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The Threat of the Use of Nuclear Weapons from the Perspective of International Law

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ABSTRACT

The possession of nuclear energy is a right derived from general international law, and all states are entitled to benefit from this right. Nevertheless, the threat arising from the diversion of nuclear energy from serving humanity toward the production and use of deadly nuclear weapons prompted the international community to establish mechanisms aimed at restricting the use of nuclear energy to peaceful purposes and preventing the proliferation of nuclear weapon production. Therefore, the principal objective of the present study is to answer the question of how the threat of the use of nuclear weapons is viewed from the perspective of international law. The study was conducted through a library-based documentary method using a descriptive-analytical approach. The findings demonstrated that the prohibition of the threat of the use of nuclear weapons is not governed by specific rules of international law, and the most important instruments that explicitly address this issue, such as resolutions and security assurances provided by nuclear-weapon states, lack binding legal force. The prohibition of the threat or use of nuclear weapons is primarily inferred from indirect and general principles of international law, particularly the rules governing armed conflicts and international humanitarian law.

Keywords: *International community, humanitarian law, international law, nuclear weapons, resolutions*

Introduction

The era of the United Nations marks a new period in the international system. The order that emerged after the Second World War and occupied the attention of scholars and actors in the international arena has largely revolved around international peace and security. In this context, disarmament and arms control, of which nuclear weapons are one manifestation, have been considered among the important subjects of international law and a step toward the realization of the aspiration for peace and security. The rules governing nuclear weapons may be examined in two categories: the general rules of international law and the special regulations applicable to this type of weapon, as reflected in international instruments.



The principal objective of the United Nations is to establish peace and security throughout the world through peaceful mechanisms for the settlement of international disputes. If the only advantage of nuclear weapons is, as has so far been claimed, their deterrent function, then although this method may prevent armed conflicts, it is not consistent with the spirit of the United Nations Charter. The Charter not only prohibits the use of force or the threat of force, but also emphasizes the establishment of lasting peace through peaceful means. A peace maintained under the shadow of threat and fear contradicts the fundamental values of the United Nations Charter. Global peace and security cannot be founded on fear and mutual threat. Such a peace is fragile and unstable, and at any moment, because of an error or misunderstanding, it may drive the world toward a nuclear catastrophe. Reliance on nuclear weapons and the theory of deterrence is an illusory solution for resolving disputes, and regulating international relations on the basis of atomic power pushes the world toward a cold war in which cooperation and trust among states are replaced by rivalry and hostility.

In pursuit of a disarmament and arms regulation regime, while disarmament in the fields of biological and chemical weapons has been pursued through multilateral treaties, the achievements of international efforts regarding nuclear weapons, which constitute another form of weapons of mass destruction, have amounted to little more than the creation of a regime of horizontal non-proliferation, except in limited cases reflected in treaties concerning the maintenance of certain regions free from nuclear weapons and the prohibition of nuclear testing. Under the 1968 Treaty on the Non-Proliferation of Nuclear Weapons, known as the NPT, horizontal proliferation of nuclear weapons has been controlled under the supervision of the International Atomic Energy Agency. Nevertheless, the treaty has failed to prevent vertical proliferation, whether quantitative or qualitative, by nuclear-weapon states. The treaty has largely remained an ethical and aspirational commitment and has had no significant effect in restricting the technological improvement of nuclear weapons by states possessing this technology.

