

Under What Circumstances Should the Use or Testing of Nuclear Weapons Be Permitted, and How Should International Law Address State-Sponsored Nuclear Proliferation?

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History of the Committee

The International Court of Justice was established right after WWII on June 25 1945 at the San Francisco Conference. It was set with the purpose of ensuring that international law is applied in a fair and consistent way in order to maintain order and overall justice. The court began work in April 1946, as the PCIJ (Permanent Court of International Justice) dissolved due to its ineffectiveness. On April 18 of 1946, the ICJ held its first meeting in the Peace Palace in The Hague, Netherlands. Since its establishment, the court has been taking action on a variety of cases. The court played an important role in expanding jurisprudence which is the philosophy of law. This expansion was important because jurisprudence helps lawyers to have basic ideas and reasoning behind the written laws. During the 1990s, the ICJ went through a series of challenges due to the post-cold war including the maritime and frontier disputes between El Salvador and Honduras in 1992 for example. Regarding nuclear weapons, an advisory opinion on the legality of the threat or use of nuclear weapons was conducted by the ICJ in 1996. The ICJ concluded that the threat or use of nuclear weapons should be generally illegal under international humanitarian law nevertheless it left open a possibility of legality in extreme cases of self-defenses. Another significant action made by this court was in 2004 when the ICJ delivered an advisory opinion on the consequences of the construction of a wall in the occupied Palestinian Territory. In the 2010s, the court made a clear shift from State-Centric Disputes to Global Issues as well. This includes human rights or environmental protection. For instance, in 2014, when the ICJ ruled in favor of Australia in the "Whaling in the Antarctic" case against Japan finding that Japan's whaling program was not for scientific purposes. One of the most relevant and recent

actions taken by the court, was its intervention in the Ukraine and Russian Federation conflict in 2022 where Ukraine accuses Russia of violating the Genocide Convention.

Introduction

Since its invention in 1945, nuclear weapons have been heavily regulated in international laws and global security. Typically considered only in extreme cases. Nevertheless their devastating impacts make it controversial. This is because one of these weapons could potentially destroy a whole city, end the lives of millions, expose natural environments and put at risk the lives of future generations with catastrophic and long-term effects. In fact, according to Bulletin of the Atomic Scientists(October 20 2022) "Regional nuclear war between India and Pakistan that involved about 100 15-kiloton nuclear weapons launched at urban areas would result in 27 million direct deaths" Now, with the ongoing conflicts around the world, a nuclear arm race or nuclear conflict is feared. Countries with nuclear power in their disposal are Russia, the United States, China, France, and the United Kingdom, Pakistan, India, North Korea and it is believed Israel does too. With Russia having the most nuclear arsenal, and North Korea having the least. Even so, the only nations considered nuclear-weapon states by the NPT (non-proliferation of nuclear weapons) are the first five. This is because the other four did not meet the criteria. The criteria states that for a nation to be defined as a nuclear-weapon state, it must have had a manufactured and exploded nuclear weapon or other nuclear explosive device before January 1 of 1967. Which is not the case of India, Pakistan, North Korea and Israel. Although Israel has not publicly conducted a nuclear test. Other countries such as South Africa

used to develop nuclear weapons but dismantled its arsenals in 1989 and joined the NPT as a non-nuclear-weapon state. Other countries such as Iran and Pakistan consider the NPT is discriminatory and illogical as it does not take into account security every nation is entitled to have. Countries such as North Korea are believed to have obtained nuclear technologies through illegal proliferation believed to be coming from Russia and China which are NPT signatures yet supporters of North Korea Nuclear Program. Nuclear state-sponsored proliferation refers to when a government supports or enables the spread of nuclear arsenal to other states. Some reasons for this might be alliances, economic profit or deterrence. When two countries have one adversary country in common, spreading nuclear capabilities is a great strategy, and plays as a huge threat. It is argued how international law should respond to state-sponsored nuclear proliferation and what measurements it should take with situations like this.

