THE NUCLEAR QUESTION:

UNDERSTANDING THE ICJ'S NUCLEAR WEAPONS RULING AND CHARTING A PATH TO GLOBAL DISARMAMENT

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I. INTRODUCTION

The International Court of Justice (ICJ) applied international law to nuclear weapons in its 1996 advisory opinion on the "Legality of the Threat or Use of Nuclear Weapons."[1] However, the ICJ declined to explicitly hold that the threat or use of nuclear weapons was contrary to international law.[2] In a splintered 7-7 opinion on the main question presented, the ICJ held that while the "threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law . . . the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a State would be at stake."[3] How could the threat or use of a weapon be contrary to international humanitarian law, yet not be illegal in every circumstance? This article argues that the holding reflects an attempt by the ICJ to reconcile its contradictory aims of upholding international law while acknowledging the importance of nuclear deterrence and the eventual need to achieve nuclear disarmament.

II. WHAT THE ICJ DID (AND DID NOT) SAY

The question before the Court was as follows: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?"[4] This question resulted in the Court taking seven separate votes on subsidiary issues, with the sixth vote – regarding the

1. Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226 (July 8).

2. *Id.* at 266, ¶ 105.

3. *Id.*

4. *Id.* at 228, ¶ 1.

application of international humanitarian law (IHL) to nuclear weapons – being the most prominent.[5]

In the first vote, by a vote of 13 to 1, the Court accepted the request for an advisory opinion from the U.N. General Assembly pursuant to Article 96, paragraph 1 of the U.N. Charter. This was a noteworthy step, given that the Court had denied the World Health Organization's request for an advisory opinion on essentially the same question three years earlier.[6]

In the second and third votes, the opinion applied customary international law (CIL) and conventional international law to the threat or use of nuclear weapons.[7] While unanimously holding that there is no "specific *authorization* of the threat or use of nuclear weapons," it still held by a vote of 11 to 3 that there was yet no "comprehensive and universal *prohibition* of the threat or use of nuclear weapons."[8] Regarding conventional law, the Court rejected the argument that there is a general prohibition of nuclear weapon threat or use based on the existence of various treaties prohibiting the threat, use, or manufacture of nuclear weapons.[9] Instead, the Court noted that the state practice "has been for weapons of mass destruction to be declared illegal by specific instruments."[10] The Court, however, did note that these treaties were "foreshadowing" the goal of nuclear disarmament.[11] Regarding CIL, the Court was unable to establish an *opinio juris* against the threat or use of nuclear weapons but acknowledged nuclear non-use.[12] Hesitant to "pronounce here upon… the 'policy of deterrence,'" the Court stated that the non-use of nuclear weapons since 1945 may not reflect a legal obligation among states to follow custom, but rather the

5. *Id.* at 266, ¶ 105.

6. *Id.* at 235, ¶ 14; 266, ¶ 105.

7. *Id.* at 266, ¶ 105.

8. *Id.* at 266, ¶ 105 (emphasis added).

9. *Id.* at 253, ¶ 62.

10. *Id.* at 248, ¶ 57.

11. *Id.* at 253, ¶ 62; 249, ¶ 58 (providing a list of such treaties, which notably includes the Treaty of Tlatelolco for the Prohibition of Nuclear Weapons in Latin America, and its Additional Protocols; Treaty on the Non-Proliferation of Nuclear Weapons; Treaty of Rarotonga on the Nuclear-Weapon-Free Zone of the South Pacific, and its Protocols; Antarctic Treaty; Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies; Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof; and Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and under Water).

