

Nuclear Deterrence and International Law: Assessing Compliance with Article 2(4) of the UN Charter

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Abstract:

This essay examines the legality and ethical implications of nuclear deterrence under international law, with a specific focus on Article 2(4) of the UN Charter, which prohibits the threat or use of force against the territorial integrity or political independence of states. It argues that nuclear deterrence, by its very nature, constitutes an unlawful threat of force and contravenes the foundational principles of international humanitarian law (IHL), including distinction and proportionality. The analysis draws on the 1996 Advisory Opinion of the International Court of Justice, the Treaty on the Prohibition of Nuclear Weapons (TPNW), and state practice to evaluate the tension between nuclear deterrence and the UN Charter's commitment to peaceful dispute resolution. While arguments rooted in self-defence and state sovereignty are considered, the essay concludes that nuclear deterrence undermines global security and legal norms, advocating instead for renewed efforts toward disarmament and diplomatic engagement.

Keywords: Nuclear deterrence, Article 2(4) UN Charter, international humanitarian law, ICJ Advisory Opinion,

1. Introduction

Nuclear deterrence, a strategy employed by nuclear-armed states to prevent attacks through the threat of nuclear retaliation, has played a pivotal role in shaping international relations since the inception and proliferation of nuclear weapons. Proponents argue that the risk of mutually assured destruction has deterred direct military conflict between major powers, thereby contributing to a degree of strategic stability (Helfand, Lewis & Haines, 2022). However, the legality and ethicality of this strategy face severe

challenges within the framework of international law. The contemporary international legal system, centred on the UN Charter, explicitly prohibits the threat or use of force in Article 2(4), aiming to maintain international peace and security. Whether the inherent 'threat' central to nuclear deterrence violates this fundamental principle constitutes the core question explored in this essay.

Furthermore, a profound contradiction exists between nuclear deterrence strategy and the fundamental principles of International Humanitarian Law (IHL). IHL seeks to distinguish between combatants

and civilians and to limit unnecessary suffering during armed conflict (Additional Protocol I, 1977). Given their devastating, indiscriminate nature, and long-term humanitarian and environmental consequences, nuclear weapons struggle to comply with these requirements (Norris & Cochran, 2024). The recent adoption of the Treaty on the Prohibition of Nuclear Weapons (TPNW, 2017) further underscores the international community's deep concern regarding the humanitarian impact of nuclear weapons and reinforces the legal and ethical call for nuclear disarmament.

This essay argues that the reliance on nuclear deterrence by nuclear-weapon states for security is not only potentially inconsistent with Article 2(4) of the UN Charter but also diverges from the fundamental objective of international law to resolve disputes through dialogue rather than the threat of catastrophic violence. The analysis will first outline the legal foundations of Article 2(4) of the UN Charter. It will then demonstrate the legal challenges of nuclear deterrence by examining its nature as an unlawful threat of force (Drummond, 2019), IHL concerns (Greenwood, 1997), the Advisory Opinion of the International Court of Justice (ICJ, 1996), and moral-ethical considerations. Concurrently, the essay will scrutinize the main arguments favouring deterrence, such as the right to self-defence and historical precedents from the Cold War. Ultimately, through a comprehensive assessment, this essay contends that nuclear deterrence poses an unacceptable challenge to the international legal order and human security, advocating that progress toward nuclear disarmament is the appropriate path aligned with the purposes of international law and the common interests of humanity.

2. Nuclear Deterrence as an Unlawful Threat of Force

The core of nuclear deterrence strategy lies in the public declaration and maintenance of the capability and willingness to carry out nuclear retaliation against other states, which inherently constitutes a persistent threat of force. According to Article 2(4) of the UN Charter, all members are obliged to “refrain in their international relations from the threat or use of force.” Basing national policy on the potential use of nuclear weapons directly challenges this fundamental principle (Drummond, 2019). The extreme and indiscriminate nature of nuclear weapons means that the threat of their use represents the most severe form of threat imaginable under international law. For instance, the United Kingdom's policy of “Continuous At-Sea Deterrence” explicitly maintains the constant readiness to use nuclear weapons, creating a permanent state of threatened

force that arguably violates the spirit and letter of the UN Charter (Drummond, 2019).

The risks associated with such threats were starkly demonstrated in 2022 when an Indian missile test accidentally crossed into Pakistani airspace. This incident highlighted how quickly misunderstandings between nuclear-armed states could escalate towards the very catastrophe that deterrence purports to prevent. Similarly, North Korea's assertions of a right to preemptive nuclear strike further illustrate how deterrent postures can transform into aggressive threats that undermine international peace and security. These examples underscore that nuclear deterrence not only constitutes a potential violation of Article 2(4) but actively creates conditions of instability and mistrust among states.

3. Incompatibility with International Humanitarian Law

The fundamental principles of International Humanitarian Law (IHL), particularly distinction and proportionality, present insurmountable obstacles to the lawful use of nuclear weapons. The principle of distinction, as codified in Article 48 of Additional Protocol I to the Geneva Conventions (1977), requires parties to conflict to distinguish between combatants and civilians at all times. Nuclear weapons, by their very nature, cannot comply with this requirement due to their blast radius, thermal radiation, and long-term radioactive fallout effects that inevitably affect civilian populations and infrastructure (ICJ, 1996).

The International Court of Justice in its 1996 Advisory Opinion acknowledged this fundamental tension, stating that “the use of nuclear weapons would generally be contrary to the principles and rules of international humanitarian law” (ICJ, 1996). The Court particularly emphasized the inability of nuclear weapons to distinguish between civilian and military targets, as well as their capacity to cause unnecessary suffering to combatants – both prohibited under IHL. Furthermore, the persistent and severe environmental damage caused by nuclear detonations raises additional concerns under principles of environmental protection that have become integrated into modern IHL.

