



Reaching Critical Will

a project of the Women's International League for Peace and Freedom

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International Court of Justice and its 1996 advisory opinion

The [International Court of Justice \(ICJ\)](#) is the judicial branch of the United Nations, and the highest and most authoritative court in the world on questions of international law.

On 8 July 1996, the ICJ issued its advisory opinion, [The Legality of the Threat or Use of Nuclear Weapons](#). This opinion ruled that nuclear weapons are generally illegal, and all states that possess them are obligated to bring to a conclusion negotiations on nuclear disarmament in all its aspects.

The ICJ found that:

- 1) the threat or use of nuclear weapons “would generally be contrary” to humanitarian and other international law regulating the conduct of warfare; and
- 2) under Article VI of the nuclear Non-Proliferation Treaty and other international law, states are obligated 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.”

The opinion was issued in response to a request from the UN General Assembly, spurred on and supported by a global civil society campaign, the [World Court Project](#).

The Court's reasoning

The Court did not make new law. It merely confirmed certain well-established principles of the law of war, also known as humanitarian law. These are prohibitions against methods and means of warfare which fail to distinguish between civilian and military targets, which result in the infliction of unnecessary suffering on combatants and which violate the neutrality of noncombatant states. The Court described the unique character of nuclear weapons, whose immense destructive power, it said, cannot be contained in either time or space, thus making their use inherently incompatible with the rules of humanitarian law.

In reply to the argument that there was no treaty specifically forbidding the use of nuclear weapons, the Court referred to the famous Martens clause, so named after the Russian foreign minister at the time of the first Hague Peace Conference (1899), which provides that “in cases not covered by ... international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience.”

The holding of general illegality of threat or use of nuclear weapons came by a vote of seven of the Court's 14 judges then serving, with the deciding vote cast by the [Court's President, Mohammed Bedjaoui](#). The seven also held that, given the elements of fact and law at their disposal, they could not decide whether this rule applied “in an extreme circumstance of self-defence in which the very survival of a state would be at stake.” Of the seven dissenting judges, three voted for illegality without exception, thus making the vote for general illegality, in fact, ten to four.

Disarmament obligation

The opinion ended with the following unanimously adopted clause: "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." This is now the authoritative interpretation of Article VI of the Nuclear Nonproliferation Treaty. In General Assembly resolutions following up on the opinion, the interpretation has been endorsed almost all states. In 2002 the vote on the paragraph containing the Court's conclusion was 161-4 with one abstention.

The conclusion is also reflected in the "unequivocal undertaking by the nuclear-weapon states to accomplish the total elimination of their arsenals" adopted by consensus of all participating states at the 2000 NPT Review Conference.

Analysis

- "[A Guide to the Historic Opinion of the International Court of Justice](#)" by John Burroughs, Executive-Director of the Lawyers' Committee on Nuclear Policy, foreword by Phon van den Biesen
- "[Notes on a Misunderstood Decision: The World Court's Near Perfect Advisory Opinion in the Nuclear Weapons Case](#)" by Peter Weiss, Co-President of the International Association of Lawyers against Nuclear Arms
- "[The International court of Justice and the Scottish High Court: Two Views of the Illegality of Nuclear Weapons](#)" by Peter Weiss, Co-President of the International Association of Lawyers Against Nuclear Arms
- "[Implications of the Advisory Opinion by the International Court of Justice on the Legal Status of Nuclear Weapons](#)" by Commander Robert Green, Royal Navy (Ret'd).

Other resources

[Text and Judges' Statements](#)

[The World Court Project](#)

[Bibliography of Articles, Books, and Papers Concerning the World Court Opinion on Nuclear Weapons](#)