Historical context

It all started with the discovery of nuclear fission in December of 1938 in the Kaiser Wilhelm Institute by the physicists Otto Hanh and Fritz Stassmann(Energy.Gov). They discovered that when uranium nuclei were bombarded with neutrons, they split into smaller nuclei which would release a huge amount of energy. This process was called nuclear fission. Then during World War II, The United States launched a research program called the Manhattan Project led by J. Robert Oppenheimer and General Leslie Groves in order to secretly build nuclear weapons. This research program led to the development and detonation of the first

atomic bomb on July 16 1945. The device was detonated 210 miles south of Los Alamos, New Mexico and the code name for the test was "trinity". Then, just a few days later on August 6 1945 the world changed forever with the detonation of the atomic bomb "Little Boy" in Hiroshima Japan killing nearly 150,000 people causing the end of World War II and marking the first and only use of nuclear weapons in war. Later on in August 29 of 1946 the Soviet Union successfully tested its first nuclear bomb, beginning the nuclear arms race with the United States during the Cold War. The arms race became a bigger concern when the United States tested its first successful hydrogen bomb on November 1 1952 followed by the Soviet Union on August 12 1953. According to WWII The National WWII Museum(2020)"The combined force of the Hiroshima and Nagasaki bombings was minuscule in comparison to the Tsar Bomba, the most awesome nuclear weapon ever detonated."

In the 1960s, a concept called Mutual Assured Destruction was declared. This concept came out because both the United States and the Soviet Union had enough nuclear weapons to destroy each other, creating a balance of power. Neither of the sides wanted to risk a nuclear conflict since it could result in total destruction of both countries. Nevertheless this strategy only achieves peace when the countries involved have an equal amount of arm power which was not the case. On July 1 1968 the NPT(treaty on the non-proliferation of nuclear weapons) was opened for signature and later entered into force on March 5th 1970. This treaty had the purpose of preventing a wider spreading of nuclear weapons and facilitating peaceful nuclear energy use.

The nations that signed this treaty agreed not to develop nuclear weapons. It was signed by The United States, China, France, The United Kingdom, The Soviet Union and more nations. Nevertheless, Pakistan, India, Israel and North Korea never signed the treaty therefore making the treaty less effective. In fact, in 1974 India developed its first nuclear test under the name of "peaceful nuclear explosion" which caused controversies in Asia. Then Pakistan followed with its tests in 1998.

During the Cold War, which took place from March 12, 1947 to 1991, many arm control agreements were signed among nations to limit the growth of nuclear weapons and avoid a nuclear conflict. One example could be the Strategic Arms Limitation Talks (SALT) signed on May 26 1972 between the United States and Soviet Union where they agreed on limiting the number of nuclear missiles in their arenas. One success to point out from this agreement is how it froze the number of ICBMs and SLMBs missiles for 5 years. For context, ICBMs(intercontinental ballistic missiles) is a type of missile with a range greater than 5,500 kilometers and SLMBs(submarine-launched ballistic missiles) is a type of missile capable of being launched from a submarine. Despite this and more achievements, SALT did not reduce the number of nuclear weapons. It just made the growth slower. Both the United States and the Soviet Union continued to develop new weapons systems even with agreements like SALT. One example is the MIRVs (multiple independently targetable reentry vehicles) which is a type of ballistic missile with the capacity of delivering multiple nuclear warheads to different targets.

In 1991, the Soviet Union collapsed and the Cold War ended. This made the nuclear tensions decrease and brought the United States and Russia for a while. It also opened an entrance for peace treaties such as START to take place. This treaty, signed on July 31 1991, required both nations to reduce their total number of nuclear warheads and bombs by one third and is considered a success. Just when progress in arms control and nuclear proliferation was finally being achieved, North Korea withdrew from the NPT(treaty on the non-proliferation of nuclear weapons) in 2003 and has not stopped conducting nuclear tests since then. In this same year, secret nuclear facilities in Iran's nuclear program such as Natanz were discovered. The lack of transparency shown from Iran raised suspicions and concerns about the potential development and proliferation of nuclear weapons in the Middle East. Restrictions were placed to Iran's nuclear activities in 2015 by JCPOA (joint comprehensive plan of action) but since the withdrawal of the United States from this agreement in 2018, its efficiency has decreased.

Current Issue

Currently, the risk of a nuclear weapon being used has increased to an amount not seen since the cold war. According to the Arms Association Control, all of the nuclear-armed states combined possess an amount of 12,000 nuclear warheads as of March 2024. Russia, having the most with around 5500, and North Korea having the least with 50. Many countries argue that the international nuclear order is quite unfair and the restrictions on nuclear weapons are biased towards powers while limiting the security for other countries. One example is Iran which has

been outspoken about its right to develop nuclear technology but has been sanctioned and pressured by western countries. Other examples are India and Pakistan who are not signatories of the NPT and developed their own nuclear weapons, South Africa, Egypt and Brazil. This opens a debate of whether every nation has the right of developing or processing nuclear weapons.

