Under the Weapons the Laws Remain Silent

A Qualitative Content Analysis of the Idea and Value of the International Court of Justice as a Legal Norm Maker

Felicia Gustafsson

The Department of Human Rights

Historical Institution

Course Code: MRSK62

Semester: Autumn 2019

Supervisor: Darcy Thompson

Words: 14 711

Abstract

The objective of the thesis was to examine the ICJ's role in international law as a legal norm maker to the international community, by examining the question: *how is the idea of the Court and its value to the international community conceptualized and framed by the UNGA and the judges of ICJ in connection to the Opinion?* The data consisted of selected sections of the eight UNGA resolutions which led to a request for an opinion from ICJ and relevant paragraphs in the Opinion from 1996. In addition, three declarations and three dissenting opinions from the ICJ judges, which were selected from a sorting strategy. The data was analyzed through a qualitative content analysis with an inductive approach and the results were interpreted through a concept, which views the ICJ as an 'agent' of legal development, thus shaping international law. The results of the study showed that the Court's idea and value to the international community depends on the perspective. Indeed, the Court was of value for the UNGA's deadlock, however, its conclusion E made an exception in extreme circumstances of self-defense, which shows that it is above IHL. The Court is almost referring to a state of nature, despite being a creature of the UN. It may be interpreted as the Court embarked on a course not wishful for neither the UNGA nor the international community, thus its value was reduced. On the one hand the dissent's and the UNGA's idea of the Court and what is was able to achieve did not correspond. On the other hand, the declarations and parts of the Opinion stated that the Court was limited by its Statute and that it represented a guide to action.

Keywords: Nuclear Weapons, Advisory Opinion, International Court of Justice, Legal Development, International Community, United Nations General Assembly, International Law

Abstract

Svensk titel: Under vapnen förblir lagarna tysta — en kvalitativ innehållsanalys av International Court of Justice idé och värde som legal normsättare. Uppsatsens syfte var att undersöka hur ICJ influerar internationell rätt som legal normsättare till det internationella samfundet. Frågeställningen var: *hur konceptualiseras idén om ICJ och dess värde för det internationella samfundet av FN:s generalförsamling och domarna som dömde i samband med kärnvapensrådgivningen?* Primärmaterialet utgjordes av valda sektioner i de åtta resolutionerna från FN:s generalförsamling som ledde till en rådgivningsbegäran och valda paragrafer ur rådgivningen från 1996. Även tre deklarationer och tre oeniga yttranden från ICJ:s domare inkluderades, vilka valdes utefter en sorteringsstrategi. Primärmaterialet analyserades genom en kvalitativ innehållsanalys med induktivt tillvägagångssätt. Resultaten tolkades m.h.a. ett konceptuellt ramverk som ser ICJ likt en ’agent’ för juridisk utveckling vilken formar internationell rätt. Resultaten av studien visade att domstolens idé och värde till det internationella samfundet som legal normsättare beror på perspektiv. Domstolen var av värde för generalförsamlingens dödläge, men dess slutsats E gjorde ett undantag i extrema förhållanden av självförsvar, vilket visar att IHL-principerna inte gäller. Domstolen hänvisar nästan till ett naturtillstånd, vilket är problematiskt eftersom den är ett FN-organ. Det tolkades som oönskat för både generalförsamlingen och det internationella samfundet, därav reducerades värdet. Å ena sidan överensstämde inte de oeniga yttrandena och generalförsamlingens idé om domstolen och vad de faktiskt kunde uppnå. Å andra sidan argumenterade deklarationerna och delar av rådgivningen att domstolen var begränsad p.g.a sin stadga och att den representerade en handlingsguide.

Nyckelord: Nuclear Weapons, Advisory Opinion, International Court of Justice, Legal Development, International Community, United Nations General Assembly, International Law

Abbreviations

Art.	Article
COD	Conference on Disarmament
ICJ	International Court of Justice
IHL	International Humanitarian Law
LON	League of Nations
NNWS	Non-Nuclear Weapon States
NWS	Nuclear Weapons States
P5	Permanent five in the United Nations Security Council
Para.	Paragraph
PCIJ	Permanent Court of International Justice
Res.	Resolution
UN	United Nations
UNGA	United Nations General Assembly
UNSC	United Nations Security Council
WMD	Weapons of Mass Destruction

