



# JLPH: Journal of Law, Politic and Humanities

E-ISSN: 2962-2816  
P-ISSN: 2747-1985<https://dinastires.org/JLPH> ✉ [dinasti.info@gmail.com](mailto:dinasti.info@gmail.com) ☎ +62 811 7404 455DOI: <https://doi.org/10.38035/jlph>  
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## Nuclear Weapons From the Lens of the UN Charter

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**Abstract:** Nuclear weapons have been a longstanding topic of debate in international law, as their presence brings up concerns about their legality and morality in relation to global peace and security, which are core principles of the United Nations (UN). This article analyses the provisions related to the possession, use, and threat of use of nuclear weapons under the UN Charter. Employing a qualitative approach and normative method, this article examines relevant legal documents and scholarly literature. The analysis shows that while the UN Charter does not directly regulate nuclear weapons, its principles have laid the foundation of the Non-Proliferation Treaty (NPT) and the Treaty on the Prohibition of Nuclear Weapons (TPNW). The possession of nuclear weapons is legally permitted for certain states under the NPT, provided they make sincere efforts toward achieving complete disarmament. Additionally, the use and threat of use of nuclear weapons must comply with the principles of international humanitarian law and customary law, which inherently cannot be fulfilled by nuclear weapons due to their nature.

**Keyword:** Nuclear Weapons, The UN Charter, Law.

### INTRODUCTION

Recently, international conflicts have reignited the debate over nuclear weapons. Several states have threatened the use of nuclear weapons either to deter other states from being involved in war or to conquer adversaries already engaged in conflict. Vladimir Putin declared that Russia would not hesitate to use nuclear weapons amid its conflict with Ukraine and NATO if its sovereignty were threatened (Aljazeera, 2024). In another part of the world, the threat of nuclear weapons has also emerged in the ongoing conflict between Palestine and Israel. Israel's nuclear threat prompted Palestinian Foreign Minister Riyad Al-Maliki to file an official complaint with the International Atomic Energy Agency (IAEA) (Asmar, 2023). Nuclear weapons are broadly recognized as weapons of mass destruction. They are capable of devastating entire regions in a short amount of time, causing massive casualties, and inflicting prolonged suffering. Their explosions are hundreds to thousands of times more powerful than conventional bombs, able to injure or kill large numbers of people and destroy crucial buildings and infrastructure. For example, the detonation of the atomic bombs by the United States (US) during World War II, called "Little Boy" in Hiroshima and "Fat Man" in Nagasaki, resulted in approximately 210,000 deaths (Tomonaga, 2019). Among the survivors, it was reported that

440,000 people suffered blast injuries, 409,000 sustained burns, and 157,000 were affected by radiation (Xu & Dodt, 2023). These figures do not include other physical conditions such as leukemia, cancer, and cataracts, nor do they include mental illnesses such as depression and Post-Traumatic Stress Disorder (PTSD).

In reaction to the United States' capability, other states started to construct their own nuclear arsenals. In 1961, the Soviet Union detonated the "Tsar Bomb", the biggest nuclear weapon ever created with an explosion 4,000 times more powerful than the bombs detonated by the US (Gabrieli, et al., 2013). This was succeeded by the United Kingdom in 1952, France in 1960, and China in 1964 (Srogosz, 2016). This growing nuclear arms race created a pervasive sense of looming large-scale destruction, leading states to work together through the United Nations (UN) to pursue global peace and security.

The UN has been instrumental in establishing international norms and regulations related to nuclear weapons. The United Nations General Assembly (UNGA) has sought advisory opinions from the International Court of Justice (ICJ) regarding the interpretation of the UN Charter on nuclear weapons and made recommendations to the United Nations Security Council (UNSC). In this context, no article regulates the legality of nuclear weapons, and this situation has inevitably led to debates and differing interpretations among member states, particularly those possessing nuclear weapons. However, upon closer analysis, although nuclear weapons are not expressly addressed by the UN Charter, its principles have served as a foundation of the Nuclear Non-Proliferation Treaty (NPT) that entered into force in 1970. This treaty is designed to stop the proliferation of nuclear weapons by encouraging disarmament and the peaceful use of nuclear energy. The NPT was subsequently reinforced by the ratification of the Treaty on the Prohibition of Nuclear Weapons (TPNW) in 2021, aimed at accelerating the goals of disarmament and non-proliferation. The treaties were established on the principles of the UN Charter: maintaining international peace and security, fostering international relations, promoting international cooperation, and achieving common goals. These principles are reflected in the preamble of the treaty, which emphasizes that nuclear energy should be utilized for peaceful use to enhance global security and encourage international cooperation. Nevertheless, how are nuclear weapons addressed under the UN Charter? This article will examine the provisions of the UN Charter related to nuclear weapons, concentrating on three categories of states: those that possess nuclear weapons, those that use them, and those that threaten to use them.

