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HIROSHIMA AND THE ICJ: RE-THINKING THE LEGALITY OF NUCLEAR WEAPONS UNDER INTERNATIONAL LAW

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Abstract

Nuclear weapons remain the most controversial category of armaments under international law. Their unparalleled destructive capacity, long-term radiological effects, environmental devastation, and existential implications for humanity make them uniquely difficult to reconcile with the normative architecture of the international law. Notwithstanding, the decades of disarmament diplomacy as well as humanitarian consequences, nuclear weapons continue to occupy a protected and even privileged space within global security doctrine. The authors therefore argued that the current legal regime is structurally contradictory in the sense that it stigmatises proliferation on the one hand while at the same time normalising possession by a select class of states. Furthermore, the subsisting framework operated to recognise humanitarian limits on warfare, while tolerating strategic doctrines based on catastrophic annihilation; and invoked good faith disarmament obligations without meaningful enforcement. The paper therefore concluded that nuclear weapons expose one of the deepest legitimacy crises in international law, the inability of a universal legal order to effectively outlaw the most universally catastrophic means of warfare.

Keywords: nuclear weapons, international law, warfare, disarmament, deterrence, ICJ.

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1. Introduction

Few questions in international law¹ reveal the tension between power and principle as sharply as the legality of nuclear weapons. If international law² is at its core, a normative order intended to regulate the use of force, protect humanity, and restrain the excesses of state violence, then the continued existence of nuclear weapons

¹ This term (International Law) was first used by J. Bentham: *Introduction to the Principles of Morals and Legislation*, London, 1780.

² International law covers relations between states in all their myriad forms, from war to peace, and regulates the operations of the many international institutions.

presents an almost unbearable contradiction. No other class of weapon combines such immediate destructive force with such profound and enduring humanitarian, ecological, and civilizational consequences. Yet nuclear weapons remain embedded not at the margins of international legality, but within the strategic heart of contemporary international relations.

This contradiction is neither merely doctrinal nor merely political. It is jurisprudential. Nuclear weapons challenge the very self-understanding of international law as a rational, universal, and ethically defensible system of norms. On the one hand, the legal order has developed extensive principles designed to limit war: distinction, proportionality, necessity, humanity, environmental restraint, sovereign equality, and collective security.³ On the other hand, the same order has tolerated indeed and structurally accommodated the possession and threatened use of weapons whose effects are fundamentally difficult to reconcile with those principles. The result is a legal field characterised by ambiguity, exceptionalism, and normative fragmentation.

The paper appraised and interrogated the place of nuclear weapons under international law. The central issue is not simply whether nuclear weapons are lawful or unlawful in the abstract, but how international law has situated, regulated, normalised, constrained, or failed to eliminate them. This purpose requires moving beyond a narrow positivist search for a single dispositive rule and instead engaging the broader structure of treaty law, customary international law, international humanitarian law, judicial interpretation, disarmament practice, and legal theory.

The article advances three principal arguments. First, the international legal regime governing nuclear weapons is deeply fragmented and normatively inconsistent. It contains non-proliferation obligations, partial restrictions, disarmament commitments, and humanitarian principles, yet stops short of universal, enforceable prohibition. Secondly, the jurisprudence and structure of the regime reveal a persistent pattern of nuclear exceptionalism, whereby nuclear-armed states are effectively insulated from the full normative consequences of legal principle. Thirdly, notwithstanding this structural contradiction, the direction of legal development increasingly points toward delegitimation and eventual prohibition, particularly through humanitarian

³ See Article 2(4), 51, 107, 24 and 25 of the UN Charter, 1945

disarmament discourse and the normative significance of the Treaty on the Prohibition of Nuclear Weapons 2017.⁴

The article proceeds in various substantive parts. Following the introduction, traces the nature and historical evolution of nuclear weapons. It then examines the treaty architecture, focusing on the Nuclear Non-Proliferation Treaty (NPT), the Comprehensive Nuclear-Test-Ban Treaty (CTBT), regional nuclear-weapon-free zones, and the Treaty on the Prohibition of Nuclear Weapons (TPNW). Thereafter, it considers the compatibility of nuclear weapons with international humanitarian law. The article then critically analyses the 1996 Advisory Opinion of the International Court of Justice (ICJ),⁵ explores the role of customary international law, interrogates the legality of nuclear deterrence, evaluates humanitarian and environmental developments, and offers a broader critical appraisal of the structural place of nuclear weapons within international law. The conclusion and recommendations reflects on moving toward abolition or refining the management of strategic hypocrisy currently inherent under global nuclear regime.

2. History and nature of Nuclear Weapon under International Law

In order to correctly place the issue of nuclear weapon under international law in perspective, it is imperative to take into account the unique characteristics of nuclear weapons, and in particular their destructive capacity. Nuclear weapons are explosive devices whose energy results from the fusion or fission of the atom.⁶ By its very nature, it releases not only immense quantities of heat and energy, but also powerful and prolonged radiation. Nuclear weapon is vastly more powerful and causes greater damage compared to other weapons⁷, with the phenomenon of radiation peculiar to nuclear weapons. These characteristics render the nuclear weapon potentially catastrophic. The destructive power of nuclear weapons cannot be contained in either

⁴ The Treaty on the Prohibition of Nuclear Weapons, 2017 (TPNW) is the first globally applicable multilateral agreement to comprehensively prohibit nuclear weapons. It is also the first to include provisions to help address the humanitarian consequences of nuclear weapon use and testing.

⁵ Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226, para 105(2)(F).

⁶ *ibid*

⁷ Chemical weapons such as sarin gas, mustard gas, chlorine gas, phosgene, novichok agents, vx nerve gas. Biological weapon such as anthrax, botulinum toxin, tularemia and ricin toxins. Equally nuclear weapon are more profound in the nature of its destructive abilities than pure radiological weapons.

space or time. They have the potential to destroy all civilisation and the entire ecosystem of the planet. The radiation released by a nuclear explosion would affect health, agriculture, natural resources and demography over a very wide area. Further, the use of nuclear weapons would be a serious danger to future generations. Ionising radiation has the potential to damage the future environment, food and marine ecosystem, and to cause genetic defects and illness in future generations.⁸

It is apposite to state that, the legal problem of nuclear weapons emerged simultaneously with the political dawn of the nuclear age. The atomic bombings of Hiroshima and Nagasaki in August 1945 were not merely military events; they constituted a jurisprudential rupture. For the first time, a single weapon could annihilate entire cities in moments, while also imposing invisible and enduring harms through radiation, contamination, disease, and intergenerational trauma. The destructive capacity of these weapons immediately raised questions that the existing law of war had not anticipated in their full magnitude.⁹

The post-war legal order, embodied in the United Nations Charter 1945, was built around the twin aspirations of collective security and the prevention of aggressive war.¹⁰ Yet the emergence of nuclear weapons rapidly transformed the architecture of international peace and security from one concerned with preventing war to one increasingly obsessed with managing the risk of total annihilation. Early efforts to place nuclear energy and weapons under international control most notably the Baruch Plan of 1946¹¹ failed due to Cold War distrust and superpower rivalry.¹² The result was not abolition but strategic entrenchment.

