Nations General Assembly is authorized by Article 96(1) of the United Nations Charter  
10 (Charter) to “The General Assembly or the Security Council may request the International Court of Justice to give  
11 an advisory opinion on any legal question.” Therefore, it is the Majority Opinion of this Court that it is within our  
12 purview to issue an opinion on the legal question requested by the GA. Resolution A/RES/49/75 adopted by the GA  
13 requested the Court to answer the question: “Is the threat or use of nuclear weapons in any circumstance permitted  
14 under international law?”

15 Additionally, the Majority notes that the General Assembly has a responsibility “to take effective collective  
16 measures for the prevention and removal of threats to the peace”, per Article 1 1 of the Charter. In recognizing  
17 this responsibility, the Court believes that it is imperative that the General Assembly have access to all relevant  
18 information and guidance from United Nations bodies before drafting legislation.

19 The Majority finds that Article 1, 1, Article 4, 4, and Article 51 of the United Nations Charter, Article  
20 31 of the Vienna Convention on the Law of Treaties (VCLT), Articles 53 and 33 of the Fourth Geneva Convention  
21 of 1949 (Geneva IV, Fourth Geneva Convention), the Treaty on Non-Proliferation of Nuclear Weapons (NPT),  
22 Article 1, B, and Article 8 of the Convention on the Prohibition of the Development, Production and Stockpiling of  
23 Bacteriological (Biological) and Toxin Weapons and on their Destruction (Bioweapons Convention), are pertinent in  
24 its ruling concerning the question of whether or not the threat or use of nuclear weapons in any circumstance are  
25 permitted under law.

26 With respect to the use of nuclear weapons, the Majority holds that the stake that each country holds  
27 in this matter supersedes reservations to accepting the opinions of the Court. In consideration of the widespread  
28 environmental and humanitarian effects associated with nuclear weapons, the Court views such an action to be an  
29 act of collective penalization and, therefore sees the use as a violation of Article 33 of Geneva IV, which prohibits  
30 collective penalties. Further, Article 53 of Geneva IV states that any destruction of property belonging individually  
31 or collectively to private persons, a state, public authorities, or social or cooperative organizations is prohibited,  
32 except where such destruction is absolutely necessary by military operations. Even so, the Majority believes that the  
33 indiscriminate nature of nuclear weapons differentiates their use from the use of other weapons. Therefore, even in  
34 cases deemed appropriate by military operations, the Majority sees the consideration of state sovereignty as inferior  
35 to the communal well-being of civilians.

36 Turning to treaties relevant to the prohibition of weapons, the Majority Majority finds a plethora of evidence.  
37 As articulated in Article 2, Paragraph 4 of the Charter of the United Nations, Member States are explicitly prohibited  
38 from initiating “the threat or use of force against the territorial integrity or political independence of any state.”  
39 Further, Article 51 protects against impediments to the “inherent right of individual or collective self-defense...until

40 the Security Council has taken the measures necessary to maintain international peace and security.” Under these  
41 articles, it is clear that the use or threat of using nuclear weapons violates the Charter, as the inherently heightened  
42 threat and possible damage caused by nuclear weapons inevitably poses a threat to all States’ territorial integrity  
43 or political independence. We find that any threat or use of nuclear weapons, in direct correlation with these  
44 international statutes, is inherently in violation of the Charter and international law. Following the tenets of Article  
45 51, the threat or use of nuclear weapons is still prohibited in acts of self-defense. While this Court recognizes States’  
46 rights to their own sovereignty, retaliating against any nuclear attack with a nuclear attack still threatens a State’s  
47 territorial integrity or political independence. We find that there is no instance in which the use or threat of use of  
48 nuclear weapons for self-defense doesn’t inherently violate the tenets of the Charter. Further disarmament treaties  
49 such as the Nuclear Non-Proliferation Treaty (NPT), and the Convention on the Prohibition of the Development,  
50 Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction support the  
51 Charter’s text and intent.

52 The Council for the Netherlands posits that we should not issue an advisory opinion because there are existing  
53 treaties and international diplomatic relations that would be threatened by the Court’s issuing of an opinion. They  
54 argue that particular countries that have signed on to the Treaty on the Non-Proliferation of Nuclear Weapons  
55 would pull support from the document if this Court issued a decision permitting or prohibiting particular instances  
56 of threatening or using nuclear weapons. Following the Vienna Convention on the Law of Treaties, we must strictly  
57 understand the NPT as an anti-nuclear treaty. Thus, it is preposterous to assume that countries who had signed  
58 an anti-nuclear agreement would be vehemently opposed to this Court issuing an opinion that further affirms the  
59 tenets. While the possession of Nuclear weapons is commonplace, the legality is not addressed within the scope of  
60 this ruling. It therefore cannot be taken into consideration when considering how member states would comply with  
61 this ruling. Subsequently, we must conclude that compliance would likely be high as the use of nuclear weapons has  
62 been nonexistent and the threat has been minimal in recent years.