12. *Id.* at 254, ¶ 67.

effectiveness of deterrence policy – itself predicated on the use of nuclear weapons in self-defense – preventing their use.[13]

In the fourth and fifth votes, the Court had a unanimous holding: since law governing the use of force from the U.N. Charter, IHL, and treaties were applicable to nuclear weapons, then any threat or use of nuclear weapons that violated any of these laws would be prohibited.[14]

Turning next to the seventh vote, the Court also unanimously held that states have "an obligation" to pursue and achieve "nuclear disarmament" through negotiations and international control.[15] This, according to the Court, remained the best means to ease the "suffer[ing]" of the international order "from the continuing difference of views with regard to the legal status of weapons as deadly as nuclear weapons."[16]

Regarding the all-important sixth vote, the Court voted 7-7 with ICJ President Bedjaoui casting the tiebreaking vote, holding that the legality of the threat or use of nuclear weapons could not be determined in an extreme circumstance of self-defense, but such threat or use would generally be against IHL.[17] As an initial matter, the Court reasoned that it did not have "sufficient elements to enable it to conclude with certainty" that the threat or use of nuclear weapons would violate IHL in *every* circumstance, owing in part to the debate of whether there are circumstances in which nuclear weapons could be used such that the use does not escalate to the level of indiscriminate nuclear war – e.g., employment of low-yield, tactical nuclear weapons.[18] Crucially, the Court emphasized that it had to consider each state's "fundamental right" to survival and the policy of nuclear deterrence to which many states had adhered.[19] As a result, no conclusive answer in the existing state of international law was possible.

Among the many notable dissenting arguments, Judge Weeramantry argued that the threat or use of nuclear weapons would violate the IHL principles of unnecessary suffering, proportionality, distinction, and (implicitly) necessity.[20] Judge Higgins argued that the Court's

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13. *Id.* at 254, ¶ 66–67.
14. *Id.* at 266, ¶ 105.
15. *Id.* at 267, ¶ 105.
16. *Id.* at 263, ¶ 98.
17. *Id.* at 266, ¶ 105.
18. *Id.* at 262, ¶ 94–95.
19. *Id.* at 263, ¶ 96.
20. *See id.* at 513–17, 546 (Weeramantry, J., dissenting) (implying that the use of nuclear weapons would be inconsistent with the principle of necessity but not stating so explicitly: "To the extent that [nuclear weapon use] seeks to override the principles of the laws of war, it has no place in modern international law").

holding amounted to a "*non liquet*" – a holding that the law simply does not apply to the issue – which necessarily "leaves open the possibility that a use of nuclear weapons contrary to humanitarian law might nonetheless be lawful."[21] Seemingly in response to this line of reasoning, President Bedjaoui went to great lengths to emphasize that the *Lotus* principle, which effectively states that a state can act however it wants as long as it is not in violation of an express prohibition in international law, is *not* implicated by the Court's holding.[22] Instead, "[w]hereas the Permanent Court [in *Lotus*] gave the green light of authorization . . . the present Court does not feel able to give a signal *either way*."[23] Recognizing the dissatisfaction many states would have with the holding, President Bedjaoui stressed that the Court had to consider its responsibilities as a judicial body to state what the law is and not what it should be, leaving the process of disarmament to international negotiations.[24]

III. EXPLAINING THE RULING

A. Deterrence Perspective

Perhaps the strongest force behind the Court's holding was its reticence to opine upon nuclear deterrence. In sum, deterrence entails inducing an adversary's restraint by threatening to impose unacceptably high costs if the adversary acts in a certain way. Nuclear deterrence reflects the view of "assured destruction": war is best prevented by threats to destroy a large part of an opponent's population and industry.[25] When two opposing countries both possess nuclear weapons, this doctrine is known as "mutual assured destruction" (MAD): the understanding that nuclear war is in neither country's interest given the destructive nature of the weapon.[26] With two debatable and limited exceptions, nuclear deterrence has arguably prevented conventional head-to-head war between nuclear-armed states, let alone general

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21. *Id.* at 590, ¶ 29 (Higgins, J., dissenting).

22. S.S. Lotus (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 18 (Sept. 7); Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. at 270, ¶ 12; 271, ¶ 15 (declaration by Bedjaoui, P.).

23. Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. at 271, ¶ 14 (declaration by Bedjaoui, P.) (emphasis added).

24. *Id.* at 272, ¶ 16–18.

25. SCOTT D. SAGAN, MOVING TARGETS: NUCLEAR STRATEGY AND NATIONAL SECURITY 11 (1989). For an explanation on the links between deterrence and realist theory, see Robert Jervis, *Deterrence Theory Revisited*, 31 WORLD POL. 289 (1979).

