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Nuclear Weapons

20th Anniversary of World Court Advisory Opinion

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The International Court of Justice ("Court," or "ICJ"), the world's highest court, issued its Advisory Opinion on the legality of the threat or use of nuclear weapons on July 8, 1996. Thus, this week marks the 20th anniversary of that momentous opinion.

The Court found in a split vote (7 to 7), with the casting vote of the Court's president Mohammed Bedjaoui deciding the matter, that the threat or use of nuclear weapons would generally be illegal under international law. The Court could not determine whether it would be legal or illegal to threaten or use nuclear weapons "in an extreme circumstance of self-defense, in which the very survival of a State would be at stake."

[https://acdn.net/spip/local/cache-vignettes/L300xH202/la_haye_peace_palace-300x202-05a22.jpg]

La Haye (Netherlands), Peace Palace

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Three of the judges voting to oppose general illegality, however, were concerned with the word "generally" and wanted the Court to go further and remove any ambiguity about the illegality of threat or use of nuclear weapons. Judge C.G. Weeramantry, for example, argued in a brilliant dissenting opinion "that the use or threat of use of nuclear weapons is illegal in any circumstances whatsoever." Thus, in actuality, ten of the fourteen judges supported either general illegality or total illegality of the threat or use of nuclear weapons.

The Court also found unanimously that any threat or use of nuclear weapons must be compatible with the United Nations Charter and must also be compatible with the international law of armed conflict and particularly with "the principles and rules of international humanitarian law." This means that the threat or use of nuclear weapons must be capable of distinguishing between combatants and civilians and must not cause unnecessary suffering. It is virtually impossible to imagine any use of nuclear weapons that could meet such limiting criteria.

Finally, the Court concluded, "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." Unfortunately, despite this obligation, such negotiations have not taken place in the past twenty years.

The tiny Pacific Island country, the Republic of the Marshall Islands, has cited the Court's conclusion regarding this legal obligation in bringing contentious lawsuits against the nine nuclear-armed countries at the International Court of Justice and separately against the United States in U.S. federal court. In the ICJ, only the cases against the UK, India and Pakistan are currently going forward, since the other six nuclear-armed countries do not accept the compulsory jurisdiction of the Court and have not opted to accept the Court's jurisdiction in this matter.

The cases brought by the Marshall Islands in the ICJ are currently awaiting the Court's ruling on preliminary objections filed by the three respondent countries. The case against the U.S. was dismissed in U.S. federal district court on jurisdictional grounds, and is currently on appeal in the Ninth Circuit Court of Appeals.

Nuclear weapons are devices of mass annihilation. The ICJ found these weapons to be generally illegal and to require good faith negotiations leading to total nuclear disarmament. All nine nuclear-armed countries are in breach of this obligation to the detriment of the people of the world, including the citizens of their own countries. The Republic of the Marshall Islands has had the courage to bring this matter back to the ICJ as contentious cases.

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On the illegality of nuclear weapons, the then Court President, Mohammed Bedjaoui, stated: "Nuclear weapons, the ultimate evil, destabilize humanitarian law, which is the law of the lesser evil. The existence of nuclear weapons is therefore a challenge to the very existence of humanitarian law, not to mention their long-term effects of damage to the human environment, in respect to which the right to life can be exercised."

On the 20th anniversary of the ICJ Advisory Opinion on threat or use of nuclear weapons, the people must wake up, stand up and speak out. Nuclear weapons are illegal as well as immoral and costly. They are not even weapons, but instruments of mass annihilation. They serve no useful purpose and endanger all countries, all people, and all future generations. It is past time to end the nuclear era.

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