In the last couple of years, nuclear-weapon states have been modernizing their nuclear weapons which could lead to a new nuclear arms race. The ongoing conflict of the Russian invasion of Ukraine has been a huge concern lately. Especially with the message to NATO from president Vladimit Putin: "Don't go too far in providing military support for Ukraine or you'll risk a conflict with Russia that could quickly turn nuclear" crossing the nuclear doorway. If these threats continue, nobody knows what this conflict will evolve to. Not to mention the increased collaboration and military ties between Russia and North Korea. In fact, Russia is not allowed to provide assistance to North Korea's nuclear programs under the terms of the United Nation Security Council but this sanction was already violated when Moscow accepted armaments from Pyongyang. Situations like this one, open doors to the discussion of whether the NPT is enough to prevent nuclear proliferation or not. Or even, if nuclear proliferation should be or can actually be prohibited at all.

In addition, China has been expanding and diversifying its nuclear forces and the United States has stated that it does not have the need to increase its nuclear forces as much in order to deter its competition. This opens a debate over what is driving China's nuclear buildup and about

how the United States should respond to this. Not to mention the quest of whether the United States actually has the necessary force structure to deal with concurrent conflicts with two strong nuclear-armed adversaries which are China and Russia.

Advances in technology play a huge risk to nuclear security. Geopolitical changes and regional conflicts can drive proliferation and the tensions between disarmament goals and the modernization of these weapons will play a huge role in the future of the nuclear quest. Delegates will address these risks, tensions and changes in order to come up with viable solutions for them, and protect global nuclear security.

Past International Actions

On July 1 1968 the NPT (non-proliferation of nuclear weapons) was signed by the Soviet Union, the United States, the United Kingdom and 59 other nations. This existing treaty was made with the purpose of preventing the wide spread of nuclear weapons and promoting disarmament. It also looked forward to making the use of nuclear energy easier and peaceful. This treaty successfully divided the nuclear-weapon states and non-nuclear-weapon states. The nuclear-weapon states committed to disarmament and the non-nuclear weapon states agreed not to pursue the development or use of nuclear weapons. Even so, nuclear-armed states have been slow to disarm and their modernization programs continue. The NPT cannot do anything about that, therefore its effectiveness is not really long-term.

Following the end of the Cold War, on July 31 1991 the treaty START was signed between the Soviet Union and the United States. This treaty required both nations to reduce their total number of nuclear warheads and bombs by one third and is considered a success because of this matter. But recently on february 21 2023 Vladimir Putin announced the suspension of Russia in the START treaty due to tension with the west.

On July 8, 1996, the ICJ(International Court of Justice issued its Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons to provide an opinion on whether the use or threat of nuclear weapons should be permitted under the international law. The ICJ concluded that the threat or use of nuclear weapons would be against international law. Nevertheless there is no definite prohibition of the weapons. On September 24 1996 to The CTBT(comprehensive nuclear-test-ban treaty) was adopted by the United Nations General Assembly after being signed by 71 states including all five nuclear weapon states at the time. It had the purpose of prohibiting all nuclear explosions. The treaty has not entered into force yet, but the UN established the CTBTO (comprehensive nuclear-test-ban treaty organization) to monitor compliance and promote the approval by all countries. It succeeded in encouraging countries to avoid the use of nuclear weapons nevertheless it did not have much of a practical effect.

Between 2006 and 2015 there were a series of solutions by the UN Security Council in which sanctions were imposed on Iran due to its nuclear program, specifically its activities

regarding uranium. Known as the Iran Nuclear Deal, it consisted in providing a framework to lift existing economic sanctions all with the purpose of making Iran compliant with the IAEA (international atomic energy agency) and limiting its nuclear program. This resolution was successful in the short term, but with the withdrawal of the United States in 2018 from the JCPOA (joint comprehensive plan of action) Iran started reactivating its nuclear facilities.

Subtopics

The 2016 Marshall Islands Case: officially known as the Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament, was brought to the ICJ by the Marshall Islands. The Marshall Islands, a nation heavily impacted by nuclear testing during the 20th century, argued that nuclear-armed states, including the United Kingdom, India, and Pakistan, had violated their international obligations to pursue negotiations for nuclear disarmament. Citing the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and principles of customary international law, the Marshall Islands claimed these states were failing to work in "good faith" toward nuclear disarmament and were instead perpetuating an ongoing arms race. The Marshall Islands sought to hold nuclear-armed states accountable, emphasizing that their inaction posed a severe risk to global security. However, the ICJ ultimately dismissed the case on jurisdictional grounds, as it found that no actual dispute existed between the Marshall Islands and the respondent states, leaving open significant questions about the enforceability of nuclear disarmament obligations.