## **METHOD**

This study employs a qualitative approach using the normative legal research method, which involves analyzing primary sources such as applicable norms, rules, laws, and recognized general principles. In addition, supporting secondary sources are utilized, including scholarly articles from journals, news reports, and documents from institutions related to nuclear studies, in order to capture a broader perspective on the issue at hand. In analyzing the data, the study follows the method outlined by William H. Putman (Putman, 2004; Sonata, 2014), which consists of Issue, Rule, Analysis, and Conclusion (IRAC). This analytical method is carried out in four stages: identifying the issue (legal question), identifying the rule governing the issue in question, analyzing the rule applicable to the issue, and drawing conclusions.

## **RESULTS AND DISCUSSION**

### **Possessing Nuclear Weapons**

The possession of nuclear weapons is a shared concern within the UN to create a safe and peaceful world. This issue is particularly significant for two main UN bodies: the UNGA and the UNSC. Under Article 96(1), the UNGA and the UNSC are authorized to request legal opinions on legal matters from the ICJ. The ICJ Advisory Opinion noted that the legality of

the possession of nuclear weapons is as dangerous as the weapons themselves, and the necessity for complete disarmament is the most appropriate solution (ICJ, 1996). This disarmament mandate is outlined in Article VI of the NPT, where all signatory states commit in good faith to halt the nuclear arms race and disarm under international oversight. Therefore, the NPT prohibits non-nuclear-armed states from obtaining nuclear weapons and obligates nuclear-armed states to disarm. This provision has become one of the fundamental principles of the NPT, referred to as the principle of disarmament.

Currently, there are nine states with the possession of nuclear weapons: Russia (5,977), the US (5,428), China (350), France (290), the UK (225), Pakistan (165), India (160), Israel (90), and North Korea (20) (Kristensen & Korda, 2022). Among these nine states, only five—Russia, the US, China, France, and the UK—are recognized as legal possessors. In contrast, Pakistan, India, and Israel are considered illegal and non-compliant with NPT provisions. Meanwhile, North Korea opted to withdraw from the NPT in 2003, using its right to self-defense. North Korea perceives that the US has threatened its security through policies deemed contrary to its national interests, positioning it as a target for pre-emptive nuclear attacks (Kirgis, 2003). The right to withdraw from the treaty for national interests is outlined in Article X of the NPT, which allows any party to withdraw if circumstances arise and significantly jeopardize its national interests. Unfortunately, this right can be misused to justify a state's withdrawal from the NPT to produce and develop its own nuclear weapons. As we know, the possession of such weapons can be highly appealing for states seeking to enhance their bargaining power in international relations and improve their security, even as it simultaneously poses security threats to other states. In 2024, the Stockholm International Peace Research Institute (SIPRI) released its annual report, estimating that there are 12,121 nuclear weapons worldwide and showing a substantial decrease from previous years. In 1980, the total number reached 70,000, and this decline reflects a continuing commitment of the NWS to nuclear disarmament.

Nevertheless, the absence of a deadline for disarmament has led to frustration among non-nuclear states and disarmament advocates, as nuclear-armed states have not demonstrated sufficient commitment to the obligations under Article VI of the NPT. What is more, the recent threats of nuclear weapon use in international conflicts indicate a diminishing respect for world peace and security. In response to this situation, the UNGA adopted the Treaty on the Prohibition of Nuclear Weapons (TPNW) in 2017 to advocate for disarmament and non-proliferation of nuclear weapons. Unlike the NPT, the TPNW completely prohibits the development, testing, possession, and use of such weapons for all its signatories (UNGA, 2017). In other words, while the NPT grants a monopoly on these weapons to the five specified states, the TPNW prohibits nuclear weapons for all (Erästö, 2019). Article 4(2) of the TPNW requires nuclear-armed states to make a quantifiable commitment to getting rid of their nuclear weapons as soon as feasible. To do this, they must create a legally binding plan with a deadline, which must be submitted 60 days after the treaty becomes effective for those states. As of April 2024, there are 70 ratifications and 93 signatories to the TPNW (Krasno & Szeli, 2024). Sadly, the nuclear-armed states and most NATO states have not joined the treaty. This, of course, raises questions about the effectiveness of the TPNW, as disarmament will remain difficult to achieve without their participation.