Table of Contents

1. Introduction **7**

1.1 Purpose and Statement of Issue 8

1.2 Primary Material 8

1.3 Background 9

1.3.1 International Court of Justice 9

1.4 Research Review 10

1.4.1 Sovereign (In)equality 10

1.4.2 The Court's Dismissal of IHL in conclusion E 12

1.4.3 The Legal Status of the Opinion and the Jurisdiction of ICJ 14

2. Conceptual Framework and Method **17**

2.1 Conceptual Framework 17

2.1.1 The ICJ as an 'Agent' of Legal Development 17

2.1.2 The ICJ's Political and Diplomatic Tendencies 20

2.2 Method 21

2.2.1 Data 21

2.2.2 Content Analysis and Procedures Followed 26

3. Analysis **30**

3.1 The Court's Role in Solving the UNGA's Deadlock - a Dispute 30

3.1.1 The UNGA's Deadlock and its Need for a Conclusion 30

3.1.2 The Idea of the Court and its Value to the UNGA 33

3.2 The Court's Contradiction between Promise and Performance 35

3.2.1 Controversies of the Non-liquet Finding - a Deviation from its Judicial Function? 35

3.2.2 The Court as a Creature of the UN - a Contradiction in conclusion E 39

3.3 Controversies regarding the Court's Responsibility 42

3.3.1 The Opinion - a Guide to Action or a Repellent of International Law 42

3.3.2 A Divided Court leading to an even more Divided International Community 44

4. Discussion and Conclusion **47**

Bibliography **54**
Literature 54
Official Documents 55

1. Introduction

Countless articles, official statements and resolutions have dealt with the status, function and the possession of nuclear weapons. The majority of them agree that nuclear weapons are possibly the most destructive weapon ever created and states have acknowledged that no nuclear war can be won. Therefore, it is interesting that so few rules of international law have been adopted to regulate this category of Weapons of Mass Destruction (WMD).[1] In 1994 the United Nations General Assembly (UNGA) requested an advisory opinion from the International Court of Justice (ICJ or 'the Court') with the question: "[i]s the threat or use of nuclear weapons in any circumstances permitted under international law?"[2] The ICJ after consideration accepted the request in 1996, and its findings sparked controversies within the Court, among researchers and the international community. The Opinion, named *Legality of the Threat or Use of Nuclear Weapons,* is a landmark international law case and touched upon the area *jus in bello*[3], which had not been done before regarding nuclear weapons.[4] One of the major conclusions to come out of the Opinion was conclusion E, a *non-liquet*[5] finding. It stated that the Court could not definitively conclude whether the use of nuclear weapons in extreme circumstances of self-defense would be unlawful if the "[…]very survival of a state would be at stake."[6] This is interesting from a human rights perspective. The court is almost referring to a state of nature, where no rules or laws applies.[7]

There is a general disagreement among researchers regarding the idea of ICJ, its value to the international community and its impact on legal development. Some argue that the Conclusion does not comply with the idea of ICJ as the principal judicial UN-organ and its Organization's interest.

---

[1] Koppe, E. (2008). *The Use of Nuclear Weapons and the Protection of the Environment during International Armed Conflict*, Oxford: Hart Publishing, p. 30.

[2] UN General Assembly, *General and Complete Disarmament; Request for an advisory opinion from the International Court of Justice on the legality of the threat or use of nuclear weapons.,* 15 December 1994, A/RES/49/75 K (hereafter 'A/RES/49/75 K, 1994'), p. 16.

[3] *Jus in bello* is part of international law and contains guidelines of war conducts, more specifically discrimination and proportionality. Discrimination refers to justified targets and proportionality legitimate the use of force in war. See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996 (hereafter 'the Opinion'), p. 260.

[4] Koppe, 2008, p. 30-32.

[5] *Non-liquet* is a latin term used when there is no applicable law. See the Opinion, 1996, para. 105.

[6] The Opinion, 1996, para. 105 (2)E.

[7] Nakanishi, H. (2012). "Towards a Nuclear-Weapon-Free World: How Can the World Resolve the Disharmony between the UNSC and UNGA". *Victoria University of Wellington Law Review*, 43(4), p. 622.

While others concluded that the Court was limited by its Statute and that it would deviate from its judicial function if they stated laws that did not exist.[8]

1.1 Purpose and Statement of Issue

The objective of the thesis is to examine ICJ's role in international law as a legal norm maker to the international community, to examine this issue the study will look at the Opinion and the political context surrounding it. There is a gap in the research area where my study aims to contribute to the field. A gap in which the UNGA's resolutions which led to a request of an opinion, the Opinion, the judges' declarations[9] and dissenting opinions[10] have been examined collectively to investigate the idea and value of the Court as a legal norm maker to the international community. To approach this issue, the qualitative content analysis will be used to examine and uncover how the idea and value of ICJ are conceptualized and framed in connection to the Opinion. The method will be used with a concept viewing the ICJ as an 'agent' of legal development, and thus as a legal norm maker which shapes international law, also the Court's political and diplomatic tendencies in highly political questions. The question to be examined is:
How is the idea of the Court and its value to the international community conceptualized and framed by the UNGA and the judges of ICJ in connection to the Opinion?

