

# Nuclear Weapons' Illegality in International Law

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**Abstract:** Nuclear weapons are globally recognised as the most dangerous weapons in existence. Their destructive power is incalculable, not only harming the environment, but also affecting the survival and development of mankind and endangering global peace. This paper argues the illegitimacy of nuclear weapons in international law not only by talking about their adverse effects, but also by discussing their own characteristics, such as indistinguishability and overkill.

**Keywords:** Nuclear Weapons; Illegality; Impact; International Law.

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## 1. Introduction

Nuclear weapons are the most dangerous arms in existence. A single nuclear bomb can obliterate a city, potentially killing millions and causing severe harm to the natural environment and human health. Its devastating effects also include long-term catastrophic consequences that could endanger future generations.

In this essay, I will look at the history of nuclear weapons, discuss their adverse effects on the environment, human survival and development, and global peace and security, and then argue for their illegitimate status in international law by discussing their own indistinguishability, overkill, indiscriminate harm to non-combatants, and violation of international humanitarian law.

## 2. History and Development of Nuclear Weapons

The nuclear weapon is a kind of nuclear weapon that uses the optical and thermal radiation, shock wave and sensory radioactivity of nuclear reaction to cause killing and destructive effects, resulting in the radioactive contamination of a large area and preventing the other side from military to prevent the other side's military action in order to achieve the strategic purpose of the weapon of mass destruction. Nuclear weapons are military deterrence force.

The history of nuclear weapons dates back to World War II, when German scientists first discovered the phenomenon of nuclear fission. The discovery of this technology opened the door to the use of nuclear energy, but German nuclear research was soon used in warfare.

In 1939, Germany established an Institute for Atomic Energy, led by Heisenberg, to begin developing nuclear weapons. However, news of this reached the United States through several scientists fleeing Nazi persecution. Notable figures like Albert Einstein alerted U.S. President Roosevelt, leading to the initiation of the Manhattan Project, aimed at accelerating the creation of the atomic bomb. In 1945, the United States deployed two atomic bombs on Hiroshima and Nagasaki, Japan, marking the inaugural use of nuclear weapons by a nation. Against the backdrop of Cold War dynamics and the absence of robust international disarmament measures, the United States, Soviet Union, United Kingdom, France, and China ascended as nuclear-capable states from 1945 to 1964[1].

Nuclear weapons not only changed the nature of warfare,

but also profoundly affected international relations and strategic stability. With the proliferation of nuclear weapons, there has been a gradual realisation of their immense destructive power and the emergence of a normative consensus. After the Second World War, a number of international efforts to control nuclear weapons gradually emerged:

### 2.1. Initial Efforts after the Second World War

Baruch Plan (1946): a US plan for international control of nuclear weapons and technology that failed to gain the support of the Soviet Union, leading to its failure.

### 2.2. Cold War

Partial Nuclear Test Ban Treaty (1963): an agreement signed by the United States, the Soviet Union, and the United Kingdom. It prohibited nuclear testing in the atmosphere, outer space, and underwater while permitting underground nuclear testing.

Nuclear Non-Proliferation Treaty (1968): an international treaty crafted to inhibit the spread of nuclear weapons by prohibiting nuclear-weapon States from transferring nuclear weapons technology to non-nuclear-weapon States and promoting the peaceful applications of nuclear energy.

Strategic Arms Limitation Talks (SALT I and SALT II, 1972 and 1979): An agreement signed by the United States and the Soviet Union to limit the number of strategic nuclear weapons.

### 2.3. Post-cold War Progress

Intermediate-Range Nuclear Forces Treaty (INF Treaty, 1987): a treaty signed by the United States and the Soviet Union that requires both countries to destroy all intermediate-range and shorter-range missiles, with important disarmament implications.

Strategic Arms Reduction Treaty (START I and START II, 1991 and 1993): A treaty to further reduce the number of U.S., Soviet/Russian strategic nuclear weapons.

### 2.4. Progress and Challenges in the Twenty-first Century

New Strategic Arms Reduction Treaty (New START, 2010): a treaty signed by the United States and Russia to further reduce the number of strategic nuclear weapons deployed by both countries.

Nuclear Security Summits (2010 and beyond): a series of international conferences initiated by United States President

Barack Obama to strengthen global nuclear material security and prevent nuclear terrorism.