The Greatest Threat to Disarmament from the Perspective of International Law

In 1996, the International Court of Justice finally responded to the requests of the World Health Organization and the United Nations General Assembly and issued its advisory opinion on the legality of the use and threat of nuclear weapons. The Court declared that the use or threat of use of nuclear weapons is generally contrary to the rules of international law and characterized such conduct as unlawful. This opinion of the Court was a response to the request of the United Nations General Assembly for guidance on one of the most challenging issues of international law in the nuclear age. The International Court of Justice adopted a broad approach and, for the first time, declared that states are under an obligation to ensure that activities within their jurisdiction and control respect the environment of other states and areas beyond national control. According to the Court, states must take environmental considerations into account when lawfully and necessarily using military weapons. Although existing international law on environmental protection does not specifically prohibit the use of nuclear weapons, the importance of environmental factors must be considered within the framework of the application of legal principles and rules in armed conflicts. In this case, the International Court of Justice did not examine the legal nature of international environmental regulations or their relationship with customary law. The Court merely emphasized that these regulations are binding on states that have accepted them. The Court also acknowledged that the right of self-defense, whether under customary law or Article 51 of the United Nations Charter, is applicable, and that the conditions of proportionality and necessity must be observed with respect to all types of weapons. The principle of proportionality does not, in itself, exclude the use of nuclear weapons under all circumstances. The International

Court of Justice noted that there is no treaty or customary rule authorizing the use of nuclear weapons, and likewise no convention specifically prohibiting the use of this type of weapon. Although no treaty expressly prohibits the use of nuclear weapons, numerous global and regional treaties limit various aspects of nuclear weapons, including their acquisition, manufacture, possession, development, testing, and use. Given the current state of international law and the available evidence, the Court concluded that it could not reach a definitive ruling on the legality or illegality of the use of nuclear weapons by a state in circumstances in which it is exercising self-defense and its survival is at stake (1).

The Threat and Use of Nuclear Weapons from the Perspective of the International Court of Justice

Following the requests submitted by the World Health Organization and the United Nations General Assembly to the International Court of Justice for an advisory opinion on the legality of the use and threat of nuclear weapons under international law, the Court finally issued its advisory opinion on July 8, 1996. In response to the request of the General Assembly, the Court held that the threat or use of nuclear weapons is generally contrary to the rules of international law. The majority of the Court also adopted a broad approach and, for the first time, recognized the general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other states or areas beyond national control. Accordingly, the Court stated that states must take environmental considerations into account when they lawfully and necessarily use military weapons, and concluded that although existing international law concerning environmental protection does not specifically prohibit the use of nuclear weapons, the importance of environmental factors must be taken into consideration within the framework of the application of legal principles and rules in armed conflicts. However, the Court did not clarify whether environmental regulations had crystallized into customary law, and only noted that these regulations bind states that have ratified them. With respect to the application of the rules of self-defense, the Court found that the right of self-defense reflected in customary law and Article 51 of the United Nations Charter, together with the requirements of proportionality and necessity, applies to all weapons. The principle of proportionality does not, in itself, exclude the use of nuclear weapons under any circumstances. Nevertheless, the Court noted that there is no authorization in treaties or customary law permitting the use of nuclear weapons, and that there is also no convention prohibiting the use of nuclear weapons. In any event, none of the treaties expressly prohibits the use of specific weapons of mass destruction referring to nuclear weapons. However, a number of global and regional treaties have restricted the acquisition, manufacture, possession, development, testing, or use of nuclear weapons. Ultimately, the Court concluded that, in the current state of international law and in light of the factual elements available, it could not reach a definitive conclusion regarding the legality or illegality of the use of nuclear weapons by a state in an extreme circumstance of self-defense in which its very survival is at stake (2).

The Threat and Nuclear Testing in International Law

Theorists in the fields of politics and security define deterrence as a policy aimed at persuading a rival or adversary of one's superiority and at significantly increasing the costs of aggression in comparison with the benefits derived from it. Accordingly, nuclear deterrence means the use of military threat to induce the rival to exercise restraint and abandon ambitious military objectives. According to deterrence theory, if the values threatened in an atomic war exceed the benefits to be gained, actors will refrain from actions leading to atomic war, and the increasing costs of atomic war will result in stronger deterrence. For this reason, proponents of this view believe