1.2 Primary Material

The ICJ's idea and its value to the international community will be examined by looking at selected sections of the UNGA's eight resolutions which led to a request of an opinion, relevant paragraphs in the Opinion, three declarations and three dissenting opinions of the ICJ judges, which were selected from a sorting strategy. The data will be examined to uncover how the ICJ's idea and its value to the international community are conceptualized and framed by the UNGA and the judges whom judged in the nuclear weapons Opinion. In section 2.2.1 in connection to the method, there

[8] Greenwood, C. (1997). "The Advisory Opinion on Nuclear Weapons and the Contribution of the International Court to International Humanitarian Law". *International Review of the Red Cross*, 316(37), p. 61.

[9] Declarations are used by judges who are in favor of an advisory opinion. See the Opinion, 1996, p. 266-267.

[10] Dissenting opinions are used by judges who are generally against the Court's findings. See the Opinion, 1996, p. 266-267.

will be a more detailed view of the data, how it was selected and an explanation of the extension and delimitations of the material.

1.3 Background

1.3.1 International Court of Justice

The Court was established at the San Francisco Conference 1945 through the Charter, to take over the duties previously held by the Permanent Court of International Justice (PCIJ). The two Courts' Statutes are virtually identical to their substantive content and the Charter states that ICJ's Statute is based on PCIJ.[11] The institution is the same essential kind *per se* as its predecessor and its aim is to contribute to legal development by settling disputes and rendering advisory opinions. Through its opinions and rulings, it serves as a source of international law and is often referred to as a 'world court', which the UN-member states are *ipso facto* parties of.[12] Under art. 96 of the Charter, the UNSC and the UNGA may request advisory opinions from the Court on any legal question, other UN-organs may also if authorized by the latter.[13] Note that advisory opinions are not binding according to art. 59 of the ICJ Statute, but has been treated, within the international community, as authoritative statements of law which carries high authority.[14]

Moreover, the Court consist of fifteen judges, elected for a nine year period by the UNGA and the UNSC.[15] The Court's decision and advisory opinions follows the principle of majority, however if equal voting occurs the ruling Court's President has the casting vote. Judges may attach statements, so-called declarations, separate- or dissenting opinions, where the court's ruling was not decided unanimously or they want to give a further explanation.[16]

---

[11] Berman, F. (2013). "The International Court of Justice as an 'Agent' of Legal Development". In Tams, C.J., & Sloan, J (eds.), *The Development of International Law by the International Court of Justice*. OUP Oxford; 1 Edition, p. 8.

[12] Berman, 2013, p. 8-10.

[13] Charter of the United Nations, adopted at San Francisco, on 26 June 1945 (hereafter 'the Charter'), art. 96.

[14] Anastassov, A. (2009). "Are Nuclear Weapons Illegal? The Role of Public International Law and the International Court of Justice". *Journal of Conflict & Security Law*, 15(1), p. 73; Statute of the International Court of Justice, adopted at San Francisco, on 26 June 1945 (hereafter 'The Statute of ICJ' or 'the Statute'), art. 59.

[15] The Statute of ICJ, art. 3 para 1, art. 4 para. 1 and art. 13 para. 1.

[16] Ibid., art. 55 and art. 57.

1.4 Research Review

The following section aims to highlight controversies of the Opinion, its findings and the different perceptions of the Court's idea and value to the international community, which the previous research is focused on. This will be done by mapping the research in the following fields that are most relevant to this study: (a) Sovereign (In)equality, (b) The Court's Dismissal of IHL in conclusion E and (c) The Legal Status of the Opinion and the Jurisdiction of ICJ. These were chosen because the researchers argue that the Opinion, specifically conclusion E, is based on sovereign inequality and that the Court's idea and value is thus questioned. The second research field also questions this, and sparked controversies regarding the Court's role and legal impact to the international community. Therefore, the third research field was chosen, because they argued for and against the status and jurisdiction of the Court as well as its impact. These research fields were selected because they align with my study. However, there is a gap in the previous research where the UNGA's resolutions, the Opinion and the judges' declarations and dissenting opinions collectively have been examined to investigate the Court's idea and value to the international community, thus the possibility to fill the void.

Substantial research has been conducted in the field of the (il)legality of nuclear weapon in connection to the Opinion, the principles of International Humanitarian Law (IHL) and sovereign (in)equality. Identifying relevant previous research that related to the research question and finding the relevant material, the study searched for *IHL, sovereign inequality, the advisory opinion from 1996, the international community, the idea of ICJ, the value of ICJ* and *nuclear weapons* on LUBsearch.