By the 1950s and 1960s, nuclear weapons had become central to the military doctrines of the United States and the Soviet Union, and later to other states. The legal

⁸ See the preamble to the 1968 Treaty on the Non-Proliferation of Nuclear Weapons adopted on 1 July, 1968

⁹ Richard Falk, *The Shimoda Case: A Legal Appraisal of the Atomic Attacks upon Hiroshima and Nagasaki* (1965) 59 *American Journal of International Law* 759.

¹⁰ Charter of the United Nations 1945, arts 1, 2(4), 39–51.

¹¹ The Baruch plan was a proposal put forward by the United States on 14 June 1946 to the United Nations Atomic Energy Commission, with Bernard Baruch writing the bulk of the proposal based on the March 1946 Acheson-Lilienthal Report for an International Organisation to regulate the use of atomic energy.

¹² David Holloway, *Stalin and the Bomb: The Soviet Union and Atomic Energy 1939–1956* (Yale University Press 1994) 161–172.

discourse that developed during this period was correspondingly cautious and incomplete. Rather than outright prohibition, the early legal response focused on partial risk containment: atmospheric test bans, safeguards against proliferation, and arms control mechanisms designed to reduce instability rather than eliminate the weapons themselves.¹³

This historical trajectory matters because it shaped the normative DNA of nuclear law. Unlike chemical and biological weapons, which came to be addressed through more categorical prohibitionist logics, nuclear weapons entered international law through the vocabulary of strategic management. Their legal regulation was therefore never neutral. It emerged from and remains conditioned by a world order structured around the security preferences of the most powerful states.

The Cold War also normalised the doctrine of nuclear deterrence, according to which the threat of catastrophic retaliation would preserve peace through fear. This doctrine deeply influenced legal consciousness. Instead of asking whether such weapons were compatible with the laws of war, states increasingly framed the issue as one of strategic necessity. Legal restraint became subordinated to political realism.¹⁴

The end of the Cold War briefly revived optimism about disarmament. Bilateral reductions, the extension of the NPT, and the negotiation of the CTBT suggested the possibility of progressive denuclearisation. However, this optimism proved partial and fragile. Nuclear modernisation programmes, regional proliferation crises, and renewed great power competition have since reinforced the enduring centrality of nuclear weapons in international politics.¹⁵

Thus, the historical evolution of the nuclear question reveals a persistent structural pattern: whenever international law has confronted nuclear weapons, it has tended to regulate around them rather than through them. Their “place” under international law has therefore been less that of a prohibited object than of a tolerated anomaly.

¹³ Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water 1963.

¹⁴ Lawrence Freedman, *The Evolution of Nuclear Strategy* (3rd edn, Palgrave Macmillan 2003).

¹⁵ Stockholm International Peace Research Institute, SIPRI Yearbook 2025: Armaments, Disarmament and International Security.

3. Framework on Nuclear Weapon in International Law

There are chains of framework regulating development, acquisition and storage of nuclear weapon. They include the following:

3.1 The Nuclear Non-Proliferation Treaty

The Treaty on the Non-Proliferation of Nuclear Weapons adopted in 1968, entered into force in 1970 and remains the foundational legal instrument in the global nuclear order.¹⁶ It is often described as resting on three interlocking pillars: non-proliferation, disarmament, and the peaceful use of nuclear energy. In formal terms, the treaty seeks to prevent the spread of nuclear weapons, facilitate access to peaceful nuclear technology, and move toward eventual disarmament.¹⁷

Articles I and II establish the core non-proliferation bargain: nuclear-weapon states agree not to transfer nuclear weapons or assist others in acquiring them, while non-nuclear-weapon states agree not to receive, manufacture, or otherwise acquire such weapons.¹⁸ Article III subjects non-nuclear-weapon states to safeguards administered by the International Atomic Energy Agency (IAEA), thereby institutionalising verification as a central feature of the regime.¹⁹ Article IV recognises the “inalienable right” of all parties to develop and use nuclear energy for peaceful purposes, subject to safeguards.²⁰ Most importantly for present purposes, Article VI imposes a legal obligation on all parties to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race and to nuclear disarmament.²¹

Notwithstanding its centrality, the NPT is also the site of one of the most profound normative contradictions in modern international law. The treaty does not simply regulate nuclear weapons; it stratifies the international community into legally differentiated classes. It recognises as “nuclear-weapon states” only those states that manufactured and exploded a nuclear device before 1 January 1967.²² This effectively

¹⁶ Treaty on the Non-Proliferation of Nuclear Weapons 1968.

¹⁷ http://en.wikipedia.org/wiki/Treaty_on_the_Non-Proliferation_of_Nuclear_Weapons> accessed 27 August 2026

¹⁸ NPT arts I and II.

¹⁹ *ibid*, art III.

²⁰ *ibid*, art IV.

²¹ *ibid*, art VI.

²² *ibid*, art IX(3).

confers legal privilege upon the United States, Russia, the United Kingdom, France, and China, while denying equivalent status to all others.

This structure has often been defended as a pragmatic compromise necessary to secure non-proliferation. Yet from the standpoint of legal principle, it is difficult to avoid the conclusion that the NPT institutionalises asymmetry. It does not prohibit nuclear weapons universally. Rather, it restricts access to them while allowing a select group to retain them indefinitely at least in practice. The regime is therefore not merely non-proliferative; it is distributively unequal and disturbing.

The legitimacy problem is compounded by the chronic underperformance of Article VI. The disarmament obligation has been the moral and legal justification for the treaty's asymmetrical bargain. Non-nuclear states accepted permanent abstention in exchange for a commitment that the nuclear powers would move in good faith toward disarmament. Yet over half a century later, the major nuclear powers continue to maintain, modernise, and in some cases expand their nuclear capabilities.²³ This raises serious questions as to whether the disarmament pillar has been honoured in substance.

The ICJ in its 1996 Advisory Opinion gave Article VI significant interpretive force by holding that it entails an obligation "to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects".²⁴ This is a powerful formulation. However, in the absence of institutional enforcement, Article VI has often functioned more as a promissory norm than a justiciable constraint.

The NPT has nevertheless had substantial practical success in limiting horizontal proliferation. Without it, many more states might today possess nuclear weapons.²⁵ But success in non-proliferation cannot obscure the treaty's deeper normative deficit.