### **3. Humanitarian Impact of Nuclear Weapons**

#### **3.1. Impact of Nuclear Weapons on the Environment**

Nuclear experiments are carried out in various settings, including the atmosphere, beneath the surface, and underwater. The smoke cloud formed after the explosion of a nuclear weapon contains large quantities of radioactive particles, which move and spread in the atmosphere and gradually settle towards the ground, forming radioactive fallout and causing environmental pollution, which in the case of the atmosphere leads to a reduction in light and rainfall and a depletion of the ozone layer, and in the case of the underground and underwater, leads to land contamination, the breaking up of vegetation and the pollution of the oceans.

Atmospheric tests can cause shockwaves and thermal damage, causing great heat suffering and even damage to eye sight. And shockwaves from underground nuclear tests can trigger earthquakes and damage the integrity of natural features, for example by causing coral disturbances that crack coral atolls, such as on the island of Moruroa in French Polynesia.

In addition, in a nuclear conflict, urban firestorms triggered by it would cause significant changes in global temperatures and precipitation for a decade or more, shortening the growing season by one month in the main agricultural areas of the mid-latitudes, thus affecting world food and agricultural production, with serious implications for famine[2].

#### **3.2. Impact of Nuclear Weapons on Sustainable Human Development**

Nuclear explosions differ from conventional explosions in that they release ionizing radiation, which can negatively impact the health of humans and other living organisms. The United Nations Scientific Committee on the Effects of Atomic Radiation (UNSCEAR) distinguishes between ‘deterministic’ and ‘stochastic’ health effects of ionizing radiation exposure in its scientific literature review. Deterministic effects include conditions such as ‘acute radiation syndrome, skin burns, alopecia (hair loss), and sterility.’ Stochastic effects include ‘solid cancers, leukemia, and hereditary diseases[3].’

Radioactive fallout from nuclear weapons can be transported by wind to other countries or regions, greatly increasing the risk of diseases such as leukaemia and thyroid cancer in people outside the blast zone, and the symptoms of these diseases may not appear for decades.

The International Committee of the Red Cross and the Japanese Red Cross Society also monitor the health of children born to survivors in the years following their exposure to the blast. If it is discovered that radiation exposure has damaged the parents’ genes, as seen in animal studies, the hereditary transmission of radiation effects will pose a long-term problem. This could result in another generation of victims requiring extended treatment[4].

Beyond the immediate effects of blast, heat, and radiation, the trauma and anxiety caused by the use and testing of nuclear weapons-and even the persistent threat of a nuclear attack-can be transmitted socioculturally at local, communal, national, and regional levels. Research indicates that

individuals exposed to ionizing radiation, or who fear such exposure, may suffer ‘psychological consequences’ such as anxiety and trauma symptoms[5].

#### **3.3. Impact of Nuclear Weapons on Global Peace and Security**

The emphasis on human security aims to address the true sources of insecurity that affect many people worldwide. Nuclear weapons significantly contribute to this insecurity. Weapons of mass destruction, including nuclear, chemical, and biological arms, are major threats to national security. According to the Union of Concerned Scientists, Nuclear weapons remain the most serious and immediate threat to human civilisation[6].

According to Mohamed ElBaradei, Director General of the International Atomic Energy Agency (IAEA), the very existence of nuclear weapons triggers the pursuit of nuclear weapons. Nuclear weapons are regarded as a means of global influence and are valued for their deterrent effect. However, as long as some states possess nuclear weapons (or are protected by them through alliances) while others do not, this imbalance fosters enduring global insecurity[7].

In the age of global terrorism, the existence of nuclear weapons imposes a substantial security burden on all States. The primary uncertainty in today’s security landscape lies not in whether States will face assaults from terrorists and non-State actors, but in the possibility of these actors acquiring the capability to transition from conventional to nuclear explosives, thereby magnifying the consequences of their inevitable attacks.

To prevent nuclear attacks by terrorists and sub-State actors, States must develop effective strategies to stop them from acquiring nuclear weapons. However, current strategic trends undermine this goal: the production of nuclear material is increasing, knowledge of nuclear weapons manufacturing is spreading, and terrorist organizations are increasingly interested in obtaining nuclear capabilities. Consequently, it is essential to eliminate all nuclear weapons and weapons-grade fissile materials before they fall into terrorist hands. The pursuit of a nuclear-free world must be coupled with efforts to significantly reduce the risk of nuclear terrorism.