Along with the principle of disarmament, the NPT also incorporates the principle of non-proliferation to avert the proliferation of nuclear weapons by reducing their quantities or potentially eliminating them entirely. Under the NPT, states are divided into two categories: Nuclear-Weapons States (NWS) and Non-Nuclear Weapons States (NNWS). The distinction is based on whether a state has produced and detonated nuclear weapons before January 1, 1967. This date was carefully selected as a cut-off to prevent any state from producing or detonating nuclear weapons at the last minute to qualify as an NWS (Asada, 2021). In this regard, transferring nuclear weapons, including their control and explosive devices, to the

NNWS is forbidden under Article I. Similarly, Article II forbids the NNWS from receiving nuclear weapons from the NWS, including their control and explosive devices. Thus, the possession of nuclear weapons is deemed legal only for states that possessed them prior to January 1, 1967, while the possession of such weapons after that date is considered illegal.

In endorsing the principle of non-proliferation, the NPT is supported by the International Atomic Energy Agency (IAEA). In Article III, the NNWS is required to accept IAEA safeguards to comply with non-proliferation obligations. The IAEA aims to facilitate the peaceful use of nuclear energy by ensuring that it is not utilized for military purposes. The right of every state to enjoy nuclear energy for peaceful purposes and to gain from international collaboration is thus acknowledged by the principle of peaceful use as articulated in Article IV. It is possible to see nuclear energy as having both military and civilian needs. In military contexts, nuclear power is categorized into explosive uses and non-explosive applications (nuclear-powered military aircraft and submarines). On the other side, civilian applications of nuclear energy encompass electricity generation, medical treatment, industrial activities, and agriculture productivity.

### **Using and Threatening to Use Nuclear Weapons**

The use and threat of use of nuclear weapons are explicitly prohibited in Article 1(1) of the TPNW. Unfortunately, this prohibition may only apply to the state parties to this treaty. Nuclear-armed states outside of this treaty may still use or threaten to use nuclear weapons in exercising their right to self-defense as outlined in the UN Charter. A question may arise: what is the legal status of using nuclear weapons in the context of a state's right to self-defense as articulated in the UN Charter? Since Article 2(4) of the UN Charter places the terms "threaten" and "use" in the same sentence, the discussion regarding the threat and use of nuclear weapons here will be addressed together.

According to Article 2(4) of the UN Charter, states are not allowed to threaten or use force against other states in a manner that is inconsistent with the objectives of the UN. Nonetheless, Article 51 affirms that if an armed attack emerges, every state has the right to self-defense, either individually or collectively. Under this provision, a state wishing to exercise self-defense must promptly report to the UNSC, and measures may continue until the UNSC takes non-military and military actions. Non-military actions are further elaborated in Article 41, authorizing the Security Council to impose economic sanctions, halt maritime, aerial, and communication routes, and even cut diplomatic relations. If these measures are deemed insufficient or fail to deter further aggression, the UNSC may resort to military actions by land, sea, and air as outlined in Article 42. The problem lies in the lack of detailed specifications regarding the types of weapons referenced. Article 2(4) does not explicitly mention the weapons involved and does not authorize the use of nuclear weapons. This provision appears to neither prohibit nor automatically permit the use of these weapons (Schmitt, 1998). Consequently, a state may interpret that nuclear weapons could be used for self-defense purposes under Article 51. This interpretation could also undermine the principle of non-proliferation, as in collective self-defense, the NNWS might receive nuclear weapon assistance from the NWS as part of military cooperation.

Regarding the use or threat of such weapons, the ICJ has confirmed that both are constrained by the principles of International Humanitarian Law (IHL). Although the principles of IHL in armed conflicts existed prior to the invention of nuclear weapons, they are still applicable. They permeate the entire body of law, governing armed conflict and apply to all types of weapons, whether they existed in the past, present, or future. There are applicable International Humanitarian Laws (IHL) in armed conflicts, the Hague Convention IV of 1907, and the Geneva Conventions of 1949.