²³ See for instance Pyongyang threat to withdraw from the NPT in 1993 and formally did so in 2003. It has since conducted six nuclear tests, prompting a raft of international sanctions and is believed to possess dozens of nuclear warheads. Speaking on the eroding issue of the NPT, the UN Secretary-General Antonio Guterres said: "Commitments remain unfulfilled. Trust and credibility are wearing thin. The drivers of proliferation are accelerating," he said.

²⁴ Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226, para 105(2)(F).

²⁵ The February 28 US-Israel invasion of the Iran and its regional allies leading to the killing of Iran's Supreme Leader Ali Khamenei was partly attributable to suspicion of Iran's covert need to acquire nuclear weapon.

It has constrained access without dismantling privilege. In that sense, it reflects not the universal triumph of law, but the legal management of strategic hierarchy.

3.2 The Comprehensive Nuclear-Test-Ban Treaty

The Comprehensive Nuclear-Test-Ban Treaty 1996 was designed to prohibit “any nuclear weapon test explosion or any other nuclear explosion”.²⁶ Its significance lies in the recognition that testing is central to the development, refinement, and legitimacy of nuclear arsenals. By banning tests, the CTBT aims to impede both proliferation and qualitative arms racing.

Normatively, the CTBT is an important instrument because it narrows the operational space of nuclear weapons. Politically, however, its authority is limited by the fact that it has not entered into force due to the failure of several Annex 2 states to ratify it.²⁷ This non-entry into force is not merely a technical matter, it illustrates a recurring pathology of nuclear law: strong normative aspiration without universal strategic buy-in.

Even so, the CTBT has generated a powerful *de facto* norm against nuclear testing. Most states have observed test moratoria, and the international reaction to recent tests by North Korea demonstrates the extent to which testing has become stigmatised.²⁸ In this respect, the CTBT exemplifies how legal norms may shape conduct even in the absence of formal entry into force.

3.3 Regional Nuclear-Weapon-Free Zones

Regional nuclear-weapon-free zone treaties constitute one of the most underappreciated achievements of the international legal order. These include the Treaty of Tlatelolco 1967 (Latin America and the Caribbean), the Treaty of Rarotonga 1985 (South Pacific), the Treaty of Bangkok 1995 (Southeast Asia), the Treaty of

²⁶ Comprehensive Nuclear-Test-Ban Treaty 1996, art I.

²⁷ *ibid*, art XIV. The following Annex 2 States that have not ratified the treaty such as, China, US, Russia Federation, Korea, Israel, Pakistan, India tell a lot about the success of this treaty being basically the Nuclear Armed States.

²⁸ . United Nations Security Council Resolution 2397 (2017) UN Doc S/RES/2397.

Pelindaba 1996 (Africa), and the Treaty on a Nuclear-Weapon-Free Zone in Central Asia (Semipalatinsk) 2006.²⁹

These instruments are important for at least three reasons. First, they reflect regional agency in the construction of disarmament norms. Secondly, they expand the practical geography of nuclear abstention. Thirdly, they expose the asymmetrical character of the global regime by showing that many regions of the world have chosen legal denuclearisation while a few strategically privileged states retain arsenals.

The African perspective is especially notable. The Treaty of Pelindaba reflects a continent-wide rejection of nuclear weapons and embeds anti-nuclear commitments within a broader post-colonial and anti-apartheid legal consciousness.³⁰ Africa's stance underscores a recurring tension in international law: those states most committed to abolition are often those with the least influence over the strategic structures that perpetuate nuclear armament.

3.4 The Treaty on the Prohibition of Nuclear Weapons, 2017

By resolution 71/258, the General Assembly of the United Nations convened a conference in 2017 in New York to discuss toward the prohibition and by a harsher measure, the elimination of nuclear weapons. The Treaty on the Prohibition of Nuclear Weapons, was adopted by a vote of 122 States in favour with one vote against, and one absenteeism on July 2017, and opened for signature on 20 September and entered into force on 22 January 2021 marking the most significant normative development in the law of nuclear weapons since the NPT.³¹ It prohibits the development, testing, production, manufacture, acquisition, possession, stockpiling, transfer, stationing, use, and threat of use of nuclear weapons.³² It also contains obligations relating to victim assistance, environmental remediation, and pathways for verified elimination.

²⁹ See <http://www.iaea.org/topics/nuclear-weapon-free-zones> accessed 27 August 2026; Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean 1967 (Treaty of Tlatelolco); South Pacific Nuclear Free Zone Treaty 1985 (Treaty of Rarotonga); Southeast Asia Nuclear Weapon-Free Zone Treaty 1995 (Treaty of Bangkok); African Nuclear-Weapon-Free Zone Treaty 1996 (Treaty of Pelindaba); Treaty on a Nuclear-Weapon-Free Zone in Central Asia 2006.

³⁰ African Nuclear-Weapon-Free Zone Treaty 1996.

³¹ Treaty on the Prohibition of Nuclear Weapons 2017

³² *ibid*, art 1.

The TPNW is conceptually transformative because it reframes the nuclear issue from strategic management to humanitarian prohibition. Rather than treating nuclear weapons as unfortunate but legitimate tools of statecraft, the treaty places them within the same broad moral and legal universe as other inhumane weapons. In doing so, it rejects the logic of nuclear exceptionalism.

Critics argue that the treaty is politically naive because none of the nuclear-armed states have joined it, and many umbrella states remain opposed.³³ That criticism is not entirely misplaced in practical terms. The TPNW does not currently bind the states whose conduct most directly sustains the nuclear order. However, to dismiss it on that basis would misunderstand the role of law in norm development. International law often develops through stigmatisation before compliance. The legal significance of the TPNW lies not only in its immediate enforceability, but in its capacity to reshape legitimacy, discourse, and expectations.

Indeed, the TPNW's importance may be analogous to earlier humanitarian disarmament instruments, such as the Ottawa Convention on anti-personnel landmines and the Convention on Cluster Munitions. These treaties were initially resisted by major powers yet succeeded in transforming normative landscapes.³⁴ The TPNW may be understood as an effort to do for nuclear weapons what earlier humanitarian regimes did for other categories of indiscriminate or inhumane armaments, to strip them of legal respectability.

In sum, the treaty architecture governing nuclear weapons reveals both progress and pathology. There is no legal vacuum. Nuclear weapons are heavily regulated. Yet the architecture remains fragmented, uneven, and structurally deferential to power. International law has moved from silence to regulation, and from regulation to partial stigmatisation, but it has not yet achieved universal prohibition backed by effective compliance.

³³ North Atlantic Treaty Organization, 'North Atlantic Council Statement on the Treaty on the Prohibition of Nuclear Weapons' (20 September 2017).

