

Threat of use of nuclear weapons

War



Legality of threat or use of nuclear weapons was a consultative opinion that was delivered to the international court of Justice (ICJ) in 1993 and 1995 respectively.

Who are the parties?

The world health organization (WHO) and the UN general assembly found it necessary to get an advisory opinion from the international court of justice hence they presented the case. However the international court of justice did not provide concrete solutions when the case was first filed because the world health organization was acting outside its capacity. However, the case was again presented to the court by the UN general assembly and the court gave out an advisory opinion in 1996 basing its ruling under the international law of nuclear weapon use or threatened use.

What is the Summary of the Facts?

Deterrence and threat

Deterrence and threat involved a threat by the enemy or potential enemy to use nuclear weapons against a certain nation. The court considers that when threatened with persistent strikes that may involve military action, it is not necessarily illegal for a nation to use nuclear weapons in its defense against the enemy.

Legality of possessing nuclear weapons

While giving an advisory opinion, the court also reviewed the legality of owning nuclear weapons and the use of nuclear weapons. From the UN treaties, the court declared that there is no treaty that forbids a country from

owning nuclear weapons hence it is not illegal for a country to own nuclear weapons.

What is the issue, problem, or question facing the court?

The international laws have no restrictions for the possession of nuclear weapons since some countries do not consider them to be illegal (Burroughs & Arms, 1998). The use of the nuclear weapons however raised eye brows and a universal consensus had to be made on the restrictions of using or threatening to use nuclear weapons. The court was unfortunately unable to provide a legal consensus of declaring nuclear weapons to be illegal. Going with statistics, there has not been an actual use of nuclear weapons since 1945 due to the persistent condemnation from the UN.

There have been many recommendations and amendments regarding the use of nuclear weapons which were all engineered by the UN. However, the court declared that the customary recommendations were not clear and absolute to legally forbid the use of nuclear weapons (Burroughs & Arms, 1998). The court had a lot of challenges in the sense that the nature of case presented to them was unique, sensitive and had to consider all the legal requirements of the international law. Unfortunately, the international law has did not have provision for such a case hence there were neither conventional or customary laws documented under the international law to act as the reference point of the court's ruling. The greatest challenge that the court had while giving their opinion was the fact that there was no universal prohibition of use or threatened use of nuclear weapons.

What is the court's ruling?

However, in order to create an advisory opinion, the court undertook separate votes that all passed. The court therefore affirmed that in the event of an armed conflict with the enemy, the use or threatened use of nuclear weapons should be highly restricted by the international laws and the United Nations Charter on humanitarian laws in order to meet specific legal obligations stated in various treaties that restrict the use of nuclear weapons. The court further asserts that any use or threatened use of nuclear attack that defies the international laws is illegal. However, the court states that the elements in the current international law do not definitively conclude on whether it is unlawful to use nuclear weapons in extreme cases of self-defense (Burroughs & Arms, 1998).

What is the court's rationale or reasons for its ruling

The court majorly based its ruling and decisions on the humanitarian initiative. It continually insists that any use or threatened use of nuclear weapons should first abide to the international humanitarian laws. The reason for the acquiring an advisory opinion in for this case was greatly influenced by the humanitarian consequences that come after the use of nuclear weapons hence nuclear disarmament based on humanitarian dimension gained traction as the court gave its opinions.