Despite the obvious negative impact of nuclear weapons on global peace and security, there are still scholars who put forward the view that nuclear deterrence is the main reason why there has been no major power war since 1945. This argument is clearly irrational. Nuclear weapons failed to play a role in avoiding war between the United States and the Soviet Union after the Cold War. At the same time, their role in the absence of conflict between the United States and Russia over the past 20 years has been negligible, and the absence of fundamental ideological conflict and the pursuit of common interests have been the cause of peace. The problem with the notion that nuclear deterrence guarantees prolonged peace is that it distorts strategic reasoning, fostering excessive trust in nuclear armaments without solid evidence. This inflated perception of their importance increases tolerance for the risks inherent in nuclear deterrence[8].

### **4. Illegality of Nuclear Weapons in International Law**

#### **4.1. Indistinguishability and Overkill**

The indistinguishability of nuclear weapons usually refers to the fact that at the military and strategic levels, it is

impossible to easily distinguish between the types, numbers and deployment modes of the enemy's nuclear weapons, as well as their specific uses. This indistinguishability is mainly reflected in the following aspects:

**Types of nuclear weapons:** Nuclear weapons can be divided into strategic nuclear weapons and tactical nuclear weapons. The former are mainly used to strike key enemy targets and cities. The latter, on the other hand, are usually used against military targets on the battlefield. However, in practice, it is not always easy to distinguish between the types of nuclear weapons, as their appearance and launch platforms may be very similar[9].

**Deployment and delivery modes:** Nuclear weapons can be deployed and delivered in a variety of ways, including intercontinental ballistic missiles (ICBMs), submarine-launched ballistic missiles (SLBMs), fighter-delivered, cruise missiles, and so on. Nuclear weapons on different delivery platforms may look similar, especially during long-range reconnaissance and intelligence gathering, making it difficult for an adversary to clearly distinguish between the specific types and purposes of these weapons.

**Camouflage and deception:** In order to protect nuclear weapons and prevent pre-emptive strikes by the enemy, states may adopt camouflage and deception tactics that make it difficult for the enemy to accurately determine the actual status of their nuclear weapons.

**Intentions and tactics:** An adversary's nuclear weapons tactics and intentions may also be difficult to distinguish. Even if it is known that an adversary possesses a particular nuclear weapon, there is still a great deal of uncertainty in understanding the conditions, rules and strategic objectives of its use. This ambiguity may lead to miscalculation and misinterpretation, thereby increasing the risk of nuclear conflict.

The indistinguishability of nuclear weapons increases uncertainty and tension in international relations, as it exposes States to additional complexities and risks in assessing nuclear threats. That is why transparency and verification mechanisms are often involved in nuclear weapons control and disarmament negotiations, in order to reduce the risk of miscalculation and unnecessary conflict.

As for the overkill nature of nuclear weapons, it is inherent. On 6 August and 9 August 1945, the US military dropped atomic bombs code-named 'Little Boy' and 'Fat Man' on Hiroshima and Nagasaki respectively, killing 88,000 people in Hiroshima and 86,000 in Nagasaki, leaving the cities in ruins. Hiroshima suffered 88,000 deaths and Nagasaki 86,000 casualties that day, leaving the cities in ruins. The study calculated that 'Little Boy' (the uranium bomb dropped on Hiroshima) was 6,500 times more effective at causing casualties (including deaths) than ordinary high-explosive bombs [10].

Even 'low-yield' nuclear weapons could cause urban devastation not seen since 1945[11].