³⁴ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction 1997; Convention on Cluster Munitions 2008.

4. Nuclear Weapons and International Humanitarian Law

If treaty law reveals the fragmented political management of nuclear weapons, international humanitarian law (IHL) provides the clearest normative lens through which their legality must be interrogated. The central question is whether nuclear weapons can, in principle or practice, be used consistently with the foundational rules governing the conduct of hostilities. On any serious analysis, this question is extraordinarily difficult for the defenders of nuclear legality.

IHL is not concerned primarily with whether war is justified; rather, it governs how war is fought. Its core principles distinction, proportionality, precaution, military necessity, and humanity are designed to limit the violence of armed conflict.³⁵ The legal problem posed by nuclear weapons is that their foreseeable effects appear fundamentally resistant to those limits.

4.1 Distinction and the Problem of Inherent Indiscriminateness

The principle of distinction requires parties to an armed conflict at all times to distinguish between civilians and combatants, and between civilian objects and military objectives.³⁶ Attacks may only be directed against lawful military targets. Weapons that are incapable of being directed at a specific military objective are generally regarded as indiscriminate and unlawful.³⁷

Nuclear weapons present a profound challenge to this principle. Even so-called “tactical” or “low-yield” nuclear weapons generate blast, heat, radiation, and fire effects that are extremely difficult if not impossible to confine in space and time. The destructive radius of a nuclear detonation, coupled with fallout and long-term contamination, means that civilian populations and objects are almost inevitably implicated.

Defenders of legality sometimes argue that advances in targeting and reduced-yield designs may allow some hypothetical nuclear uses against isolated military targets.

³⁵ Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict* (3rd edn, CUP 2016).

³⁶ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) 1977, art 48

³⁷ *ibid*, art 51(4).

However, this argument is legally and morally fragile. The question is not whether one can imagine an abstract scenario in which collateral damage is minimised; it is whether the weapon's foreseeable effects are compatible with the duty of distinction in the real conditions of armed conflict. The broader the lens of humanitarian consequence, the harder it becomes to sustain the claim that nuclear weapons can be employed as genuinely discriminate means of warfare.

4.2 Proportionality and Excessive Civilian Harm

The principle of proportionality prohibits attacks expected to cause incidental civilian harm that would be excessive in relation to the concrete and direct military advantage anticipated.³⁸ This is an evaluative and contextual standard, but it is not empty. It requires decision-makers to assess whether civilian cost is legally tolerable in relation to military gain.

The application of proportionality to nuclear weapons is deeply problematic. The immediate civilian consequences of nuclear use are massive, and the long-term effects including radiation exposure, infrastructural collapse, famine risk, and public health catastrophe further intensify the humanitarian burden.³⁹ The military advantage claimed in support of nuclear use would therefore have to be extraordinarily compelling to satisfy proportionality, particularly where civilian centres are implicated.

The problem is compounded by uncertainty. Nuclear detonations produce cascading effects that are difficult to predict with precision, including atmospheric, ecological, and medical consequences. Where harm is potentially vast and not fully controllable, the margin for lawful proportionality narrows dramatically.

4.3 Unnecessary Suffering and the Principle of Humanity

A long-standing principle of the law of armed conflict prohibits weapons of a nature to cause superfluous injury or unnecessary suffering.⁴⁰ The underlying idea is that

³⁸ Ibid, art 51(5)(b).

³⁹ International Committee of the Red Cross, *'Humanitarian Impacts and Risks of Use of Nuclear Weapons'* (2020).

⁴⁰ Hague Convention (IV) Respecting the Laws and Customs of War on Land and annexed Regulations 1907, art 23(e); Additional Protocol I 1977, art 35(2).

even in war, not all forms of suffering are legally permissible.⁴¹ Means of warfare must not inflict injury beyond what is necessary to disable an adversary militarily.

Nuclear weapons inflict forms of suffering that are qualitatively extreme. Beyond blast trauma and burns, they cause radiation sickness, long-term cancers, reproductive harm, congenital defects, psychological devastation, and social dislocation across generations.⁴² These effects are not incidental in a narrow sense; they are central to the weapon's destructive profile. This raises a powerful argument that nuclear weapons are inconsistent with the principle of humanity that animates the law of armed conflict.

4.4 Environmental Protection in Armed Conflict

The legality of nuclear weapons must also be considered in light of the growing body of international law concerned with environmental protection during armed conflict. Additional Protocol I prohibits methods or means of warfare intended, or expected, to cause widespread, long-term, and severe damage to the natural environment.⁴³ Although the threshold is high and the precise contours of the rule remain debated, nuclear weapons are among the clearest candidates for scrutiny under this standard.

A nuclear detonation may contaminate land, water, and air for decades. It may devastate ecosystems, render territory uninhabitable, and trigger climatic consequences extending far beyond the immediate theatre of conflict. The environmental argument against nuclear weapons is therefore not merely supplementary; it strengthens the case that such weapons are structurally at odds with modern humanitarian and ecological norms.

⁴¹ 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 certain regional instruments for the protection of human rights. Article 6, paragraph 1, of the International Covenant provides as follows: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." In reply, others contended that the International Covenant on Civil and Political Rights made no mention of war or weapons, and it had never been envisaged that the legality of nuclear weapons was regulated by that instrument. It 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.

⁴² ICRC, 'Humanitarian Impacts and Risks of Use of Nuclear Weapons' (n 28).

⁴³ Additional Protocol I 1977, arts 35(3) and 55.

4.5 The Martens Clause and the Conscience of Humanity

Where treaty rules are incomplete, the Martens Clause⁴⁴ remains a significant interpretive resource. It provides that civilians and combatants remain under the protection and authority of the principles of humanity and the dictates of public conscience.⁴⁵ While often criticised as indeterminate, the clause serves an important normative function. It reminds legal interpretation that not everything turns on explicit textual prohibition.

In the context of nuclear weapons, the Martens Clause is particularly resonant. Even if positive law does not yet contain a universally accepted and historically continuous express prohibition, the humanitarian consequences of nuclear weapons are so severe that they invite precisely the kind of conscience-based legal judgment the clause was designed to preserve.

In sum, IHL does not easily accommodate nuclear weapons. The strongest reading of the law suggests that their use would, in almost all conceivable circumstances, violate core humanitarian principles. The fact that the law has not always translated that conclusion into categorical prohibition reflects not doctrinal coherence, but the continuing influence of strategic exceptionalism.

5. The 1996 ICJ Advisory Opinion: Ambiguity or Doctrine

The International Court of Justice's Advisory Opinion in Legality of the Threat or Use of Nuclear Weapons remains the most authoritative judicial statement on the legal status of nuclear weapons.⁴⁶ Yet it is also one of the most controversial opinions in the Court's history. It is cited by both abolitionists and defenders of deterrence, which indicates the depth of its ambiguity.