The fundamental principles forming IHL in situations of armed conflict include: (1) protecting civilians and civilian objects while differentiating combatants and non-combatants; and (2) banning weapons that subject combatants to needless pain and undue harm. Since nuclear weapons are unable to discriminate between civilians and soldiers, utilizing them when it comes to armed conflict could breach the first principle as clearly stated in the Hague Convention IV of 1907. Moreover, their impacts can devastate civilian objects such as residential areas, schools, hospitals, holy sites, and other infrastructure. Specifically, Article 25 of the Hague IV prohibits attacks and bombings of cities, towns, and civilian objects that are not defended. This implies that if civilian objects are not safeguarded by military forces or do not fulfill a military purpose, they are deemed undefended and must be protected from attack. Likewise, Article 27 emphasizes that bombing actions should, to the greatest extent possible, spare buildings dedicated to religious, artistic, scientific, and health activities, as well as places where the sick and wounded individuals gather, as long as they are not used for military purposes.

Moving to the second principle, the use of nuclear weapons is also inconsistent as it inflicts excessive burdens and suffering on combatants. Not only causing massive fatalities, nuclear explosions also result in severe suffering, such as extensive burns, tissue damage, high radiation exposure, disabilities, and agonizing slow deaths. This clearly violates the principles outlined in the Geneva Conventions of 1949 and Additional Protocol I of 1977, particularly Article 35(2) which prohibits the use of weapons or methods of warfare that cause excessive injury and unnecessary suffering. In addition to this, paragraph 3 prohibits the methods of warfare that cause serious and widespread long-term damage to the environment.

Other than that, the ICJ has suggested that a state's right to self-defense must comply with the principles of necessity and proportionality in International Customary Law. When there are no other options and the situation is urgent, self-defense is based on the principle of necessity. Self-defense must begin with rational consideration and necessitate conditions that require the need for action (Corn, 2020). Meanwhile, the principle of proportionality asserts that self-defense must be proportionate to the attack received. This principle consists of two conditions: the means of self-defense must align with the objectives of defense, and the amount of force used must not be excessive (ILPI, 2014). The intention behind this principle is to balance self-defense actions with the received attack to avoid unnecessary harm. The use or threat of using nuclear weapons in response to conventional attacks is clearly disproportionate and unjustifiable.

A state may consider using nuclear weapons as a means of self-defense to respond to an attack that has a comparable destructive capacity. For instance, India's Official Nuclear Doctrine of 2003 states that "nuclear weapons will only be used in retaliation for a nuclear attack on Indian territory or on Indian forces" and that "the retaliation will be massive and intended to cause unacceptable damage." Arguably, the first statement of this doctrine aligns with the principle of necessity. However, the second statement contradicts the principle of proportionality because the destructive capacity of a nuclear explosion is intentionally excessive and may surpass the damage caused by the attacking state. Thus, while India's use of nuclear weapons for self-defense may be deemed necessary, the current formulation of this doctrine violates the proportionality test (Jian & Seth, 2018; Hood & Cornier, 2023).

## CONCLUSION

Although the UN Charter does not explicitly regulate nuclear weapons, its principles serve as the foundation for the treaties addressing nuclear weapons, the Non-Proliferation Treaty (NPT) and the Treaty on the Prohibition of Nuclear Weapons (TPNW). The ICJ has suggested that the NPT legalizes the possession of nuclear weapons only for states that had possessed, produced, or detonated them prior to January 1, 1967. While such possession should be

accompanied by disarmament, there is no specific timeline outlined for this process. In contrast, the TPNW forbids all states from holding nuclear weapons, but its effectiveness remains questionable due to the absence of participation by nuclear-armed states. Additionally, the use or threat of using nuclear weapons for self-defense can only occur in exceptional circumstances and must adhere to the principles of IHL (weapons must distinguish between civilians and military forces and must not cause unnecessary suffering) and customary international law (necessity and proportionality). Considering the indiscriminate and immensely destructive nature of nuclear explosions, along with the substantial and enduring suffering they cause, nuclear weapons fail to meet the principles of humanitarian or customary law. Thus, the use and threat of nuclear weapons indirectly violate and are not justified under the UN Charter.

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