1.4.1 Sovereign (In)equality

The concept sovereign equality, is based on the idea that sovereign states should posses the same legal right under international law. However, the norm of sovereign equality, Lee argues, is rather unequal in terms of states' rights to wage war. The value of the norm is therefore dubitable. Sovereign equality regarding military realm is preceded in the Charter and limited to five states' veto rights (P5), which are the US, the UK, Russia, China and France.[17] There is an imbalance of

[17] Lee, T. (2004). "International Law, International Relations Theory and Preemptive War: the Vitality of Sovereign Equality Today". *Law and Contemporary Problems*, 67(1) p. 148-149.

power Lee argues, where the sovereign equality norm is restricted in preemptive self-defense and the right to wage war. The other sovereign states can only wage war in self-defense or if it is authorized by the UNSC.[18] Therefore, the P5 have greater legal rights to war than others, which is a restriction of sovereign equality. In connection to the Opinion, Lee's article shows that the Court's finding, specifically conclusion E, makes it hard to see how any case can be made against it, because the state's own survival is at stake. Lee argues that the principle of self-defense is strong and a state will often presume the worst intentions of the enemy, because guessing wrong can cost its own survival. It is a security dilemma and Lee refers to art. 51 of the Charter (self-defense) as a pandora's box; if you open it anything can happen.[19] Conclusion E is evidence for this he argues, where the Court could not conclude if it was unlawful to use nuclear weapons in extreme circumstances of self-defense.[20]

Historically, sovereign equality and self-defense have been used as blockades in general disarmament negotiations, where members emphatically claim their right, especially Nuclear Weapon States (NWS) according to Nakanishi.[21] He adds that the League of Nations (LON) collapsed due to its failure of disarmament, which highlights the controversy of the disarmament question. When negotiating the current UN-system, in the 1943 Declaration of Four Nations on General Security[22], the P5 was stated to be 'the international policemen' and therefore in control of such weapon.[23] Nakanishi argues that there is an inequality between P5 and the rest of the UN-members, because the UNSC are the ones authorizing the use of force, *jus ad bellum*[24], established by the Charter.[25] Koppe states that sovereign inequality also shows in the limited amount of states allowed to possess nuclear weapons. The P5 are recognized as NWS under the Non-Proliferation Treaty from 1970, as well as India, Pakistan, Israel and North Korea, whom are not a part of the treaty. The dichotomy between NWS and Non-Nuclear Weapon States (NNWS) is a question of sovereign equality. The P5 with nuclear weapon and right to veto on global security matters are

---

[18] Lee, 2004, p. 159-161.

[19] Ibid., p. 158.

[20] Ibid., p. 159.

[21] Nakanishi, 2012, p. 622.

[22] The Moscow Conference, Joint Four-Nation Declaration, October 1943.

[23] Nakanishi, 2012, p. 622.

[24] *Jus ad bellum* refers to states' justified reasons to wage war. See Nakanishi, 2012, p. 622.

[25] Nakanishi, 2012, p. 623.

contrary to the legal maxim: *nemo judex in causa sua*[26]. Therefore, according to Koppe, the sovereign equality under the Charter is an illusion.[27] He argues that the Opinion's finding even strengthened the dichotomy between NNWS and NWS, because in extreme circumstances of self-defense the latter can decide for themselves when the use of nuclear weapons are lawful.[28]

1.4.2 The Court's Dismissal of IHL in conclusion E

Nuclear weapons raises fundamental questions which go to the very heart of IHL and the foundations of the laws of war, *jus in bello* and *jus ad bellum*, which the Court dismissed in conclusion E Bugnion argues.[29] Kolb notes that no legal area can be reduced to a collection of detailed static rules, the complex changeability of war and the infinite complicated situations that can arise require flexibility and general principles. These principles contribute to the implementation and applicability, which are necessary to function in legal gaps, *lacuna*[30], especially in relation to specific categories of weapons.[31] In the Opinion, this legal gap could have been filled by IHL according to Kolb, which shows that the Court deviated from its jurisprudence.[32] IHL consists of principles driven by the balance between military necessity on the one hand and humanity on the other Oeter explains. In the Opinion, there was a collision of fundamental principles, where the military necessity sort of weighted more.[33] Anastassov, Bugnion, Izmir, Koppe, McNeil and Mohr clarifies that nuclear weapons do not comply with IHL's three general

---

[26] *Nemo judex in causa sua* is a latin phrase for "no one should be a judge in his own case". See Nakanishi, 2012, p. 623.

[27] Koppe, 2008, p. 103-105.

[28] Ibid., p. 104.

[29] Bugnion, F. (2005). "The International Committee of the Red Cross and nuclear weapons: From Hiroshima to the dawn of the 21st century". *International Review of the Red Cross*, 87(859), p. 511.

[30] *Lacuna* is a latin term used to explain that there are gaps in law, comparable to *non-liquet* (see footnote 5). See Bugnion, 2005, p. 511.