⁴⁴ Introduced by Fyodor Fyodorovich Martens at the 1899 Hague Peace Conference. It ensures that civilians and combatants remain protected by the principles of humanity and the dictates of public conscience, even in situations not explicitly covered by written treaties.

⁴⁵ Hague Convention (II) with Respect to the Laws and Customs of War on Land 1899, preamble; Additional Protocol I 1977, art 1(2).

⁴⁶ Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion) [1996] ICJ Rep 226.

5.1 The Questions before the Court⁴⁷

The question upon which the advisory opinion of the Court has been requested is set forth in resolution 49/75 K adopted by the General Assembly of the United Nations on 15 December 1994. By a letter dated 19 December 1994, received in the Registry by facsimile on 20 December 1994 and filed on 6 January 1995, the Secretary-General of the United Nations officially communicated to the Registrar the decision taken by the General Assembly to submit the question to the Court for an advisory opinion.

The United Nations General Assembly asked the Court whether the threat or use of nuclear weapons was in any circumstance permitted under international law.⁴⁸ This formulation may appear deceptively simple. In reality, the Court was being asked to decide whether a weapon class that had structured the strategic order for half a century could be reconciled with the legal principles of that same order.

Before moving to give its opinion, the issue of jurisdiction and competence of the ICJ to give such an advisory was raised. The Court in determining that question relied on Article 65, paragraph 1, of its statute. Article 96, paragraph 1, of the UN Charter, which provides that: "The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question." Also relied upon are Article 10 of the UN Charter which conferred upon the General Assembly a competence relating to "any questions or any matters" within the scope of the Charter. Article 11 specifically provided it with a competence to "consider the general principles ... in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments".

Lastly, according to Article 13, the General Assembly "shall initiate studies and make recommendations for the purpose of ... encouraging the progressive development of international law and its codification". The Court further satisfied itself that the

⁴⁷ Present at the ICJ bearing testament to this advisory opinions are: President Bedjaoui; Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins; Registrar Valencia- Ospina.

⁴⁸ United Nations General Assembly Resolution 49/75K (1994)

advisory opinion requested does indeed relate to a "legal question" within the meaning of its Statute and the United Nations Charter.⁴⁹

5.2 The Court's Core Findings

The Court held, first, that there was no specific authorisation in international law for the threat or use of nuclear weapons.⁵⁰ Secondly, it held that there was likewise no comprehensive and universal prohibition of nuclear weapons as such under conventional or customary law at that time.⁵¹ Thirdly and crucially it found that any threat or use of nuclear weapons must comply with the requirements of the UN Charter and the principles and rules of IHL.⁵²

The Court further observed that the use of nuclear weapons would generally be contrary to the rules of IHL, especially the principles of distinction and unnecessary suffering.⁵³ However, in the most controversial paragraph of the opinion, the Court stated that it could not conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful "in an extreme circumstance of self-defence, in which the very survival of a State would be at stake".⁵⁴

This final equivocation has attracted sustained criticism. It appears to place existential state survival in uneasy tension with humanitarian law, without explaining how a weapon generally incompatible with IHL might somehow become lawful in precisely the most catastrophic of circumstances.

5.3 Strengths of the Opinion

The opinion was not without legal significance. It confirmed that nuclear weapons are not outside the law. They are subject to the Charter regime on the use of force and to the full force of humanitarian law. This alone was important, given the strategic

⁴⁹ See the Western Sahara, Advisory Opinion, I.C.J. Reports 1975, p. 18, para. 15; Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, Advisory Opinion, I.C.J. Reports 1973, p. 172, para. 14; (Article 4 of Charter), Advisory Opinion, 1948, I.C.J. Reports 1947-1948, pp. 61-62; Competence of the General Assembly for the Admission of a State to the United Nations, Advisory Opinion, I.C.J. Reports 1950, pp. 6-7; Certain Expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962, p. 155).

⁵⁰ Legality of the Threat or Use of Nuclear Weapons (n 33) para 105(2)(A).

⁵¹ *ibid*, para 105(2)(B).

⁵² *ibid*, paras 39, 42 and 105(2)(C)–(D).

⁵³ *ibid*, para 95

⁵⁴ *ibid*, para 105(2)(E).

tendency to treat nuclear weapons as *sui generis* instruments beyond ordinary legal judgment. Equally significant was the Court's interpretation of Article VI of the NPT. The Court held unanimously that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.⁵⁵ This remains one of the strongest judicial affirmations of disarmament duty in international law.

5.4 Weaknesses and Critique

Notwithstanding these strengths, the opinion is jurisprudentially unsatisfactory in several respects. First, it reflects excessive caution in the face of legal principle. The Court recognised that nuclear weapons are generally incompatible with IHL, yet stopped short of drawing the more obvious legal conclusion. This caution is often explained as institutional prudence, but prudence is not always neutral. In contexts of extreme power asymmetry, judicial restraint may function as normative accommodation.

Secondly, the Court's treatment of self-defence is problematic. Article 51 of the UN Charter recognises the inherent right of self-defence, but it does not create a legal vacuum in which humanitarian law disappears.⁵⁶ The notion that existential necessity might suspend or destabilise humanitarian constraints risks introducing a form of exceptionalism into *jus in bello* reasoning.

Thirdly, the opinion arguably reproduces the very strategic ambiguity that sustains deterrence doctrine. By refusing to declare nuclear weapons categorically unlawful, the Court preserved a zone of legal uncertainty within which nuclear powers could continue to claim that their deterrent postures remain legally conceivable.

5.5 The Opinion's Continuing Relevance

Despite its limitations, the Advisory Opinion remains central to any legal analysis of nuclear weapons. It does not settle the issue, but it frames the terrain. Properly read, it points toward a conclusion stronger than the one the Court was institutionally willing to state: if nuclear weapons must comply with IHL, and if their foreseeable effects are

⁵⁵ *ibid*, para 105(2)(F).

⁵⁶ Charter of the United Nations 1945, art 51.

generally incompatible with IHL, then their lawful use is at best vanishingly remote and at worst illusory.

The deeper lesson of the Advisory Opinion is not simply doctrinal. It reveals the difficulty international adjudication faces when legal principle confronts entrenched geopolitical power. The opinion is thus both a source of law and an exhibit in the sociology of legal hesitation.

6. The inter-relation between customary International Law and Prohibition on Nuclear weapon

The question whether nuclear weapons are prohibited under customary international law remains one of the most contested issues in the field. Customary international law arises from a general practice accepted as law (*opinio juris*).⁵⁷ In theory, if a sufficiently widespread and representative body of state practice and legal conviction rejects nuclear weapons, a customary prohibition may emerge. In practice, however, the analysis is complicated by deep asymmetry between the conduct of nuclear-armed and non-nuclear states.