26. SAGAN, *supra* note 25, at 11.

nuclear war.[27] And, in a conventional conflict that may take place, the stability-instability paradox that exists as an effect of nuclear weapon possession would likely cabin the conflict to lower levels.[28] Even in this circumstance, deterrence "take[s] the risk of ruinous nuclear escalation off the table."[29]

Nuclear deterrence is kept stable by the mutual understanding that the threat of nuclear weapons is *credible*.[30] In fact, the Court acknowledged this argument in its opinion.[31] The mutual understanding of credibility by rival states is necessary, because in its absence a state may try to call the other's bluff on nuclear weapons use and initiate general war. This would either lead to nuclear blackmail (and concessions), or (more likely) spark the climbing of the escalation ladder to eventual nuclear conflict. During the Cold War, the United States first asserted credibility through a policy of "massive retaliation": threatening to unleash its entire nuclear arsenal at the Soviet Union in response to any attack on NATO forces in Europe.[32] However, this approach raised credibility issues. First, its inflexible nature required the launch of *all* nuclear missiles in response to *any* attack, however minor, on NATO forces – a strategy so drastic that European allies found it dubious.[33] Second, the United States military determined that this strategy would likely not prevent the Soviets from still being able

27. The two exceptions are the Sino-Soviet Border Conflict of 1969 and the 1999 Kargil War between India and Pakistan. *See* Hyun-Binn Cho, *Nuclear Coercion, Crisis Bargaining, and the Sino-Soviet Border Conflict of 1969*, 30 SEC. STUDS. 552 (2021) (discussing the crisis as an example of where nuclear compellence failed). *See also* Abhijnan Rej, *S(c)helling in Kashmir: Bargaining under the Nuclear Shadow*, 42 WASH. Q. 163 (2019) (discussing the Kargil War as an example of nuclear deterrence and the stability-instability paradox); *But see* Arzan Tarapore, *Conditional Restraint: Why the India-Pakistan Kargil War is Not a Case of Nuclear Deterrence*, 79 BULL. ATOMIC SCIENTISTS 388 (2023) (pushing back on the notion that the Kargil War is an example of brinkmanship under nuclear deterrence, as its limited nature can be explained by prevailing strategic conditions).

28. David A. Cooper, *Has the Forgotten "Stability-Instability Paradox" Belatedly Reared Its Ugly Head in Ukraine?*, 67 ORBIS 103, 106 (2023) (explaining that the stability-instability paradox arises when nuclear deterrence is *so* strong and reliable ("stability") that it actually encourages military adventurism at the non-nuclear, conventional level ("instability"), with the mutual knowledge that the conflict will not escalate to the nuclear level).

29. *Id.*

30. *Id.* at 104.

31. Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. at 246, ¶ 48 (stating that deterrence "necessitates that the intention to use nuclear weapons be credible").

32. SAGAN, *supra* note 25, at 22–23.

33. *Id.* at 37.

to return fire with a nuclear attack of their own.[34] Given these issues, the Kennedy Administration pivoted to a "flexible response" policy, in which the United States would respond with nuclear forces only in the event of the largest possible conventional Soviet attack.[35]

However, the logic of MAD insists that it is irrational for any state to carry out a nuclear threat if nuclear retaliation is expected.[36] To fill this credibility gap, states take several *additional* steps to show their resolve. These steps, which are commonly invoked in a variety of contexts in international relations, are costly signaling, staking national reputation on the resolve to fight, and strategies of commitment.[37] States can send costly signals that "tie [their] hands" to an attack by creating audience costs (i.e., blowback from domestic political audiences) "that they will suffer *ex post* if they do not follow through on their threat or commitment."[38] These signals usually appear as statements made by state leaders of that state's future intent to fight.[39] States can also send costly "sunk-cost signals" to challengers, such as "mobilizing troops that are financially costly *ex ante*."[40] States additionally risk reputational costs on the domestic *and* foreign stage to show their resolve to fight, such as when Ronald Reagan stated that if the United States "lost in Central America, 'our credibility would collapse and our alliances would crumble.'"[41] Lastly, strategies of commitment in this context refers to military alliances such as the NATO alliance, where the United States (and to a lesser extent, the United Kingdom and France) agree in principle to cover non-nuclear NATO allies under a nuclear umbrella.[42]

No theory, however, fills the credibility gap, preserves MAD, and is as tailored to the unique context of nuclear weapons strategy like the "theory of nuclear brinkmanship," also known as the "threat that leaves something to chance."[43] Brinkmanship posits that, while

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34. *Id.* at 25–26.