that strengthening atomic arsenals is a rational decision. In light of this characteristic, not only has no effective step been taken toward nuclear disarmament, but this doctrine itself has become the most important factor in the preservation and development of this terrifying weapon. Today, the United States, Russia, the United Kingdom, France, China, India, Pakistan, and North Korea openly possess nuclear weapons, while the Zionist regime possesses them covertly. From the perspective of international law, nuclear weapons fall within the category of weapons of mass destruction. On January 16, 1945, the United States tested the first atomic, or nuclear, bomb, named "Trinity," and it remains the only country to have used this dreadful weapon. In the final days of the Second World War, on August 6, 1945, Hiroshima, and three days later Nagasaki, were targeted in order to compel the Empire of Japan to cease hostilities, resulting in the deaths of nearly two hundred thousand ordinary civilians in the two cities. Thereafter, because of the strategic role of nuclear weapons in establishing superiority in international relations on the one hand, and their deterrent role on the other, the period known as the Cold War began. Dwight Eisenhower, the thirty-fourth President of the United States, delivered a speech before the United Nations General Assembly on December 8, 1953, in which he introduced the slogan "Atoms for Peace," although many regarded this slogan merely as an attempt to soften the international atmosphere toward that country's atomic policies. Nevertheless, the conditions of armed peace and the Cold War not only failed to constitute a serious obstacle to atomic disarmament, but the intense rivalry between the Western and Eastern blocs increased the number of atomic weapons day by day (3).

Legal Dimensions of the Threat of Use of Nuclear Weapons in a Situation of Self-Defense

After the first use of nuclear weapons in the final days of the Second World War by the United States, this terrifying and highly destructive weapon became one of the major and central concerns of the world; indeed, the fear and anxiety created by it alone can have destructive effects on the comfort and tranquility of societies comparable to those of an actual war. In international law, certain weapons are prohibited in light of general rules. For example, a number of international instruments expressly state that the use of weapons and equipment that by their nature cause "superfluous injury or unnecessary suffering" is prohibited. At times, the use of certain weapons is also prohibited by a specific rule. Moreover, given that nuclear weapons are classified under international law as weapons of mass destruction and are far more dangerous and terrifying than biological and chemical weapons, which are also considered weapons of mass destruction, it must be said that despite the harmful effects and unbearable suffering caused by biological and chemical weapons, public fear and terror concerning nuclear weapons are incomparable with those concerning other weapons. Considering that nuclear powers, within the framework of deterrence policy, threaten other states that if they intend to launch an attack against them, they will respond with weapons capable of totally or effectively destroying the infrastructure essential to that state's life, and given that the use of these weapons is contrary to humanitarian law, the threat of their use, which forms the basis of nuclear deterrence, is also contrary to international humanitarian law (4).

The Advisory Opinion of the International Court of Justice on the Threat of Use of Nuclear Weapons

On July 8, 1996, the International Court of Justice issued its advisory opinion on the legality or illegality of the threat or resort to nuclear weapons. The initiative to request an advisory opinion from the Court originated with certain non-governmental organizations, peace activists, and non-nuclear and non-aligned states, which pursued the matter before the Court through the World Health Assembly and the United Nations General Assembly (5). In

1993, the World Health Assembly asked the International Court of Justice to express its view on the catastrophic health and environmental effects of nuclear weapons. The question raised was whether the use of such weapons by a state in military conflicts would constitute a breach of that state's international obligations, including the Constitution of the World Health Organization (5). A year and a half later, in December 1994, the United Nations asked the International Court of Justice to provide its advisory opinion on an urgent and vital issue: whether the use of nuclear weapons or the threat of their use is compatible with international law under any circumstances (6).

Regarding the acceptance or rejection of the requests submitted, two different lines of argument existed, and states also held sharply opposed views on the matter. States supporting the legality of the use of nuclear weapons challenged the Court's jurisdiction to consider each of these requests. Their argument was that the World Health Organization lacked competence to submit such a request. They also believed that the question raised by the General Assembly was highly vague and abstract and might disrupt nuclear disarmament negotiations. States united in opposition to the legality of nuclear weapons insisted that the Court should answer both questions. They argued that the issue of nuclear weapons had been on the agenda of the World Health Organization since 1983 and that the organization had been actively examining it. They also emphasized that both requests raised legal questions connected with Article 96 of the Charter and fell within the competence of the International Court of Justice (6).