In the advisory opinion of the ICJ on the legality of the threat or use of nuclear weapon, the Court took a cryptic examination of customary international law to determine whether a prohibition of the threat or use of nuclear weapons flows from customary international law. The Court restated in the interim, that, a pragmatic approach to the question must be "looked for primarily in the actual practice and *opinio juris* of States"⁵⁸

6.1 A Case for Customary Prohibition of the Use and Threat of Nuclear Weapon under International law.

States which hold the view that the use of nuclear weapons is illegal have attempted to demonstrate the existence of a customary rule prohibiting its use. They refer to a consistent practice of non-utilisation of nuclear weapons by States since 1945⁵⁹ and

⁵⁷ North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands) [1969] ICJ Rep 3.

⁵⁸ (Continental Shelf (Libyan Arab Jamahiriya/Malta), Judgment, I.C.J. Reports 1985, p. 29, para. 27).

⁵⁹ After the United States of America dropped a Nuclear Bomb at Hiroshima and Nagasaki during the second world war.

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

According to this States, the important series of General Assembly resolutions, beginning with resolution 1653 (XVI) of 24 November 1961, that deal with nuclear weapons and that affirm, with consistent regularity, the illegality of nuclear weapons, signify the existence of a rule of international customary law which prohibits recourse to those weapons. States which consider that the use of nuclear weapons is illegal indicated that those resolution is a confirmation of customary law relating to the prohibition of nuclear warfare which, by their nature, overstepped the bounds of what is permissible in the conduct of hostilities. In their view, the resolutions in question did no more than apply to nuclear weapons the existing rules of international law applicable in armed conflict; they see in that an instrument containing certain pre-existing customary rules of international law. For those States it is accordingly of little importance that the instrument should have occasioned negative votes, which cannot have the effect of obliterating those customary rules which have been confirmed by treaty law.

To these states,⁶⁰ the General Assembly resolutions, even if they are not binding, may sometimes have normative value. They can, in certain circumstances, provide evidence important for establishing the existence of a rule or the emergence of an *opinio juris*. However, to the ICJ, whether a given General Assembly resolution has graduated to a customary prohibition of nuclear weapon under international law, it was necessary to look at the content of the resolution and the conditions of its adoption; it was said necessary to see whether an *opinio juris* exists as to its normative character. Some States seem to disagree on a mature customary prohibition under international law, considering the nature and legal effect of UN resolutions, as well as, its adoption by the totality of States, particularly nuclear armed states. Hence, to these states and the ICJ, indicates, the absence of a customary prohibition under international law.

Yet the absence of a fully matured customary prohibition does not imply normative stasis. A substantial majority of states reject nuclear weapons politically and legally.

⁶⁰ See for instance, Mexico, Malaysia, Egypt, New Zealand, Japan, Solomon Island, Zimbabwe and many others.

Repeated General Assembly resolutions, regional nuclear-weapon-free zone commitments, disarmament conference declarations, and the adoption of the TPNW all point toward an increasingly robust anti-nuclear legal consciousness.⁶¹

The humanitarian initiative, culminating in the TPNW, has strengthened the argument that the legal trajectory is prohibitionist even if not yet universally settled. Customary law does not emerge only from the practice of powerful states; it also develops through collective normative articulation by the broader international community. The challenge in the nuclear context is that the states whose conduct most resists prohibition, are also those whose strategic weight is often treated as especially relevant in custom formation.

This raises a deeper jurisprudential question, should the recalcitrant practice of a small number of militarily powerful states be allowed indefinitely to block the emergence of a norm aimed at protecting humanity as a whole? A strictly voluntarist approach to custom risks entrenching power as the ultimate source of legality.

6.2 A Case against Customary Prohibition of the Use and Threat of Nuclear Weapon under international law.

Some other States,⁶² 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 argue 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.

In response to some states who have anchored their arguments on the illegality of the threat and use of nuclear weapon on existing UN resolutions prohibiting its use, they contend that the resolutions in question have no binding character on their own account and are not declaratory of any customary rule of prohibition of nuclear

⁶¹ United Nations General Assembly Resolution 78/240 (2023) ‘Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons’; Treaty on the Prohibition of Nuclear Weapons 2017.

⁶² See the nuclear armed states such as USA, Britain, France, China, Russia, Korea, India (though an exception at the time of the advisory opinion).

weapons; some of these States have also pointed out that this series of resolutions did not meet with the approval of all of the nuclear-weapon States but of many other States as well.

The ICJ in its advisory opinion, referenced, the General Assembly's proclamation of the illegality of the use of nuclear weapons, through resolution 1653 (XVI) of 24 November 1961 and also referring to certain international declarations and binding agreements, from the Declaration of St. Petersburg of 1868 to the Geneva Protocol of 1925. In all of this, the ICJ proclaims its qualification indicating it undercuts the litmus test of a customary prohibition under international law.

The emergence, as *lex lata*,⁶³ of a customary rule specifically prohibiting the use of nuclear weapons is hampered by the continuing tensions between the nascent *opinio juris* on the one hand, and the still strong adherence to the practice of deterrence on the other. The ICJ not having found a conventional rule of general scope, nor a customary rule specifically proscribing the threat or use of nuclear weapons.

Consequently, the practical argument against the existence of a customary prohibition is straightforward. A number of powerful states continue not only to possess nuclear weapons but to integrate them explicitly into their national security doctrines. Several modernise their arsenals, rehearse deterrence postures, and maintain declaratory policies that contemplate possible use.⁶⁴ This surely, is difficult to reconcile with the claim that those same states accept a legal obligation not to possess or use such weapons.

Moreover, the persistence of nuclear deterrence within alliance structures particularly extended deterrence arrangements further complicates claims of universal *opinio juris*. So long as key states insist that nuclear weapons remain necessary for security, the evidentiary case for a fully crystallised customary prohibition remains contested.

⁶³ *Lex lata* (also called *de lege lata*) is a latin expression used in international law which translates to the "the law as it exists" but it is sometimes seen as "the law that has been borne" or ratified law".

⁶⁴ See the Iran-US, Israel War which began over Iran posture on her nuclear program

6.3 The Use and Threat of Nuclear Weapon under Customary International Law: A Case of Persistent Objectors or Structural Privilege?

One possible response is to treat nuclear-armed states as persistent objectors to a developing prohibition. But that framing is unsatisfactory for two reasons. First, persistent objection is traditionally exceptional and difficult to sustain where the norm in question implicates humanitarian fundamentals. Secondly, the “objector” language can obscure the structural privilege: these states are not merely objecting to a norm; they are preserving a strategic exception for themselves.

