

IN THE INTERNATIONAL COURT OF JUSTICE

ON THE MATTER OF THE REQUEST FOR AN ADVISORY OPINION CONCERNING THE LEGALITY OF THREATS OR THE USE OF NUCLEAR WEAPONS REQUESTED BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS ON 15 DECEMBER 1994.

MEMORIAL OF THE STATE OF QATAR

COMES NOW the State of Qatar and for their Memorial to the Court states the following:

STATEMENT OF FACT:

On 15 December 1994, the General Assembly of the United Nations adopted a resolution (49/75K) requesting an advisory opinion of the International Court of Justice (hereafter “the Court”) on the legal question: “Is the threat or use of nuclear weapons in any circumstance permitted under international law?”

The State of Qatar joined the majority of states requesting the advisory opinion, and asks that the Court address the question forthwith. All nation-states have a compelling interest in questions surrounding the legality of threats or the use of nuclear weapons. The very existence of such weapons portends suffering and death for all humanity and the natural environment alike. To deploy such a tool as a means of statecraft threatens to extinguish life itself, and regardless of a state's possession of such weapons, all members of the international community have a compelling stake in their existence given the disastrous consequences that follow their use.

STATEMENT OF JURISDICTION:

One of the core functions of the Court as the principal judicial organ of the United Nations is to issue expert advisory opinions on outstanding questions of law. This function is enshrined in the Charter of the United Nations (Article 96). Specifically, the Charter establishes that “[t]he General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question.” This function is reinforced within the Statute of the International Court of Justice (Article 65), which indicates that “the Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request.”

The present request falls squarely within the purview of the Court as established by both the UN Charter and its own founding Statute. Some of Qatar’s esteemed counterparts argue that the current question is insufficiently precise, or that it is political rather than legal in scope. We are unconvinced by such contentions, and urge the Court to consider the request without delay. The State of Qatar is confident that the Court’s impartial jurists can confine their expert judgment to the core legal issues under consideration.

STATEMENT OF LAW:

We respectfully direct the Court’s attention to multiple material sources of law that bear on the present question. These sources form the basis of our argument that international law prohibits the threat or the use of nuclear weapons. We elaborate on each source in the subsequent section.

1. The Charter of the United Nations (1945);
2. The Treaty on the Non-Proliferation of Nuclear Weapons (1968);
3. The Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (1968);
4. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (currently open for signature; EIF upon accession from 65 states);
5. Established *custom* prohibiting threats or the use of military force, including weapons of mass destruction;
6. *A jus cogens* norm prohibiting threats or the use of military force, including weapons of mass destruction.

ARGUMENTS:

Multiple material sources of law, including treaties and provisions of customary international law, expressly prohibit both threats and the use of military force against other nation-states. In the aftermath of World War II, the international community has worked tirelessly to circumscribe the conditions under which the use of military force can be considered lawful (e.g., the UN Charter [1945]). This extends even to the conditions wherein the use of force as an act of self defense may be permissible (e.g., “The Caroline Test,” *The Republic of Nicaragua vs. The United States of America* [1986]).

The State of Qatar believes that these sweeping prohibitions extend to the particular question of nuclear weapons. Qatar likewise believes that the legal prohibition against threats or the use of

military force, including nuclear weapons, has been elevated beyond treaty and binding custom to the realm of *jus cogens*. We elaborate on these arguments in turn.

1. The **UN Charter (Article 2(4))** unequivocally prohibits both threats and the use of military force against members and other states. This prohibition enjoys pride of place as the second article in the Charter, and this speaks to its critical importance to the United Nations, and to the community of nation-states that established it. Moreover, the Charter explicitly delegates the responsibility to maintain international peace and security to the Security Council (see Articles 23-51). This sacred mandate precludes the lawfulness of a nation-state issuing unilateral threats or using military force against a counterpart. The spirit of the Charter first and foremostly compels the peaceful resolution of disputes, and it intends that the Security Council operate as the international community's sole arbiter of the lawful use of threats and military force.
2. The destructive capacity of nuclear armaments remains unrivaled among weapons systems. In recognizing the grave potential of nuclear weapons, the **Treaty on the Non-Proliferation of Nuclear Weapons (1968)** – hereafter “NPT” – explicitly compels existing nuclear weapons states to work toward total and permanent disarmament. The NPT simultaneously compels states to curb the spread of nuclear weapons and related technology. Insofar as the NPT enjoys membership from a large majority of nation-states, these objectives reflect the will of the global community of sovereign states, and they naturally and logically preclude threats or the use of nuclear weapons. Quite the contrary, the will of the international community, as codified in the NPT, seeks to eradicate this category of weapon in its entirety.
3. The post-WWII era has been characterized by the proliferation of agreements aimed at curtailing, and ultimately eliminating, the most destructive weapons systems and technology, or the so-called “weapons of mass destruction” (hereafter WMDs). Specifically, the international community has crafted legal instruments that explicitly prohibit the use of biological and chemical weapons, respectively, in the **Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (1968)** and in the **Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction**, which is currently open for signature and will enter into force upon accession of 65 member states. Each agreement codifies powerful norms against the creation, stockpiling, deployment, and use of the most heinous weapons ever created. Such norms readily extend to nuclear weapons by virtue of their kindred status as WMDs. In this regard, the will of the international community is unequivocal.

4. The State of Qatar believes that parallel prohibitions against threats and the use of nuclear weapons exist within the canon of customary international law; both state practice to this effect and *opinio juris* can be readily ascertained, thereby substantiating the existence of a universally binding custom. The 20th Century has been irrevocably marred by two of the deadliest violent conflicts in human history. The establishment of both the League of Nations and its successor the United Nations reflected vital efforts on behalf of the international community to sharply curtail the use of violent conflict as a tool of statecraft. Indeed, few objectives more readily characterize our current century than a global desire to realize a new era of perpetual peace among states. This desire has animated a post-war custom whereby, in most times and most places, states have sought peaceful resolution to their disputes. So significant is this custom that it has been enshrined in the UN Charter, which arguably represents the largest and most internationally representative binding legal instrument within the law of treaties. That the global community of states has codified the custom of peaceful dispute resolution within such an important treaty underscores its fundamental nature as an *obligation of law*.

In short, the post-WWII era has been marked by a general custom whereby states eschew threats or the use of military force in favor of peaceful dispute resolution; this behavior is manifestly premised on a belief that such conduct constitutes a *legal obligation*. The custom combined with evident *opinio juris* indicates the existence of a universally binding law prohibiting states from threatening or using military force, including nuclear weapons, against their counterparts.

5. The State of Qatar further argues that the international legal prohibition against threats or the use of nuclear weapons has evolved into a *jus cogens* norm. Such norms are universally peremptory, and concern only the most heinous transgressions. Much like the pirate, the torturer, and the slave trader, the violent aggressor who would use nuclear weapons against another represents a threat to all of humanity, and to all civilized nation-states. The designation of *jus cogens* is reserved for violations that are so severe in character that they shock the moral conscience of humanity. Qatar believes that the sheer destructive potential of nuclear weapons rightly elevates their use into this category. We therefore argue that abstaining from threats or the use of nuclear weapons now constitutes a compelling norm so significant that no derogation may ever be permitted.

SUMMARY AND REQUESTS:

The State of Qatar respectfully requests that the Court give its arguments due consideration. It is the official position of Qatar that threats or the use of nuclear weapons constitute a grave breach of international law, and that this position be reflected in the Court's advisory opinion.