35. *Id.* at 37–39.

36. Reid B. C. Pauly & Rose McDermott, *The Psychology of Nuclear Brinkmanship*, 47 INT'L SEC. 9, 9 (2023).

37. *Id.* at 14.

38. James D. Fearon, *Signaling Foreign Policy Interests: Tying Hands versus Sinking Costs*, 41 J. CONFLICT RESOL. 68, 68 (1997).

39. *Id.* at 68, 70.

40. *Id.*

41. Ryan Brutger & Joshua D. Kertzer, *A Dispositional Theory of Reputation Costs*, 72 INT'L ORG. 693, 693, 695–98 (2018).

42. SAGAN, *supra* note 25, at 37–39.

43. Pauly & McDermott, *supra* note 36, at 9–10 (citing THOMAS C. SCHELLING, THE STRATEGY OF CONFLICT (1960); THOMAS C. SCHELLING, ARMS AND INFLUENCE (1966)).

threatening to use nuclear weapons is irrational and thus not credible, states can credibly take *steps toward* using nuclear weapons to test the resolve of their opponent, win a game of chicken, and exact concessions through nuclear coercion.[44] The risk is not that a state would rationally use nuclear weapons but rather that as each state creeps closer and closer to the brink, chance elements – accidents and miscommunications – may emerge and precipitate nuclear war.[45] The state that can stomach this risk the longest wins. It has been the enduring mutual understanding of this doctrine that both explains "enduring great power competition and the absence of large-scale war among nuclear powers."[46]

To understand the ICJ's holding in deterrence terms, it helps to think about what the strategic picture would look like if it were to have declared any threat or use of nuclear weapons as contrary to international law. Such a ruling would have hamstrung nuclear-armed states that wish to abide by international law from effectuating nuclear deterrence. When facing brinkmanship with an aggressive, threatening, nuclear-armed adversary, an international law-respecting state would have to choose between making credible threats of nuclear weapon use on one hand and abiding by international law on the other. Nuclear-armed states that habitually disregard IHL (e.g., Russia)[47] would take advantage of the difficult position the ICJ would have put international law-respecting states in by pursuing nuclear coercion on an even larger scale. This would likely take the form of frequent "salami tactics": the "repeated use of limited *faits accomplis* to gain influence within some competitive arena at an adversary's expense without provoking major retaliation."[48] The adversarial state would accomplish its aims "slice by slice, securing cumulative gains at minimal costs," in repeated episodes of nuclear coercion.[49]

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44. *Id.* at 15.

45. *Id.* at 10.

46. *Id.* (citing ROBERT JERVIS, THE MEANING OF THE NUCLEAR REVOLUTION: STATECRAFT AND THE PROSPECT OF ARMAGEDDON (1989)).

47. *See* Denys Azarov et al., *Understanding Russia's Actions in Ukraine as the Crime of Genocide*, 21 J. INT'L CRIM. JUST. 233 (2023) (discussing Russian war crimes in Ukraine, such as mass killings and forced transfer of children to Russia, as evidence of potential genocidal intent to destroy Ukraine); *see also* Anastasiya Donets & Alexandre Prezanti, *A Hostage City: Hunger, Disease, and Inhumanity in Russian-Occupied Mariupol*, 58 TEX. INT'L L. J. 99, 115 (2023) (discussing mass violations of IHL by Russia in Mariupol relating to withholding food and medical supplies and bombing aid distribution points).

48. Richard W. Maass, *Salami Tactics:* Faits Accomplis *and International Expansion in the Shadow of Major War*, 5 TEX. NAT'L SEC. REV. 34, 35 (2022).

49. *Id.* (referencing "Russia's expansion into Georgia and Ukraine during the 2000s and 2010s" as examples).