By a majority, the Court rejected the objections concerning lack of jurisdiction and inadmissibility of the General Assembly's request. At the same time, while rejecting proposals that it should decline to answer the General Assembly's request, the Court held that it could not answer the question submitted by the World Health Organization. This decision was adopted by a majority because the subject matter of the question did not fall within the scope of the activities of the World Health Organization under Article 96, paragraph 2, of the Charter (6).

The Court's jurisdiction is highly significant in contentious cases, but in advisory proceedings this matter has largely been overlooked. It is noteworthy that in the history of the International Court of Justice, this was the first time that a request for an advisory opinion submitted by the World Health Organization remained unanswered. Similarly, during the period of the Permanent Court of International Justice, there was only one instance of refusal to provide an advisory opinion. In that case, Russia, which was not a member of the League of Nations, refused to participate before the Court, and the Court declined to accept the request on the ground that giving an advisory opinion would amount to adjudicating a dispute between the parties (7).

In the course of considering the question submitted, an unprecedented number of written and oral statements were received from states. These statements presented detailed pleadings and arguments both in support of and against the legality of the use of nuclear weapons. States possessing such weapons, together with their closest allies, advanced arguments that differed from those presented by the majority group on the opposing side (6).

In this case, the Court faced a complex and sensitive challenge that required a difficult decision. This decision was significant and far-reaching not only from a legal and theoretical perspective, but also from political and military perspectives. The Vice-President of the Court described the matter as a profound conflict between state practice and legal principles. For more than half a century, these weapons had formed the foundation of the defense strategy of world powers and had been used as instruments of deterrence. The Court now had to judge and issue an opinion on this highly important and influential matter.

The International Court of Justice, as the principal judicial organ of the United Nations, occupies a special position in the international legal order. Although the Court's advisory opinions are not binding, they possess high legal value

and are of great importance in clarifying and reflecting existing international law. These opinions, like judgments issued in contentious cases, have authority and significance. Undoubtedly, the degree of consensus among the judges of the Court in issuing an opinion directly affects its strength and authority. In the case of the Court's advisory opinion on the legality or illegality of nuclear weapons, the opinion was adopted by the narrowest possible majority, and the judges offered different views and interpretations in their declarations and separate opinions. Therefore, this opinion reflects a broad spectrum of legal views on one of the most challenging issues of contemporary international law.

In the Court's advisory opinion, it was concluded that these weapons had formed the basis of the defense policies of the major world powers for more than half a century and that this deterrence strategy was not legally binding. Although such instruments possess very high legal value and status, they have, in expressing and reflecting existing international law, the same authority and value as judgments issued in contentious cases (7). Undoubtedly, a decision of the Court is stronger and more authoritative when issued by a larger majority. The Court's advisory opinion on the legality of nuclear weapons was reached by the narrowest possible majority, and the judges presented different views and interpretations, reflected in their declarations, separate opinions, and dissenting opinions.

International Law and the Illegality of the Threat of Armed Attack against Nuclear Facilities