[31] Kolb, R. (2014). *Advanced Introduction to International Humanitarian Law*, Geneva: Edward Elgar Publishing, p. 76-77.

[32] Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November/11 December 1868; Kolb, 2014, p. 78.

[33] Oeter, S. (2008). "Methods and Means of Combat". In Dieter, F. (ed.) *The Handbook of International Humanitarian Law*, Oxford University Press, p. 126-127.

principles[34] namely distinction, proportionality and unnecessary suffering.[35] McNeil argues that it is beyond reasonable for the Court, as a creature of the UN, to state that IHL does not apply in the use of nuclear weapons under extreme circumstances of self-defense. He argues that the principles have been developed in line with the demands of humanity, to alleviate the suffering of combatants and civilians during armed conflicts, they were created to fill these legal gaps. For the Court to conclude that IHL was inapplicable, was a historical disappointment and even repellent of already established international laws McNeil argues.[36]

The Court had the authority and opportunity to take a stand on both a burning legal and sensitive political question and the reply was a negative one, but still affected the international community Mohr argues.[37] Bugnion's research shows that the outcome of the unclear Opinion lead to some states arguing that nuclear weapons, in certain circumstances are lawful without violating IHL, while others considered it to violate its very principles.[38] Condorelli argues that this was because of the indecisive conclusions made by the Court, which was clever of them to not clearly state the legality, but expresses disappointment due to the Court's authoritative position.[39] Greenwood disagrees with Condorelli, because for the Court to have done so would be a departure of its judicial function. Greenwood clarifies that the Court should apply the law as it is, *lex lata*[40], and not how it wishes to be, *lex feranda*[41], therefore the Opinion is compatible with IHL.[42] Greenwood argues that the Court failed to answer the substance of the question and should therefore have abstained to answer due to its ambiguity regarding the dismissal of IHL in the

---

[34] Distinction aims to distinguish combatants and civilians in war. Distinction and proportionality aims to assess military necessity, the force must be proportionate. Unnecessary suffering aims to prohibit superfluous injury as a result of means of warfare. See Oeter, 2008, p. 126-127.

[35] Anastassov, 2009, p. 72; Bugnion, 2005, p. 523; Izmir, O. (2016). "What are the Laws of War? Legality of the Threat or Use of Nuclear Weapons". *The Journal of International Scientific Researches*, 1(1), p. 75; Koppe, 2008, p. 101; McNeill, J. (1997). "The International Court of Justice Advisory Opinion in the Nuclear Weapons Cases - A First Appraisal". *International Review of the Red Cross*, 316(37), p. 105 and Mohr, M. (1997). "Advisory Opinion of the International Court of Justice on the Legality of the Use of Nuclear Weapons Under International Law - A Few Thoughts on its Strengths and Weaknesses". *International Review of the Red Cross*, 316 (37), p. 98.

[36] McNeill, 1997, p. 105.

[37] Mohr, 1997, p. 102.

[38] Bugnion, 2005, p. 523.

[39] Condorelli, L. (1997). "Nuclear Weapons: A Weighty Matter for the International Court of Justice". *International Review of the Red Cross*, 316(37), p. 15.

[40] *Lex lata* is a latin phrase meaning "the law as it is." See the Opinion, 1996, para. 73.

[41] *Lex feranda* is a latin phrase meaning "future law" and is the opposite to *lex lata* (see footnote 40). See Condorelli, 1997, p. 15.

[42] Greenwood, 1997, p. 61.

Conclusion.[43] Mohr's research shows, on the one hand, that the Court observed that art. 51 of the Charter did not refer to any specific weapons which may be used in self-defense. On the other hand, the idea of self-defense is subject to conditions of necessity[44] and proportionality, which is regulated by IHL.[45] Izmir argues that the Court's dismissal of IHL shows that there is a crack in international law and that necessary steps needs to be taken to fill the gap.[46] Mohr's article shows *de facto* that there is a trend which seems to point to an increasing concern of the use of nuclear weapons in the international community, and that the direction is a prohibitory rule against it.[47]

1.4.3 The Legal Status of the Opinion and the Jurisdiction of ICJ

UNGA's question was "[i]s the threat or use of nuclear weapons in any circumstance permitted under international law?"[48] McNeil explains that the question met resistance. Phrased this way, the UNGA assumed that international law, regarding the use of nuclear weapons, is permissive rather than prohibitory.[49] Greenwood agrees with McNeil, the way the question is phrased *permitted*, rather than asking if it was *prohibited*, was interpreted by some states as implying that the use of nuclear weapons was unlawful in the absence of a permissive rule to the contrary. While others interpreted it as lawful unless established as prohibitory in international law.[50] Greenwood argues that the question was not well framed, and the motivation behind it was unsatisfactory, which resulted in a *non-liquet* response because the Court could not "[…]possibly consider all combinations of circumstances in which nuclear weapons might be used or threatened to use."[51] Therefore, according to Greenwood, the request for an opinion was a misconception, which the Court should not have rendered. Critics of the Court argues that it missed a historic opportunity to

---

[43] Greenwood, 1997, p. 60.