## 4.2. Impact on Non-combatants

The unprecedented carnage of the First World War, in which some 8 million people died and 21 million were injured, blurred the line between soldiers and civilians. But more importantly, it introduced strategic targeting of non-military objects. War is no longer confined to the military sphere; it has become comprehensive, as entire societies have become involved. Unpleasant as this may be, the logic is that any nation wishing to defeat its adversary on the battlefield must

take great risks in order to protect the enemy's non-combatants from harm. Perhaps the most pernicious result of this logic is the strategic bombing of cities, not only to disrupt arms production but also to terrorise civilians in the hope of breaking their resolve to support the war. However, although the initial encounters with strategic bombing were startling, it was the dependence on strategic nuclear deterrence throughout the Cold War that escalated the targeting of civilians. The conclusion of the Second World War showcased the devastating potential of nuclear weapons, as evidenced by the devastation of the Japanese cities of Hiroshima and Nagasaki, which were destroyed by a single bomb, with unprecedented devastation that not only caused massive non-combatant casualties, but even affected the health of future generations[12]. To this day, there are survivors who suffer from the after-effects of radiation, such as leukaemia and cancer. The adverse effects of the bomb are evident.

During the period of nuclear deterrence strategies, the prevention of conflict heavily relies on the threat of widespread civilian devastation—a threat substantiated by amassing immense destructive capabilities and implementing what are known as counter-value objectives. In the era of nuclear deterrence strategies, the threat of mass destruction of civilian populations is a major factor in the avoidance of war[13].

## 4.3. Violations of International Human Rights Law and Humanitarianism

From the perspective of the human rights community, the production, testing, threat and use of nuclear weapons run completely counter to the moral, ethical and legal foundations of universal human rights. Moreover, nuclear weapons have the potential to completely eliminate international law as the organising principle of global human interaction through the annihilation of humankind.

The utilization of nuclear weapons contradicts the fundamental principles of international humanitarian law, including the principle of distinction, the principle of proportionality, the principle of non-harm to the environment and the principle of unnecessary suffering[14]. First, the principle of distinction requires that a distinction be made between combatants and civilians. Nuclear weapons, however, cannot be controlled in time and space, and once used, entire cities are targeted, making such a distinction impossible. Second, the principle of proportionality is based on the idea that attacks causing collateral damage (civilian casualties and injuries and damage to civilian objects) disproportionate to the intended military advantage are prohibited[15]. Obviously, it is difficult to overestimate the enormous damage caused by nuclear weapons. Besides, international humanitarian law forbids the utilization of tactics or weaponry that are aimed at or likely to result in extensive, enduring, and severe harm to the natural environment. Radiation released by nuclear explosions can affect the atmosphere, the ozone layer, agriculture, wildlife, marine life and other components of the natural environment. Even small-scale outbreaks can affect the global climate and disturb the ozone layer. Lastly, international humanitarian law bans the use of arms that inflict 'excessive injury and needless suffering'. Nuclear weapons can cause indiscriminate harm, cause decades of suffering and even affect future generations[16]. In the light of the foregoing, there is no doubt that the use of nuclear weapons is a violation of international humanitarian law.

## **5. Developments in International Law Relating to Nuclear Weapons**

### **5.1. Nuclear Non-Proliferation Treaty**

The Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which entered into force in 1970 and has been described as the ‘cornerstone of the nuclear disarmament and non-proliferation regime’, provides an irreplaceable political-legal-cooperative basis for increasing the peaceful uses of nuclear energy[17]. The NPT has been serving as the international legal framework for efforts to steer nuclear energy and science and technology away from the development of nuclear weapons for peace and development for more than half a century.

The NPT has effectively halted the proliferation of nuclear weapons to developed nations that were deemed capable of manufacturing them at the treaty's inception. Over the past twenty years since the Treaty on the Non-Proliferation of Nuclear Weapons was implemented, a significant accomplishment has been the transformation of previously potential proliferators into staunch advocates of the nuclear non-proliferation framework. By the beginning of the century, the total number of States parties had reached 187. Since almost everyone has joined the treaty, another important achievement of the NPT has been the creation of a near-international norm against nuclear proliferation[18].

### **5.2. Treaty on the Prohibition of Nuclear Weapons**

The Treaty on the Prohibition of Nuclear Weapons (TPNW), negotiated in 2017 and coming into effect on January 22, 2021, marks a significant milestone in the realm of nuclear disarmament.

Unlike the NPT, which created the necessary legal framework for further nuclear disarmament measures by explicitly banning nuclear weapons, the TPNW expands and entrenches the illegality of nuclear weapons and nuclear experiments, and is a much-needed reinforcement of legal norms for nuclear non-proliferation and nuclear disarmament efforts[19].