Despite its many advantages, the nuclear industry and nuclear technology have always been accompanied by security challenges. States and international circles are rightly concerned about the vulnerability of nuclear installations and centers to military attacks or security threats. These concerns have intensified as a result of Israeli attacks and armed threats in the Middle East, making the international community more sensitive to the security of these facilities. The possibility of an attack on such centers, whether militarily or through security threats, always exists and cannot be ignored. These security challenges have attracted considerable attention and demonstrate the importance of the safety and protection of nuclear facilities against various threats. In 1981, the Israeli regime targeted Iraq's Osirak or Tammuz nuclear facilities in an armed military attack (8), and in 2007 it also targeted Syria's nuclear facilities at Al-Kibar (9). In the relatively short history of nuclear industry and technology, two international military attacks against nuclear facilities and centers have occurred, which is a significant number. Meanwhile, officials of regimes and states continue to threaten attacks against the nuclear facilities of other countries. In recent years, Iran has been one of the countries whose nuclear facilities have been repeatedly threatened with armed attack by Israeli officials. These threats, repeatedly expressed by the Israeli government, indicate the regime's determination to prevent the progress of Iran's nuclear program. For example, reference may be made to the remarks of Benjamin Netanyahu, the Prime Minister of Israel, on March 5, 2012, in which he explicitly stated: "I want to explain why Iran must not be allowed to obtain nuclear capability. The Government of Israel will never allow a regime that has threatened to destroy us to acquire nuclear technology and use it as an instrument to carry out its objectives." These remarks reveal Israel's serious determination to confront Iran's nuclear program, and the international community must remain vigilant regarding such threats (10). At the September 2012 session of the United Nations General Assembly, Netanyahu once again threatened Iran's nuclear facilities with military attack (10).

Incompatibility with the Principle Prohibiting the Resort to Force

International efforts to prohibit war and armed conflicts date back to the period before 1945 and the adoption of the United Nations Charter. During those years, the international community attempted to restrict and prohibit the use of force in relations between states through the adoption of international legal rules. These efforts, undertaken with the aim of establishing global peace and stability, led to the creation of a legal framework for the management of international disputes. The adoption of the United Nations Charter was a turning point in this process and established principles and rules for prohibiting war and promoting peaceful solutions to international disputes (11). For the first time, in the form of a comprehensive international instrument, the United Nations Charter prescribed the prohibition of the resort to force in international relations in order to strengthen the foundations of global peace and security. Before the Charter, the Briand-Kellogg Pact had succeeded in prohibiting war as one of the major forms of the resort to force. However, with the adoption of the United Nations Charter at the San Francisco Conference, any resort to force by one state against another was prohibited, except in three exceptional cases. These exceptions include self-defense under Article 51, collective measures under Article 42, and Article 107, which is now obsolete. The resort to force is a broader concept than war and, in addition to war, includes other conflicts and disputes involving the use of force. Therefore, by prohibiting the resort to force, the United Nations Charter went beyond the Briand-Kellogg Pact and guaranteed global peace and security within a broader framework. This prohibition is one of the fundamental principles of international law and reflects the commitment of the international community to the peaceful settlement of disputes and respect for the sovereignty and territorial integrity of states.

Today, the principle of non-use of force, stated in Article 2, paragraph 4, of the United Nations Charter, is one of the fundamental rules of international law (12). This principle is recognized as the cornerstone of peace and the heart of the United Nations Charter, and jurists consider it a peremptory norm and a rule of customary international law. It reflects the commitment of the international community to the peaceful settlement of disputes and to refraining from the use of force in international relations (13). A military attack by one state against the nuclear facilities of another state, when it is neither an act of self-defense nor based on Article 42 of the Charter, is incompatible with the principle of non-use of force and constitutes a violation of that principle. Jurists agree that an armed attack by a state against the territory of another state is a clear instance of the use of force in international relations (14). The United Nations Security Council, the General Assembly, and the International Atomic Energy Agency condemned Israel's attack on Iraq's nuclear reactor and regarded it as a clear violation of the United Nations Charter. In the case of Israel's armed attack on Iraq's nuclear reactor, all three international bodies expressly stated that an international armed attack against nuclear facilities constitutes a violation of the provisions of the United Nations Charter and of the principle prohibiting the resort to force in international relations (15). The resolutions issued by these three international bodies declared Israel's attack on Iraq's nuclear reactor to be a clear violation of the United Nations Charter, particularly the above-mentioned principle. Despite this international precedent, it is difficult to accept the view of jurists such as D'Amato, who argue that Israel's attack did not constitute a violation of Article 2, paragraph 4, of the Charter because, in their view, the attack was not carried out with the purpose of changing Iraq's borders or endangering its political independence. This view does not recognize Israel's attack as an act of aggression against Iraq's territorial integrity and political independence.