The avoidance of this precise, undesirable outcome motivated the ICJ to issue its limited holding. By referencing the policy of deterrence in its reasoning, the ICJ acknowledged, at least implicitly, the perverse incentive structure it would create under an alternative holding. In this respect, the holding is "as much or more about *threat* than it is about *use*," which reflects the "*stark realities* of threat and counterthreat at least implicitly faced by states when other potentially adverse states possess nuclear weapons."[50] Recognizing this intractability, the ICJ understood that the comprehensive prohibition and elimination of nuclear weapons is "the only real solution" in this threat environment.[51]

B. The ICJ's Position and the Concept of Law

The ICJ was cognizant that, rather than willingly bind themselves to a more difficult strategic position in brinkmanship with a nuclear-armed opponent based on adherence to international law, nuclear-armed states would simply *not follow* its holding. The Court acknowledged as much when it said the effect of its opinion would be merely "a matter of appreciation."[52] President Bedjaoui separately wrote that the Court was put in a difficult position in weighing state sovereignty against IHL principles.[53] He stated that while the case presented a "head-on collision of fundamental principles, neither one of which can be reduced to the other," the ICJ would also be "quite foolhardy . . . to set the survival of a State above all other considerations."[54]

As a result, the ICJ took its own *realpolitik* approach by sidestepping the decision on whether IHL or state sovereignty ultimately prevails and by not issuing a holding that had no chance of being followed. First, the ICJ effectively punted this issue to geopolitical negotiations as President Bedjaoui explained, thus avoiding the difficult legal balancing exercise.[55] Second, even under broad conceptions of international law enforcement, such as the doctrine of "externalized outcasting," a holding of nuclear weapon illegality would not have had real

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50. John Burroughs, *Looking Back: The 1996 Advisory Opinion of the International Court of Justice*, ARMS CONTROL ASS'N (July/August 2016), https://www.armscontrol.org/act/2016-07/features/looking-back-1996-advisory-opinion-international-court-justice (emphasis added).

51. *Id.*

52. Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. at 237, ¶ 16.

53. *Id.* at 273, ¶ 22–23 (declaration by Bedjaoui, P.).

54. *Id.* at 273, ¶ 22.

55. *Id.* at 273-74, ¶ 22–23.

teeth.[56] The nuclear-armed states and the allies that fall under their nuclear umbrellas wield incredible influence in international institutions. In this respect, any alternative holding would have hurt the continuing legitimacy of an otherwise successful Court through complete non-adherence.

Instead, the Court took a strategic approach to protect its reputation while strengthening a norm against the threat or use of nuclear weapons.[57] This norm strengthening can be seen as one step toward building a "normative prohibition against nuclear weapons," known as the "nuclear taboo."[58] While laws are designed to shape behavior, international law is somewhat distinct in that it also changes in response to "behavioral regularities" among states.[59] When viewed through a behavioral economics lens, the ICJ's holding recognized that law can achieve its ends directly through threat of sanction, or indirectly "by changing *attitudes* about the regulated behaviors."[60] This indirect approach is most effective when the law (i.e., an emerging CIL against the threat or use of nuclear weapons) "changes attitudes about the

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56. Oona Hathaway & Scott J. Shapiro, *Outcasting: Enforcement in Domestic and International Law*, 121 YALE L. J. 252, 258 (2011) (defining externalized outcasting as "denying the disobedient the benefits of social cooperation and membership . . . frequently carried out by those outside the [Modern State Conception] regime"); For a critique of a broad theory of "enforcement," see Joshua Kleinfeld, *Enforcement and the Concept of Law*, 121 YALE L. J. 293, 300 (2011) (arguing instead that legal enforcement, properly envisioned, "is the activity by which a legally constituted power is applied to make the law's dictates actual," in an efficacy-based approach).

57. Amb. Juan Manuel Gómez-Robledo Verduzco, *The International Court of Justice: A Bright Light in Dark Times*, JUST SEC. (October 24, 2022), https://www.justsecurity.org/83723/the-international-court-of-justice-a-bright-light-in-dark-times/ (remarking on the high effectiveness of the ICJ, as reflected in its relatively high success rate of rulings being followed relative to other U.N. bodies).