[44] Necessity permits measures to achieve a legitimate military purpose. See Greenwood, 1997, p. 61.

[45] Mohr, 1997, p. 103.

[46] Onur, I. (2016). "What are the Laws of War? Legality of the Threat or Use of Nuclear Weapons". *The Journal of International Scientific Researches,* 1(1), p. 76.

[47] A/RES/49/75 K, 1994, p. 16.

[48] McNeill, 1997, p. 105.

[49] Ibid., p. 107.

[50] Greenwood, 1997, p. 57.

[51] Ibid., p. 60.

declare nuclear weapons as unlawful regardless of circumstances.[52] David's research showed that the states whom supported the legality of nuclear weapons, *inter alia*, the US, the UK and France, questioned the Court's competence to respond to the question given, due to the vaguely phrased question by the UNGA and potentially unfavorable outcome of such concerning disarmament negotiations.[53] However, if the Court would have declared nuclear weapons as prohibitory to use, it would be a departure from its judicial function, namely, determining the applicable law, *lex lata*, and not how the laws should be, *lex desiderata*[54].[55]

Moreover, the Court's findings were that there were no law, treaty nor convention specifically banning the threat or use or nuclear weapons. Nakanishi argues that the Opinion represents that there is *lacuna* in international law and that it is the member states responsibility to keep advancing in the disarmament negotiations.[56] Datan and Scheffran agrees with Nakanishi, but adds that international law does not ignore realpolitik, laws are broken and it is not the Court's fault, member states should proclaim and devise better laws.[57] Jasjit agrees with Nakanishi, Datan and Scheffran, the responsibility is not on the Court to prohibit nuclear weapons, it is the international community whom should demand a convention on the matter. However, as long as the NWS has their nation-state believing that nuclear weapons are for national security, the disarmament process has a long way to go.[58] Anastassov argues that political developments in the nuclear weapon area might lead to another opinion by the ICJ, which could lead to a complete prohibition of nuclear weapons.[59] Goldblat agrees that the controversy over the legality of nuclear weapons derives from the politics, but also disagrees with Anastassov, even a differentiated opinion by the ICJ would not affect the political opinion of some NWS.[60] Some scholars believe that the Opinion was a

---

[52] Greenwood, 1997, p. 61-62.

[53] David, E. (1997) "The Opinion of the International Court of Justice on the legality of the use of nuclear weapons". *International Review of the Red Cross*, 316(37), p. 22.

[54] *Lex desiderata* is a latin phrase meaning "law as one wish it to be". See Greenwood, 1997, p. 63.

[55] Greenwood, 1997, p. 63.

[56] Nakanishi, 2012, p. 77.

[57] Datan, M., & Scheffran, J. (2019). "The Treaty is Out of the Bottle: The Power and Logic of Nuclear Disarmament". *Journal for Peace and Nuclear Disarmament*, 2(1), p. 120-121.

[58] Jasjit, Singh. (2012). "Re-examining the 1996 ICJ Advisory Opinion: Concerning the Legality of Nuclear weapons". *Cadmus*, 1(5), p. 159.

[59] Anastassov, 2009, p. 72.

[60] Goldblat, J. (1994). "Legal or Illegal? The Perennial Controversy Over Nuclear Weapons". *Sage Journals,* 25(4), p. 401.

disappointment. Others, Mohr states, that it represents a triumph for the rule of law to the international community.[61]

[61] Mohr, 1997, p. 102.

2. Conceptual Framework and Method

2.1 Conceptual Framework

The purpose of this section is to explain the concept and discuss its appropriateness of the study. It offers a way to uncover how the Court makes a legal impact on the international community and shapes international law, which corresponds with the aim to examine its role as a legal norm maker. To address this issue, the concept investigates how the Court has impacted the development and dynamics of international law as an ’agent’, through its advisory opinions and its status as the principal judicial UN-organ. The concept is used to uncover the idea of the Court and its value to the international community as an ’agent’ of international law and its tendencies to be political and diplomatic in controversial requested opinions.

First, the ICJ as an ’agent’ of legal development will be explained. Followed by the Court’s political and diplomatic tendencies and how these have made an impact on both its legal status and effected the outcome.