The question that arises in continuation of this discussion is whether an attack on a country's facilities can create a right of self-defense for that country against the aggressor. Likewise, can such an attack be regarded as

aggression or a threat to international peace and security, thereby justifying collective measures under Chapter VII of the United Nations Charter? The answer to the first question, according to Article 51 of the United Nations Charter, is affirmative. This article provides that if a state is the target of an armed attack by another state, it has the right of self-defense. The term “armed attack” in this article is absolute and includes any type of attack, including an attack on the nuclear facilities of a state. The United Nations General Assembly resolution on the definition of aggression also recognizes a military armed attack against nuclear facilities located within the territory of a state as a clear example of an armed attack within the meaning of Article 51 of the Charter (14).

In the 1981 Israeli attack on Iraq’s nuclear facilities, despite political considerations, the Security Council, the United Nations General Assembly, and the International Atomic Energy Agency implicitly recognized Iraq’s right to defend itself against the aggression of the Israeli regime. They declared that the attack violated the United Nations Charter and constituted an aggressive act that entitled Iraq to compensation (15). In international judicial practice, there is no express prohibition against the right of self-defense of a state attacked in such circumstances. Although the International Court of Justice, in the case of *Nicaragua v. United States*, attempted in its interpretation of Article 51 and the concept of armed attack to limit the cases in which states may invoke the right of self-defense to large-scale armed attacks, the Court stated that “not every use of force necessarily constitutes an armed attack within the meaning of Article 51.” This implicitly confirms the existence of such a right, although the Court sought to restrict its scope (16). A distinction must therefore be drawn between grave and minor uses of force, and only a widespread and grave use of force may be characterized as an armed attack (17). Within the meaning of Article 51 and the creation of the right of self-defense for the attacked state, these statements cannot expressly deny the right of states to defend themselves in cases where their nuclear facilities are targeted by armed attack. In this regard, the Court did not explain the rights available to the targeted state where the use of force does not qualify as an armed attack. In such circumstances, it has been argued that the state may resort to a lower level of military force as a means of response (18).

Any armed attack by one state against the nuclear facilities of another state constitutes aggression and a threat to world peace. Such an act may provide a legal basis for collective action by the United Nations against the aggressor state under the prescribed conditions. With respect to the provisions of Chapter VII of the United Nations Charter, it should be noted that the Charter does not establish a fixed and specific standard in this regard, and the determination of a threat to the peace, breach of the peace, or act of aggression is left to the Security Council under Article 39. Of course, the Council is required to respect international law and justice in its decision-making (19). In the case of Israel’s attack on Iraq’s nuclear facilities, although the Security Council regarded Israel’s attack on Iraq as a threat to international peace and security, it did not take any measures against Israel under Chapter VII of the Charter. In that case, the Security Council did not consider the scope and consequences of the Israeli attack to be of such a degree as to require a collective response under Chapter VII of the Charter. In most cases, the Security Council’s assessment and action under Chapter VII have not been based on legal considerations, but rather on political considerations and the discretion of its members or some of its permanent members. Were it otherwise, the Security Council should not have treated Libya’s refusal to surrender two suspects in the Lockerbie bombing, the impact of which on international peace and security was no greater than that of the Israeli regime’s attack on Iraq, as a threat to international peace and security and imposed air sanctions against that state (19).

The Security Council’s reliance on non-legal factors and decisions based on political considerations creates the possibility that in the future, in the event of an attack on similar nuclear facilities, the Council may take measures

under Chapter VII. To restrict these discretionary and non-legal decisions of the Security Council in determining aggression, the international community adopted a resolution in 1974 entitled the “Definition of Aggression” through the United Nations General Assembly (19).