63 Even if the Netherlands’ assertion of adopters of the NPT pulling out of the Treaty materialized, the Court’s  
64 issuing of an Opinion would undoubtedly apply to all members of the United Nations, as the Advisory Opinion of  
65 this Court is universal. All legal jurisdictions take into account Advisory Opinions, at least on a basic level. If a  
66 Member State chooses to ignore the advice of this Court, especially in regard to this wholly legal case dealing with  
67 the contents of the Fourth Geneva Convention and Articles of the United Nations Charter, then it likely falls in  
68 opposition to the main tenets of Article 2 and 51 that we are basing our advice upon. If a Member State ignores the  
69 advice of anti-nuclear action, then they still are in opposition to the Charter, which is binding upon all members of  
70 the United Nations.

71 Looking beyond the Charter, a reading of other treaties and conventions supports the prohibition of the use  
72 and threat of nuclear weapons. According to the VCLT, Article 31, treaties should “be interpreted in good faith in  
73 accordance with the ordinary meaning”. Likewise, the Fourth Geneva Convention of 1949 is clear in its condemnation  
74 of acts that cause harm to civilians. Article 31 notes that “No physical or moral coercion shall be exercised against  
75 protected persons.” Article 4 of the Fourth Geneva Convention defines such persons as “those who at any given  
76 moment and in any manner whatsoever, find themselves... in the hands of a Party to the conflict,” which per Article  
77 3 includes “Persons taking no active part in the hostilities.” Nuclear weapons, with their catastrophic effects and the  
78 impossibility of distinguishing between combatants and non-combatants, clearly would run afoul of these principles  
79 if used against civilian targets because they would negatively affect the well-being of civilian populations.

80 Furthermore, a just application of the Fourth Convention of 1949 to the Convention on the Prohibition  
81 of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their  
82 Destruction, or the Bioweapons Convention should lead to the understanding that it prohibited the use and threat  
83 of nuclear weapons. Article 1, Section B of the Bioweapons Convention explicitly prohibits the use of chemical  
84 weapons. Article 8 later clarifies that this ban also includes the threat of use thereof. The ordinary meaning of  
85 chemical weapons was provided as: “Toxic chemicals, their precursors, and devices, specifically designed to cause  
86 death or other harm through the toxic properties of those toxic chemicals specified in subparagraph, which would be  
87 released as a result of the employment of such munitions and devices or any equipment specifically designed for use  
88 directly in connection with the employment of munitions and devices” previously specified.

89 Given the chemical properties of nuclear weapons, we must conclude that they are included in this definition  
90 of chemical weapons. Due to the severe physical effects, including radiation poisoning from toxic chemicals within  
91 these weapons, nuclear weapons share properties inherent to the definition of a chemical weapon.

92 Elaborating on this conceptual framework, the notion of brutality, as expounded in Part 3, Section 1,  
93 Article 32 of the Fourth Geneva Convention , embodies the prohibition of acts such as corporal punishment, murder,

94 torture, and other offenses aimed at safeguarding individuals, particularly noncombatants, from egregious harm  
95 during periods of armed conflict. The Majority discerns that the 1980 Convention on Certain Conventional Weapons,  
96 which proscribes and/or limits the utilization of specific conventional armaments deemed excessively injurious or  
97 possessing indiscriminate effects, extends the scope of brutality to encompass weaponry, specifically applying to the  
98 use of nuclear weapons.

99 For example, the consequences of a nuclear strike on a city, would far exceed the physical damage that may  
100 be done to a target of military importance. Radiation does not stay in one place, dissipate quickly, nor be effectively  
101 removed. It travels and contaminates the air, ground, and water for decades, if not hundreds of years, and causes  
102 a host of adverse health problems, including cancer. To reiterate, this challenges Article 32 of the Fourth Geneva  
103 Convention, which specifically prohibits countries from “taking any measure of such a character as to cause the  
104 physical suffering or extermination of protected persons... This prohibition applies not only to murder, torture...  
105 but also to any other measures of brutality.” It does not get much more brutal than using such an indiscriminate  
106 weapon that causes a disproportionate loss of life, renders a portion of land inhabitable for generations, and forces  
107 people from their homes.

108 For these reasons, the Majority holds that there is no circumstance in which the threat or use of nuclear  
109 weapons are permitted under law. Pursuant to the statutes and laws listed above, the Majority has found that  
110 there is undeniable evidence that the proliferation of nuclear weapons would lead to the devastation of humanity.  
111 Preventing the devastation of humanity is the most substantial effort of the United Nations, and ruling against this  
112 prevention would exhibit a considerable lack of coherence and respect for humanity.

113 Furthermore, the Court has concluded that the use of nuclear weaponry has evolved from general principle  
114 into a *jus cogens* norm. These certain norms warrant the Court to urgently address this issue as we believe the use  
115 of nuclear weapons should be defined as one of the most heinous crimes against humanity.

116 Conclusively, as we have defined the use or threat of nuclear weapons as a *jus cogens* norm and prohibited  
117 the use or threat of nuclear weapons in all circumstances under international law, the Court is suggesting that the  
118 General Assembly shall accept this opinion of the Court as a legal and ethical basis for working toward international  
119 denuclearization.

Signed By



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Justice Avery Damron



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Justice Casey Hakim



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Justice Diva Patel




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Justice Emma Lercher



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Justice Gabriel Kalla



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Justice Jadon Cox



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Justice Jaeda Koziolk



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Justice Murreyum Farooqi



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Justice Samuel Gomez



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Justice Tyler Dorsch



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Justice Vishnu Avva