2.1.1 The ICJ as an ’Agent’ of Legal Development

The term ’agent’ of legal development, is used to explain the Court’s role in international law and its value to the international community. The Court sets legal precedents, guidelines or norms which are important to move forward, therefore the term ’agent’ of legal development. The concept’s course that the ICJ is an ’agent’ which shapes the field of international law, through what it produces in terms of judgements, has both a legal impact on precedence and development. In this sense it is an ’agent’ or ’force’ of change and development.[62] The Court is the highest authority in normative international law, it is based on their interpretation of laws in which it sets legal precedents to the international community.[63]

The concept argues that the legislative intent and idea of the Court has remained intact since its predecessor PCIJ in 1920. The institution is of the same essential kind, with its main purpose to contribute to world peace.[64] The Statute of PCIJ was the primary institution to list sources of law it would draw upon, thus it became a source of international law and ’agents’ of it. The PCIJ as a

[62] Berman, 2013, p. 18.

[63] Ibid., p. 17.

[64] Ibid., p. 8.

permanent Court made a series of decisions and rulings which contributed to legal development.[65] The concept believes that the Court's predecessor shaped the legal landscape and enabled the successor to follow in its footsteps and participate as an integral part of the Charter to preserve continuity.[66]

The concept argues that even if the ICJ is an optional instrument to the international community, based on consent and not having any enforcement bindings, this does not mean that opinions come without legal effect. It stresses the fact that the Court's legal reasoning reflects its authoritative views on issues in international law and therefore being 'agents' of it.[67] In order, its legal effect derive from its status and authority embodied as the principal judicial organ of the UN. The Court is the world's highest judicial institution, and therefore the concept believes that their opinions make a legal impact to the international community. Through the Court's contentious and advisory jurisdiction it provides a means by which law is authoritatively stated, a mechanism more effective than sanctions.[68] However, when a proposition of law has been declared judicially, it tends to outrun the Court, due to the fact that it sets codes of conducts and precedents. Therefore, the concept problematizes that the decisive control in legal development does not solely lie within the Court, it is how the international community interprets and adopts its decision, therefore goes further in the development. However, the Court has a powerful influence in shaping international law.[69] In relation to the thesis, advisory opinions especially comes with high legal status, which the concept explains as progressive development of international law to the interest of the international community.[70] It argues that the ICJ has affirmed, strengthened and contributed to the development of international law in a broader legal landscape as 'agents', which it applies in either cases or advisory opinions.[71]

However, the concept acknowledges that the authority and value of opinions depends on the divergence of the Court. If a high amount of judges' attach dissenting opinions in certain conclusions, the authority of the Court, its value and its decision are considered weakened to the

---

[65] Berman, 2013, p. 18.

[66] Ibid., p. 18.

[67] Ibid., p. 19.

[68] Ibid., p. 18-19.

[69] Ibid., p. 20-21.

[70] Ibid., p. 16.

[71] Tams, C.J. (2013). "The ICJ as a 'Law-Formative Agency': Summary and Synthesis". In Tams, C.J., & Sloan, J (eds.), *The Development of International Law by the International Court of Justice*. OUP Oxford; 1 Edition, p. 380.

international community. Generally, the amount of dissenting opinions have questioned the Court's role and its usefulness in the system of international adjudication. The concept approaches this problem and explains that disagreements in international law are inevitable, especially for a 'world court'.[72] However, this also affects the legal views and decision set forth by the majority of the Court, if other judges express criticism, it shows the divergence and prevails it.[73] A decision agreed upon by the President's casting vote, does not have the great impact as an unanimous Court. Its authoritative position in international justice, its decision and legal impact will thus be reduced and harmed.[74] International law and the international community are in need of a unified Court that makes unanimous decisions, which have greater legal impact.[75] In explanation, dissents perish the illusion of unanimity, however, the value and influence of the Court depends on something stronger and more substantial.[76] Law must constantly be tested by reason, which dissents contribute to.[77] The Court has legal effect, but there are circumstances where the impact differs.[78]

Moreover, the concept believes that the jurisprudence of the ICJ has enabled it to impact contemporary international law on virtually all areas.[79] The Court's contribution to legal development is by clarifying laws in controversial areas, by ratifying them.[80] Others have approached it more restrictively and played down the effects on a broader legal landscape, arguing that the legal development should be seen as collateral damage.[81] However, the ICJ has met criticism when contributors have not supported their pronouncements. Outcomes which have met criticism are easy to find, where critics mean they have missed opportunities or been generally disappointed with the Court.[82] The concept interpret them as states whom either lost cases or political figures who criticize the Court's pronouncements when it did not respond as they wanted.

---

[72] Anand, R.P. (2005). "The Role of Individual and Dissenting Opinions in International Adjudication". *The International and Comparative Law Quarterly*, 14(3), p. 790.