What happened to Marshall Islands?: The Marshall Islands is a small Pacific nation located in the central Pacific Ocean about halfway between Hawaii and Australia, and was profoundly impacted by nuclear testing conducted by the United States between 1946 and 1958. During this period, the U.S. conducted 67 nuclear tests in the Marshall Islands, exposing the population to extreme radiation levels and causing long-term environmental and health damage. Entire communities were forcibly relocated from their ancestral lands, and many Marshallese people suffered from radiation-related illnesses, including cancers and birth defects. The islands of Bikini and Enewetak, where the largest tests took place, were left uninhabitable due to severe radioactive contamination, forcing generations of Marshallese people to live as displaced populations. Despite compensation programs, the people of the Marshall Islands continue to face the consequences of this testing today, as well as advocating on the global stage for nuclear disarmament to prevent similar devastation elsewhere.

Korean Peninsula Conflict and the State-Sponsored Nuclear Proliferation: South Korea and North Korea have been in an ongoing conflict since June 25 1950. Despite the fact there has not been an attack since 1953, the Korean peninsula conflict has never officially ended. North Korea's nuclear program is a clear example of state-sponsored nuclear proliferation as it received support in developing nuclear technology from the Soviet Union and China. As of today, North Korea develops its own nuclear weapons, or at least it is said. This directly affects South Korea and condemns it to rely on international alliances with other countries. This subtopic is important because delegates will be able to address state-sponsored nuclear proliferation as international

law.

Self Defense: In this topic we can discuss under what circumstances could a state legally make use of nuclear weapons in the act of self-defense. We can also come up with hypothetical situations and how international law should react to them. The importance of this is to come up with a proper balance and understanding that can be fair for all.

Hiroshima and Nagasaki Nuclear Bomb and Cuban Missile Crisis: By analyzing the event that put an end to World War II, the delegations are going to be able to examine at what level was the use of bombs justifiable and try to understand how this would be assessed by international law if it happened today. Another thing that could be analyzed is the Cuban Missile Crisis. The Cold War almost escalated into a nuclear war when Soviet Union missiles were found on Cuba.

The Humanitarian and Environmental Impact: It is important to be aware of the negative impact a nuclear conflict can have in a nation. This includes environmental damages like the ones seen in Chernobyl, or humanitarian impact with many lives lost such as in Hiroshima. It is important because each position must be aware of the gravity of using or developing these nuclear weapons and the consequences it could bring within for both the supplier nation and the attacked nation.

Complete Prohibition: It can be discussed whether it is possible for there to be a complete prohibition of these weapons. Also to discuss, if that is even our goal. It is important because as

the Court of Justice we need to understand what exactly is our goal addressing this topic. Is it to completely prohibit these weapons? Is it to just regulate them more? Is it to allow other nations to possess and develop this weapon for their own safety? It is important to think about what is fair and realistically achievable in this matter.

How to Make all Nations Compliant?: Plans might be made, but how are we going to make sure all nations commit to agreements without surrender? Is it even possible? If not, what other measures can there be taken and how can technology and other tools be used to the advantage of national security.

Positions

1. <u>United Kingdom Advocate</u>: The United Kingdom, as a recognized nuclear-weapon state under the NPT, supports gradual nuclear disarmament within the framework of international arms control agreements. While the UK has made efforts to reduce its nuclear arsenal, it emphasizes that complete disarmament must involve all nuclear states and be carried out responsibly to maintain global security. The UK argues that it upholds its NPT obligations by reducing its nuclear stockpile and engaging in international disarmament discussions. In the 2016 Marshall Islands case, a United Kingdom Advocate would defend the UK's position by arguing that it has fulfilled its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). The Marshall Islands argued that the UK and other nuclear-armed nations failed to pursue nuclear disarmament in

good faith. In response, the UK Advocate would emphasize the UK's consistent reduction of its nuclear arsenal and active role in international arms control agreements, underscoring that these actions align with the NPT's long-term disarmament goals. Additionally, the UK Advocate would argue that achieving global disarmament requires collective international cooperation, not unilateral action, and that the UK's gradual approach respects both its security needs and international commitments. This stance presents the UK as a responsible nuclear state acting within the bounds of the NPT and working toward a safer world.