The more plausible legal conclusion is that customary law in this area remains transitional. There is strong evidence of an emerging normative prohibition, but not yet uncontested universal custom in the classical sense. Nevertheless, even absent a comprehensive customary ban, specific uses or threats of nuclear weapons may still be unlawful because they violate other settled customary norms particularly those of IHL.

Thus, the customary law debate should not be framed as an all-or-nothing question. Even if possession is not yet universally prohibited by custom, many conceivable acts involving nuclear weapons may still be illegal under existing customary humanitarian principles.

7. The Legality of Nuclear Deterrence

No critical interrogation of nuclear weapons under international law can avoid the doctrine of deterrence.⁶⁵ Nuclear weapons have not persisted merely because states possess them; they persist because states insist that their value lies in the credibility of their possible use. Deterrence is therefore not peripheral to the legal problem. It is the legal problem in its most concentrated form.

7.1 Deterrence as Structured Threat

At its core, nuclear deterrence is a strategic posture based on the communicated willingness to use nuclear weapons under certain conditions. It is therefore built on threat. This is legally significant because the ICJ made clear in 1996 that if the use of

⁶⁵ At its core, deterrence is the ability to alter an actor’s cost-benefit calculus so they decide against taking an undesired action- <https://www.act.nato.int/activities/deterrence/>>accessed 8 August 2026

force contemplated would be unlawful, the threat to use such force would likewise be unlawful.⁶⁶

This principle generates a destabilising implication for deterrence doctrine. If the actual use of nuclear weapons would in most circumstances violate IHL, then the credibility of threatening such use is also legally suspect. A deterrent posture premised on unlawful possibilities cannot be insulated simply because the objective is preventive rather than operational.

7.2 Extended Deterrence and Complicity in Nuclear Reliance

Deterrence is not limited to the policies of nuclear-armed states themselves. Through alliance systems, especially nuclear umbrellas, non-nuclear states also participate in and benefit from nuclear deterrence doctrines. This creates a layered complicity in the maintenance of nuclearism. States that formally support disarmament may simultaneously remain strategically dependent on the threat of nuclear retaliation by allied powers.

This contradiction is especially significant for international law. It demonstrates that the legal challenge is not simply one of possession, but of systemic reliance. Nuclear deterrence is not an isolated policy choice; it is a deeply institutionalised security culture.

7.3 Can Deterrence be Reconciled with International Law?

Some scholars argue that deterrence is legally tolerable because it contributes to strategic stability and has arguably prevented major war between great powers.⁶⁷ This consequentialist defence should be treated with caution. International law does not generally validate otherwise unlawful conduct simply because states claim it produces stability. If that logic were accepted broadly, the discipline would lose much of its normative coherence.

The stronger legal position is that deterrence occupies an unstable and morally compromised space under international law. It survives not because it is fully lawful, but because the legal order has not yet found the institutional strength to delegitimise it decisively. Deterrence is the law's blind spot: a doctrine whose legal vulnerability is widely understood but insufficiently enforced.

⁶⁶ Legality of the Threat or Use of Nuclear Weapons, ICJ advisory opinion, 1996

⁶⁷ <https://www.act.nato.int/activities/deterrence/>accessed> 8 August 2026

7.4 The Use and Threat of Nuclear Weapon: Declaratory Policy and Legal Evasion of Nuclear Armed States

Nuclear-armed states⁶⁸ often attempt to preserve legal ambiguity through carefully crafted declaratory policies. They rarely specify the exact conditions under which nuclear weapons would be used, and some adopt formulations such as “extreme circumstances” or “vital interests”. These phrases are politically useful because they maximise strategic uncertainty. Legally, however, they are deeply problematic. They preserve the communicative force of threat while avoiding concrete legal scrutiny.

The problem is not merely that such policies are vague. It is that vagueness itself becomes a technology of legal evasion. By refusing to define the operational circumstances of use, States insulate deterrence from precise proportionality and distinction analysis while still benefiting from the coercive value of the threat.

8. Humanitarian Consequences, Human Rights and Environmental Justice

In recent decades, one of the most important shifts in nuclear legal discourse has been the move away from purely strategic and arms control language toward a broader humanitarian and human rights framework. This shift has significantly altered the normative terrain.

8.1 The Humanitarian Consequences, Movements and Human Rights Implications

The humanitarian initiative, associated with conferences in Oslo (2013), Nayarit (2014), and Vienna (2014), sought to foreground the real-world consequences of any nuclear detonation.⁶⁹ Rather than debating deterrence at the level of abstraction, the initiative insisted on examining what nuclear weapons actually do to bodies, cities, health systems, food chains, ecosystems, and future generations.

This shift matters legally because it re-orientes the discourse from strategic legitimacy to human vulnerability. It challenges the assumption that nuclear weapons can be assessed primarily through balance-of-power reasoning. In doing so, it helped generate the political momentum that led to the TPNW.

⁶⁸ Under the NPT, five countries are officially recognized as nuclear-weapon states: United States (first test in 1945), Russia (first test in 1949), United Kingdom (test in 1952), France (test in 1960), China (test in 1964). Others are: India (tested in 1974 and 1998), Pakistan (Tested in 1998), North Korea (tested in 2006; withdraw from the NPT), Israel (undeclared).

⁶⁹ Vienna Conference on the Humanitarian Impact of Nuclear Weapons 2014.

Although the legality of nuclear weapons is often discussed through IHL, international human rights law also has significant relevance. The right to life, the right to health, the rights of children, the rights of Indigenous peoples affected by testing, and the right to a healthy environment all provide additional normative frameworks for critique.⁷⁰

The use or testing of nuclear weapons has historically implicated grave human rights harms, including displacement, long-term illness, and environmental contamination affecting vulnerable communities. The rights-based perspective therefore broadens the legal inquiry beyond battlefield legality to encompass structural and intergenerational injustice.

8.2 Environmental Justice and Intergenerational Harm

The environmental dimension of nuclear weapons extends beyond wartime use. Uranium mining, weapons production, testing, waste management, and accident risk⁷¹ all carry severe ecological and social consequences. These burdens have often fallen disproportionately on colonized, indigenous, or politically marginalised populations.⁷²

This introduces an environmental justice dimension to the legal analysis. Nuclear weapons are not only military devices; they are part of a larger extractive and technopolitical system that distributes risk unevenly across humanity. International law has only partially confronted this structural harm.

The significance of the TPNW in this regard lies partly in its inclusion of victim assistance and environmental remediation obligations.⁷³ These provisions recognise that the nuclear question is not solely about future abolition, but also about historical accountability.