58. Nina Tannenwald, *The Nuclear Taboo: The United States and the Normative Basis of Nuclear Non-Use*, 53 INT'L ORG. 433, 434 (1999) (arguing that the pattern of nuclear non-use since 1945 cannot be explained "without taking into account the development of a normative prohibition against nuclear weapons").

59. HARLAN GRANT COHEN & TIMOTHY MEYER, INTERNATIONAL LAW AS BEHAVIOR 2 (2021).

60. Kenworthey Bilz & Janice Nadler, *Law, Moral Attitudes, and Behavioral Change*, *in* THE OXFORD HANDBOOK OF BEHAVIORAL ECONOMICS AND THE LAW 241 (Eyal Zamir & Doron Teichman eds., 2014); *See also* Roger S. Clark, *International Court of Justice: Advisory Proceedings on the Legality of the Threat or Use of Nuclear Weapons (Question Posed by the General Assembly): The Laws of Armed Conflict and the Use or Threat of Use of Nuclear Weapons*, 7 CRIM. L.F. 268, 267, 296 (1996) (stating that "[t]he whole object of seeking an advisory opinion on nuclear weapons had been to delegitimize the bomb, to take away some of its mana . . . To the extent that the opinion . . . chips away at the acceptability of nuclear weapons, it is a little more likely that those negotiations will be completed sooner rather than later.")

underlying *morality* of the behaviors . . . because if the laws change moral attitudes, we reduce – maybe drastically – the need for the state to act on or even monitor regulated players."[61] This approach is exactly in line with the strengthening of the nuclear taboo. A *de facto* nuclear prohibition may have a higher chance of arising through CIL than a *de jure* prohibition through conventional international law. And the more the *de facto* situation changes, the easier it will be for states to buy-in to prohibitive treaty negotiations.[62]

Facing overwhelming realist security concerns of states and the prospect of widespread disobedience of an illegality holding, the ICJ chose not to "denigrate [or] embellish" international law but to take a critical step in a long-term norm building project of nuclear disarmament.[63]

IV. CONCLUSION: TOWARDS GLOBAL DISARMAMENT

Twenty-eight years later, the need for global disarmament persists. Russia continues to threaten nuclear weapon use in Ukraine, tensions between the United States and China over Taiwan remain, and Iran's pursuit of a nuclear weapon could kickstart a new wave of nuclear proliferation.

The path is hard, but it is clear: states, international legal bodies, and international NGOs (non-governmental organizations) must continue building a *de facto* normative prohibition against the threat and use of nuclear weapons, while relentlessly pursuing a prohibition treaty to enshrine this norm in conventional law. Progress has been made on this front through the Treaty on the Prohibition of Nuclear Weapons (TPNW), which entered into force on January 22, 2021, and now has 94 signatories and 73 states parties.[64] However, all nuclear-armed states and many of their allies predictably boycotted the negotiation process. The difficulty of our time is finding a way to get *these* states on board with the TPNW.

The international community should work incrementally toward this goal. A multilateral treaty among the nuclear-armed states that requires the disassembly of nuclear warheads from delivery devices, and

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61. Bilz & Nadler, *supra* note 60, at 241.

62. *See* Clark, *supra* note 60, at 267, 296 (advancing this very argument: that an advisory opinion by the ICJ which delegitimizes nuclear weapons would make conventional treaty negotiations to prohibit the threat or use of nuclear weapons, at least to some extent, easier to achieve).

63. Legality of the Threat or Use of Nuclear Weapons, 1996 I.C.J. at 269, ¶ 7 (declaration by Bedjaoui, P.).

64. *TPNW Signature and Ratification Status*, ICAN, https://www.icanw.org/signature_and_ratification_status (last visited October 20, 2024).

their separate, secure storage under International Atomic Energy Agency observation would represent a substantial step in the right direction. Such a treaty would respect nuclear deterrence, as each state would have a latent nuclear capacity, but also greatly reduce the brinkmanship risk that a chance element could lead to nuclear war. This treaty could also operate as a vehicle toward full adherence to the TPNW, and ultimately, global disarmament.