2. <u>Islamic Republic of Pakistan Advocate</u>: Pakistan maintains a policy of nuclear deterrence, viewing its nuclear arsenal as essential for national security, particularly in light of regional tensions with neighboring India. Pakistan is not a signatory to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), as it believes the treaty is discriminatory toward non-nuclear states. Instead, Pakistan supports a gradual, multilateral disarmament approach that considers the security needs of all nuclear-armed states, arguing that nuclear reductions should occur in a balanced, inclusive manner. The Marshall Islands claim that all nuclear-armed states, including non-NPT members like Pakistan, have a responsibility under customary international law to pursue disarmament. In response, the Pakistan Advocate would assert that Pakistan's nuclear arsenal is essential for its national security, particularly given regional security challenges, and that Pakistan maintains a responsible stance on nuclear deterrence. The Advocate would

emphasize that Pakistan supports gradual, multilateral disarmament efforts that take into account the security concerns of all nuclear-armed states, rather than unilateral action. This stance presents Pakistan as a responsible nuclear power committed to security and stability while asserting its right to self-defense.

3. <u>India Advocate</u>: India holds a unique position as a nuclear-armed state outside the NPT, which it has consistently refused to sign, citing its discriminatory nature. India maintains that its nuclear arsenal is for self-defense and upholds a no-first-use policy, asserting that it would only use nuclear weapons in retaliation. India supports multilateral disarmament discussions but believes that global disarmament efforts should be fair and inclusive. addressing the concerns of all nuclear and non-nuclear states. An India Advocate would argue that India is not bound by the same nuclear disarmament obligations as countries under the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) since India is not a signatory to the NPT. The Marshall Islands claimed that all nuclear states, including India, have a legal obligation under customary international law to work toward disarmament. However, the India Advocate would counter this by emphasizing India's consistent position on maintaining its nuclear arsenal solely for defensive purposes and its support for a gradual, multilateral approach to disarmament. The Advocate would argue that India's security concerns require it to maintain its nuclear capability but affirm India's commitment to peaceful international relations and its stance that global disarmament must involve all nuclear-armed states in a balanced and secure manner.

- 4. Marshall Islands advocate: The Marshall Islands was deeply impacted by nuclear testing in its territory during the Cold War. It is a strong advocate for nuclear disarmament and has been vocal in urging nuclear-armed nations to reduce and eliminate their arsenals. The Marshall Islands brought the 2016 case before the ICJ, claiming that nuclear-armed states, including Pakistan, India, and the UK, have not fulfilled their legal obligations to pursue disarmament in good faith to achieve the disarmament goals outlined in the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and under customary international law. The Advocate would highlight the risks nuclear weapons pose to humanity and assert that as a nation profoundly affected by nuclear testing in the past, the Marshall Islands has a unique moral and legal standing to demand global accountability. The Advocate's position emphasizes that nuclear-armed states have a duty to reduce and eventually eliminate their nuclear arsenals, advocating for decisive action to protect future generations from nuclear threats.
- 5. <u>Judge</u>: Judges will focus on the legal merits of the arguments presented by both sides. Judges have the role of impartially examining whether states have an international obligation to prevent nuclear proliferation and actively pursue disarmament. They will also evaluate whether the Marshall Islands' claim that nuclear-armed states like the United Kingdom, India, and Pakistan have violated their obligations to pursue nuclear disarmament in good faith is supported by international law, including the Treaty on the

Non-Proliferation of Nuclear Weapons (NPT) and principles of customary law. The Judge would assess each state's arguments, questioning both the Applicant (the Marshall Islands) and the Respondents (the UK, India, and Pakistan) to clarify any legal issues and challenge any weak points in the arguments. The Judge's responsibility is to deliver an impartial judgment based on the presented evidence and international legal standards, without allowing political bias to influence their decision.

Guiding questions

- What specific obligations did the Marshall Islands claim nuclear-armed states, such as the UK, India, and Pakistan, failed to meet under international law?
- How did the Marshall Islands argue that nuclear-armed states should demonstrate "good faith" in working toward nuclear disarmament?
- In what ways could the security concerns of nuclear-armed states conflict with the global demand for nuclear disarmament?
- Does the history of nuclear testing in the Marshall Islands give the country unique moral or legal standing to demand action from nuclear-armed states?
- How might a ruling in favor of the Marshall Islands impact the nuclear policies of

non-NPT states like India and Pakistan?

- Is there evidence that the nuclear-armed states named in the case have taken any steps toward disarmament that could satisfy their alleged obligations?
- To what extent does the stance of each nuclear-armed state differ in their approach to nuclear disarmament, and how does this affect global disarmament efforts?
- What implications would a ruling for the Marshall Islands have for the credibility and future obligations of nuclear-armed states under customary international law?

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