This resolution, relied upon by the International Court of Justice in the Nicaragua case, established criteria for identifying aggression. The resolution considers an attack by the armed forces of one state against the land, sea, or airspace of another state, even without a formal declaration of war by the attacking state, to constitute aggression. Although this resolution was supported by most members of the international community, armed and military attacks by a state against the most sensitive nuclear facilities and activities of another country have not always been treated as aggression or a breach of the peace, and no international punishment has been imposed for such violations.

Incompatibility of the Threat of Attack with International Law

The threat of armed attack against nuclear facilities is one of the clearest examples of the threat of force in international relations. The prohibition of the threat of resort to force is one of the achievements of the United Nations Charter, and no such prohibition had previously been provided for in international law (14). During the drafting of the United Nations Charter, concerns existed regarding the maintenance of international peace and security. In this context, special attention was given to the prohibition of the use of force and occupation. The drafters correctly understood that the threat of force could be as destructive and destabilizing as the actual use of force. This insight led to the adoption of Article 2, paragraph 4, of the Charter, in which the threat of force was formally prohibited. This decision reflected the drafters’ deep commitment to creating a stable framework for global security. Today, the prohibition of the threat of force, like the prohibition of the use of force, is regarded as one of the general principles of international law by a number of authoritative jurists (20).

In international law, the prohibition of the use of force is a fundamental principle, although exceptions exist under the United Nations Charter and customary international law. Within this framework, the threat of force is permissible only in three cases: self-defense, collective security measures, and countermeasures. The International Court of Justice also confirmed these limited exceptions in the Nuclear Weapons case. Any threat of force outside this framework is unlawful and contrary to international law: “Not all threats of force necessarily amount in themselves to a violation of Article 2, paragraph 4. If the use of force itself would be unlawful, the threat to use such force will likewise be unlawful” (12).

Any threat of armed attack against nuclear facilities, like an actual attack, is unlawful and prohibited under international law. This matter has been confirmed in the practice of the Security Council, the United Nations General Assembly, and the International Atomic Energy Agency. This confirmation occurred after Israel’s attack on Iraq’s Osirak nuclear facilities in 1981. On June 19, 1981, the Security Council adopted Resolution 487, condemned Israel’s attack, and described it as a violation of the United Nations Charter. The Council also called upon Israel to refrain from any similar threat or attack in the future. The United Nations General Assembly and the International Atomic Energy Agency also emphasized the unlawfulness of such acts and made the same request of Israel. This demonstrates a global consensus regarding the unlawfulness of the threat or armed attack against nuclear facilities (15). In view of the request by these three international bodies to refrain from continuing threats against nuclear facilities, the threat of armed attack against such facilities cannot simply be regarded as a lawful and justified act. Despite such a request from the international community, the threat of force against facilities operating under the supervision of the International Atomic Energy Agency is unjustifiable.

Absence of a Legal Basis for Invoking Preemptive Self-Defense

In a statement dated June 8, 1981, Israel explained its reasons for attacking the Osirak facilities as follows: "For a long time, we had been observing the construction of the Osirak reactor with concern. Reliable sources informed us that the real purpose of this reactor, contrary to Iraq's claims, was the production of nuclear bombs. The ruler of Iraq had explicitly stated that the target of these bombs was Israel. We were informed that the reactor would be completed in early July or September 1981. If the reactor had become operational, its destruction would have released a wide wave of radioactivity over Baghdad. Therefore, we considered ourselves obliged to act in order to neutralize this threat." This statement shows Israel's reliance on the doctrine of preemptive self-defense. Thus, Israel claimed that it had been compelled to defend itself against the construction of an atomic bomb in Iraq (8).