⁷⁰ International Covenant on Civil and Political Rights 1966, art 6; International Covenant on Economic, Social and Cultural Rights 1966, art 12; Convention on the Rights of the Child 1989.

⁷¹ See the catastrophic Chernobyl nuclear accident of 1986

⁷² United Nations Human Rights Council, *Report of the Special Rapporteur on toxics and human rights on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes* UN Doc A/HRC/48/61 (2021).

⁷³ Treaty on the Prohibition of Nuclear Weapons 2017, arts 6 and 7.

9. A Critique on Nuclear Weapons as a Crisis of Legitimacy in International Law

It has been demonstrated the legal status of nuclear weapons. In fact, it cannot be adequately understood through narrow doctrinal postulation. The deeper issue is structural in that nuclear weapons expose a ‘legitimacy crisis,’ within international law itself.

9.1 Fragmentation without Resolution

The first problem is fragmentation. Nuclear weapons are addressed across multiple legal regimes: non-proliferation law, arms control, IHL, environmental law, human rights law, and collective security law yet no single, universally binding and enforceable framework comprehensively resolves their status. This produces a legal landscape in which regulation coexists with exceptionalism.

Fragmentation in itself is not unusual in international law. But in the nuclear context it has a particular consequence: it allows states to emphasise whichever legal register best supports their strategic position. Nuclear-armed states often rely on Charter-based self-defence logic and strategic necessity, while abolitionist states invoke IHL, human rights, and humanitarian consequences. The result is not interpretive pluralism in a healthy sense, but a form of legal compartmentalisation that prevents normative closure.

9.2 Sovereign Equality and Nuclear Hierarchy

The second problem is hierarchy. One of the foundational principles of the international legal order is the sovereign equality of states.⁷⁴ Yet the nuclear regime is built upon and reproduces inequality. The NPT’s distinction between recognised nuclear-weapon states and may have been politically expedient, but it remains normatively difficult to justify over the long term.

This inequality is not merely formal. It is materially reinforced by the structure of the Security Council, the strategic influence of permanent members, and the asymmetrical distribution of enforcement pressure. States outside the recognised nuclear order face intense legal and political consequences for proliferation, while the recognised powers modernise arsenals under the rhetorical cover of eventual disarmament.

⁷⁴ Charter of the United Nations 1945, art 2(1).

This dynamic invites critique from Third World Approaches to International Law (TWAIL) and other critical traditions. From such perspectives, the nuclear order exemplifies how international law may universalise restraint for the weak while preserving discretion for the strong.

9.3 The Problem of Strategic Exceptionalism

The third and perhaps deepest problem is strategic exceptionalism. Nuclear weapons are treated as if ordinary legal principles apply to them, but only up to a point. Whenever legal reasoning approaches a conclusion that would delegitimize deterrence or possession too decisively, exceptional strategic arguments re-enter the frame: existential survival, great power stability, alliance credibility, escalation management. This pattern reveals something important about the operation of international law. In areas touching the core security interests of major powers, law often functions not as a definitive restraint but as a language of managed discomfort. It stigmatizes, warns, qualifies, and occasionally condemns, but stops short of coercive transformation.

9.4 Juxtaposition of the Nuclear Question and International Law: Is the Law Failing or Evolving?

It would be too simple, however, to conclude that international law has simply failed. The legal and normative position of nuclear weapons has changed dramatically over time. Once treated primarily as symbols of strategic prestige and technological superiority,⁷⁵ they are now increasingly viewed as humanitarian liabilities and legal anomalies. The emergence of the TPNW, the humanitarian initiative, and the growing insistence on victim-centred discourse all indicate meaningful normative evolution.

The more accurate conclusion is that international law in this area is caught in transition. It has not yet fully abolished nuclear exceptionalism, but neither does it leave nuclear weapons morally or legally untroubled. The legal order is moving slowly, unevenly, and against resistance toward delegitimation. That movement should not be underestimated. In international law, legitimacy often precedes compliance. Before weapons are eliminated physically, they are often disarmed normatively.

⁷⁵ Matthew Anthony Evangelista, *Technological Innovation and the Arms Race: A Comparative Study of Soviet and American Decisions on Tactical Nuclear Weapons* (Ph.D. dissertation, Cornell University, 1986).

10. Conclusion

The legal regime governing nuclear weapons is obviously structurally contradictory. It seeks to prevent proliferation while tolerating possession by a privileged minority; it affirms humanitarian restraints while preserving deterrence doctrines built on the threat of catastrophic violence; it imposes disarmament obligations while lacking the institutional will to enforce them meaningfully. The international community must recognise that the continued existence of nuclear weapons represents not merely a security challenge but a profound threat to humanity, civilisation, and the legitimacy of international law itself. The future of nuclear governance should therefore be guided not by strategic exceptionalism or power politics, but by humanitarian imperatives, collective security, and the universal preservation of humanity in all of its existential and legal sense. Through:

- a. Strengthening the disarmament obligation under Article VI of the NPT from a largely aspirational commitment into a concrete and enforceable legal duty.
- b. Periodic review conferences under the NPT framework should establish accountability mechanisms capable of assessing compliance with disarmament obligations rather than focusing predominantly on non-proliferation obligations imposed on non-nuclear states.
- c. Universalisation and institutional strengthening of the Treaty on the Prohibition of Nuclear Weapons (TPNW)
- d. Reforms that democratise nuclear governance and give greater voice to non-nuclear states, especially African, Asian, and Latin American countries.
- e. Progressive delegitimisation of nuclear deterrence.
- f. International humanitarian law principles should be interpreted and applied more rigorously in relation to nuclear weapons.
- g. International institutions, courts, and humanitarian organisations should continue emphasising the incompatibility of nuclear weapons with the principle of distinction; proportionality; prevention of unnecessary suffering; and environmental protection during armed conflict.
- h. Future judicial pronouncements should adopt a more definitive legal position concerning the illegality of nuclear weapons rather than the ambiguity reflected in the 1996 ICJ Advisory Opinion.

- i. The international community should encourage the establishment and strengthening of additional nuclear-weapon-free zones, particularly in politically volatile regions.
- j. Human rights and environmental justice should be integrated into nuclear discourse
- k. The effectiveness of nuclear disarmament depends significantly on robust verification systems. The International Atomic Energy Agency (IAEA) should be provided with enhanced technical and institutional capacity to monitor compliance effectively.
- l. Promoting multilateral diplomacy over strategic rivalry, as well, there should be a complete and total stop to the production of nuclear weapons and the destruction of all existing nuclear armaments.
- m. Revitalisation of bilateral and multilateral arms control negotiations particularly among major nuclear powers is essential for reducing global nuclear risks.
- n. Developing a binding international convention on the complete elimination of nuclear weapons is necessary.