TPNW is mandated and formulated by the United Nations General Assembly, the primary democratic entity within the United Nations, with extensive involvement from civil society, and unlike the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), it does not differentiate between nuclear-armed and non-nuclear-armed states. This represents an important step in the democratisation of the global nuclear weapons debate through an inclusive participatory process[20].

### **5.3. Comprehensive Nuclear-Test-Ban Treaty**

From 1993 to 1996, the Conference on Disarmament in Geneva agreed on the Comprehensive Nuclear-Test-Ban Treaty (CTBT). The CTBT has held negotiations. The Treaty was opened for signature in September 1996. Despite the total ban The Pilot Treaty has been signed by 176 States and ratified by 126 States (as of December 2006). But because of its specific conditions for entry into force, the treaty has not yet entered into force[21]. The CTBT inhibits the development and testing of nuclear weapons and suppresses their proliferation by banning nuclear explosions in all environments. In addition, implementation has reduced the environmental damage caused by nuclear testing, especially long-term radioactive contamination from nuclear tests in the

atmosphere, underground and underwater. It plays an important role in protecting the global environment and human health. The International Monitoring System (IMS) has also been established, improving nuclear test detection capabilities[22].

Although not yet fully in force, the CTBT has largely influenced nuclear weapons policies and strategies among States.

### **5.4. The International Court of Justice Opinion on the Legality of Nuclear Weapons**

The advisory opinion issued by the International Court of Justice in the 1996 Nuclear Weapons case (‘the advisory opinion’) evaluated the legality of employing or threatening to use nuclear weapons during armed conflict.

In evaluating the central issue of the legality of nuclear weapons, the Court explored various areas of international law. It initially examined international human rights law, assessing the implementation of the International Covenant on Civil and Political Rights and the Convention on the Prevention and Punishment of the Crime of Genocide[23].

Finding no comprehensive ban on nuclear weapons, the Court then analyzed this crucial issue within the context of the law of armed conflict. The Court meticulously traced the development of this body of law through the late nineteenth and twentieth centuries, emphasizing humanitarian advancements over the past 50 years. It identified the principles of distinction and unnecessary suffering as essential to the law of armed conflict: the principle of distinction safeguards civilians from direct attacks, while the principle of unnecessary suffering forbids weapons that inflict undue harm on combatants. The Court concluded that this framework is ‘virtually irreconcilable’ with the use or threat of nuclear weapons in most situations. Yet, the Court couldn’t decisively determine the legality or illegality of employing or threatening to use nuclear weapons in an extreme scenario involving a State’s self-defense, where the very existence of the State is threatened. The Court did, however, declare in its review of the law of armed conflict relating to nuclear weapons that non-derogable human rights obligations continue to apply in times of armed conflict. However, it’s noteworthy that the Court, while examining the law of armed conflict concerning nuclear weapons, has affirmed that non-negotiable human rights obligations remain applicable during armed conflicts. While officially affirming the supremacy of the law of armed conflict, the Court underscored the importance of interpreting it within the framework of fundamental principles of humanity [24]. In other words, humanitarian aspects must be taken into account in determining the legality of military operations.

## **6. Conclusion**

Through an exploration of nuclear weapons’ attributes, such as their significant destructive power, indiscriminate nature, and the detrimental impact of nuclear explosions and testing on the environment, humanity, and global stability, alongside the violation of the fundamental tenets of international humanitarian law, it is indisputable that nuclear weapons are unlawful under international legislation. At the international level, treaties such as the NPT, the TPNW and the comprehensive Nuclear-Test-Ban treaty have emerged to regulate the use of nuclear weapons and promote the process

of nuclear disarmament. However, nuclear disarmament is still a long way off due to the different economic interests and political positions of countries, and in the future we need to make joint efforts and share the responsibility of all countries to work together for general and complete disarmament.

The need to change the overall concept of global and individual national security and to ban nuclear weapons is becoming increasingly clear. The International Court of Justice is best placed to achieve this goal. The possible aspects of the issues to be dealt with by the Court need to be carefully studied. A thorough nuclear weapons convention would institute a framework of legal responsibilities applicable to both governmental and non-governmental entities. The recent stance taken by the International Court of Justice regarding pivotal aspects of nuclear disarmament will bolster the legal foundation for realizing a world reasonably secure from nuclear threats.

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