The Treaty on the Prohibition of Nuclear Weapons (2017) represents a significant development in this regard, emerging from growing international consensus about the inherent incompatibility of nuclear weapons with humanitarian values. By explicitly prohibiting nuclear weapons based on humanitarian principles, the TPNW reinforces the conclusion that nuclear deterrence, which relies on the threat of using such weapons, is ethically and legally untenable.

4. The International Court of Justice's Advisory Opinion

The 1996 ICJ Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons remains the most authoritative judicial examination of this issue. While the Court concluded that it could not definitively rule on the legality of nuclear weapons in extreme circumstances of self-defense where the state's survival was at stake, it established several crucial legal parameters that severely constrain any potential lawful use (ICJ, 1996).

Most significantly, the Court unanimously held that any threat or use of nuclear weapons must comply with the requirements of international law, particularly the principles and rules of international humanitarian law. The Court stated that "the threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons" (ICJ, 1996). This finding places a heavy burden on states employing nuclear deterrence strategies to demonstrate how their threatened use could possibly comply with IHL principles – a burden that, given the weapons' nature, appears impossible to discharge.

The Court also emphasized states' obligation to pursue nuclear disarmament in good faith, noting that this obligation exists under the Nuclear Non-Proliferation Treaty and customary international law. This aspect of the opinion undermines arguments for the long-term legitimacy of nuclear deterrence and supports the progressive development towards prohibition exemplified by the TPNW.

5. Counterarguments and Their Limitations

5.1 Self-Defense Under Article 51

Proponents of nuclear deterrence often invoke the right to self-defense under Article 51 of the UN Charter as legal justification. They argue that in an anarchic international system, nuclear weapons provide the ultimate guarantee of state survival against existential threats (Akande, 1998). However, this argument overlooks the fact that the right to self-defense is not unlimited; it must comply with the requirements of necessity and proportionality (ICJ, 1986). The catastrophic and indiscriminate effects of nuclear weapons make it virtually impossible to conceive of their use meeting the proportionality requirement in any but the most extreme hypothetical scenarios.

Furthermore, the ICJ in its Nuclear Weapons opinion specifically addressed this issue, noting that while Article 51 acknowledges the inherent right of self-defense, "the submission of the exercise of the right of self-defense to the conditions of necessity and proportionality is a rule of customary international law" (ICJ, 1996). This means that even in self-defense, a state's use of force – including nuclear weapons – must be proportionate to the armed attack and necessary to repel it. Given that nuclear weapons would likely cause collateral harm to civilians and civilian objects on an enormous scale, their use would almost certainly violate the proportionality requirement.

5.2 Cold War Precedents and Contemporary Realities

Historical arguments often point to the Cold War as "evidence" of nuclear deterrence's success in preventing major power conflict. However, this historical analysis is both contested and of limited relevance to contemporary security challenges. Recent scholarship on the Cuban Missile Crisis has revealed how close the world came to nuclear war due to miscommunication and miscalculation (Morgan, 2023). The 1962 incident involving a Soviet submarine officer who prevented nuclear launch despite ambiguous orders illustrates the fragility of nuclear command and control systems even during periods of relative stability.

In the contemporary context, the war in Ukraine has demonstrated both the continued relevance of nuclear threats in international politics and their destabilizing effects. Rather than proving deterrence's effectiveness, nuclear threats in this conflict have undermined diplomatic solutions and prolonged hostilities (Sauer, 2024). This suggests that nuclear deterrence may create different forms of instability rather than preventing conflict altogether.

6. State Sovereignty and the Limits of Security Claims

The argument from state sovereignty suggests that states have the right to determine their own security arrangements, including the possession of nuclear weapons. This realist perspective views nuclear weapons as necessary instruments in an anarchic international system (Akande, 1998). However, this position fails to acknowledge that state sovereignty entails responsibilities as well as rights, including the responsibility to respect peremptory norms of international law such as the prohibition of indiscriminate weapons.

Moreover, the security dilemma created by nuclear pro-

liferation demonstrates how one state's pursuit of security through nuclear weapons can decrease security for all states. The nuclear arms races in South Asia and the Korean Peninsula illustrate how nuclear deterrence creates regional insecurity cycles that are difficult to break. The concept of "common security" – that genuine security can only be achieved collectively – provides a more sustainable framework than the zero-sum logic of nuclear deterrence.

7. Conclusion

In conclusion, the analysis presented in this essay demonstrates that the principle of nuclear deterrence is fundamentally incompatible with the established norms of international law. The persistent threat of force inherent in nuclear deterrence strategies directly contravenes the prohibition outlined in Article 2(4) of the UN Charter. Furthermore, the indiscriminate and catastrophic nature of nuclear weapons renders their use, and by extension the threat of their use, irreconcilable with the core principles of international humanitarian law, namely distinction and proportionality. While states may invoke self-defence under Article 51, this right is not absolute and is constrained by the requirements of necessity and proportionality, which nuclear weapons inherently violate. The Advisory Opinion of the International Court of Justice, alongside the recent adoption of the Treaty on the Prohibition of Nuclear Weapons, underscores a growing legal and ethical consensus against nuclear weapons. Ultimately, relying on the threat of mutual annihilation to maintain peace is a paradoxical and perilous approach that undermines the very foundations of international law and human security. A sustainable future necessitates a committed global transition towards nuclear disarmament and the strengthening of diplomatic mechanisms for conflict resolution.

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