Does the doctrine on which these attacks were based have legal justification in international law? Existing international law and international practice do not confirm the legality of such a doctrine. Attacking the nuclear facilities of states under the pretext of preemptive self-defense is an unlawful act. Article 51 of the United Nations Charter, as one of the exceptions to the principle of non-use of force, sets conditions for the exercise of the right of self-defense in order to minimize the use of force in the international community. Under this article, for the right of self-defense to arise, an armed attack must have occurred against the state invoking it. In light of such a rule, whose purpose is to reduce recourse to force in the international community as much as possible, justifying attacks on the nuclear facilities of states on the basis of preemptive self-defense becomes extremely difficult. The condemnation of Israel's attack on Iraq's nuclear facilities by the United Nations and the International Atomic Energy Agency also demonstrates the non-acceptance of preemptive self-defense as a basis for such attacks. The resolutions issued by these organizations expressly regarded Israel's attack as a violation of the United Nations Charter and condemned it. If this doctrine had been justifiable, these organizations should not, in principle, have condemned such an attack. The resolutions issued by general and specialized international organizations demonstrate the will of the global community to reject the doctrine of preemptive defense as a justification for attacking nuclear facilities. This doctrine, advanced in 2002 by George W. Bush, then President of the United States, cannot, in light of these international resolutions, be regarded as a legal basis for military action. These resolutions reflect a global consensus in favor of maintaining international peace and security and prohibiting the use of force as a means of resolving disputes (14). Under this doctrine, even if no attack has been carried out by the enemy, a state may unilaterally use force as a defensive measure (16). This was the doctrine invoked by the United States to justify its attack on Iraq in 2003. On the basis of this doctrine, the United States claimed that Iraq was attempting to acquire weapons of mass destruction and that action had to be taken to prevent a humanitarian disaster. The United States maintained that the attack would prevent Iraq from obtaining such weapons and from using them to harm others.

Conclusion

Regarding the prohibition of the threat or use of nuclear weapons, it must be stated that this issue is not governed by specific rules of international law, nor by the most important instruments that explicitly address this field, including resolutions and assurances. Nuclear-weapon states are not subject to binding force in this respect. The prohibition of the threat or use of nuclear weapons is inferred mainly from indirect and general rules of international law, particularly the rules governing armed conflicts and humanitarian law. International efforts to create a treaty prohibiting the threat or use of nuclear weapons have not yet reached a successful conclusion.

The nuclear threat by the United States against Iran constitutes a clear violation of customary and treaty-based international law. Although the International Court of Justice, in its 1996 advisory opinion, implicitly permitted the use of nuclear weapons in circumstances of self-defense, that opinion lacks an enforcement mechanism and is non-binding. The principles governing the United Nations Charter and international humanitarian law prohibit the use of nuclear weapons. Considering the destructive and catastrophic effects of these weapons, the international community must adopt a firm position, and one of the most important measures in this regard is to accelerate the process of nuclear disarmament in the world. The effort to establish a global treaty is a second solution for reducing the deadly effects of nuclear weapons in the world. Such a treaty, which could be implemented by the International Atomic Energy Agency through a reconsideration of the scope of its powers, would include the complete prohibition of all activities related to nuclear weapons. These activities include the manufacture, development, deployment, stockpiling, testing, use, and even threat of use of these destructive weapons. The aim of such a comprehensive international convention would be to establish a global taboo against nuclear weapons and to ensure the illegality of these activities under all circumstances.

The elimination of existing nuclear weapons has achieved the least success because the principal actors in this field are nuclear-weapon states, and despite the clarity of the United Nations Charter regarding disarmament and the establishment of special committees on this matter, efforts that go beyond ethical recommendations and political praise have not produced practical results. Considering the number of resolutions issued in recent years by the United Nations General Assembly, it appears that after the advisory opinion of the International Court of Justice, renewed vitality emerged among states and within the United Nations General Assembly. It is necessary that nuclear weapons in various fields be regulated as soon as possible within the framework of international legal treaties.

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Authors' Contributions

All authors equally contributed to this study.

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The authors of this article declared no conflict of interest.

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