[73] Anand, R.P. (2013). "The International Court of Justice and the Development of International Law". *International Studies*, 7(2), p. 237-238.

[74] Hambro, E. (1954). "The Authority of the Advisory Opinions of the International Court of Justice". *The International and Comparative Law Quarterly*, 3(1), p. 20.

[75] Anand, 2005, p. 790.

[76] Ibid., p. 792.

[77] Ibid., p. 795.

[78] Berman, 2013, p. 14.

[79] Ibid., p. 14.

[80] Anand, 2013, p. 237-238.

[81] Berman, 2013, p. 15.

[82] Anand, 2013, p. 242.

This is because their idea of the Court and its value does not correspond with what it is able to achieve.[83]

2.1.2 The ICJ's Political and Diplomatic Tendencies

The concept problematize and believes that states have a tendency, through the UNGA, to request advisory opinions with the tactical aim to pursue highly political questions, which have lead the Court into turbulent waters.[84] In cases where the ICJ has been requested to give advisory opinions, the questions can have political implications, but still be straightforward and virtually requiring a yes or no answer, yet its findings can be *non-liquet.* The concept interpret it as if the failure lays within the UNGA or the UNSC, whom requested a political question and expected the Court to answer by legal procedure, because they do not understand and respect the integrity of it.[85] The concept believes that their views of the Court's role, their intention and idea of it does not correspond.[86] This is an explanation to why the Court has political tendencies in answering posed legal questions, because they are of political character.[87]

Generally, the Court has been called diplomatic and political when avoiding controversial issues of great political sensitivity. The concept believes that the Court has a tendency of involving judicial diplomacy when difficult decisions are made, which harms the idea and value of it. It argues that the Court has tendencies, where opinions have essential parts approached diplomatic rather than judicial due to political controversies.[88] Generally, the Court's *non-liquet* findings resembles a group of diplomats trying to overcome the divergence of opinion among them, rather than judges in a Court. In these cases, the concept believes that the judges apply the strategy which diplomats use in crucial moments, namely the seeking of constructive ambiguity. The concept interprets it as the Court uses the fine art of judicial diplomacy when political questions are rendered, which harms their role, idea and value. In explanation, there is a collision between their role in international law versus the UNGA's and the UNSC's view of it.[89] It can be concluded that

---

[83] Anand, 2013, p. 252.

[84] Kreß, C. (2013). "The International Court of Justice and the Law of Armed Conflicts". In Tams, C.J., & Sloan, J (eds.), *The Development of International Law by the International Court of Justice*. OUP Oxford; 1 Edition, p. 291-292.

[85] Berman, 2013, p. 15-16.

[86] Ibid., p. 15-16.

[87] Hambro, 1954, p. 17.

[88] Kreß, 2013, p. 292.

[89] Ibid., p. 292.

the Court sometimes steps out if its judicial role and enters the diplomatic scene to act as political agents in both legal and political controversies.[90]

2.2 Method

The purpose of this section is to introduce the research methodology, which is a qualitative content analysis with an inductive approach. The aim of this method is to systematically break down and categorize parts of the data. It aims to uncover how the UNGA and the ICJ judges frame and conceptualize the idea and value of the Court to the international community as a legal norm maker, which corresponds with the aim of the study and research question. Firstly, the selected data will be defined, explained and justified, delimitations and extensions outlined, including the shortcomings of using it. Secondly, the content analysis and procedures followed will be explained and justified in relation to the study.

2.2.1 Data

The primary material consists of the eight resolutions from the UNGA which lead to the request of an advisory proceeding from the ICJ, the Opinion, three declarations and three dissenting opinions of the judges whom judged in the case. In figure 1, the data is outlined and described.

Figure 1.

Document Title	Type	Description
1. Declaration on the prohibition of the use of nuclear and thermo-nuclear weapons	UNGA, res. 1653 (XVI), 24 November 1961	The resolution declared that the use of nuclear weapons is a direct violation of the Charter and that it exceeds the scope of war, because it is directed to mankind in general. The UNGA requested the Secretary General to consult member states on their views of signing a convention on the matter and required that they would report back.

[90] Kreß, 2013, p. 293; 298.

Document Title	Type	Description
2. Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session; Non-use of Nuclear Weapons and Prevention of Nuclear War	UNGA, res. 33/71 B, 14 December 1978	The resolution stated that nuclear disarmament is essential for the prevention of nuclear war and for strengthening international peace and security. They required all states to submit their views on a prohibition of such weapon to the Secretary-General.
3. -||-	UNGA, res. 34/83 G, 11 December 1979	The UNGA decided to transmit the results from the Secretary-General to the Committee on Disarmament.
4.-||-	UNGA, res. 35/152 D, 12 December 1980	The UNGA made a request to all states that had not yet submitted their proposals to do so.
5. -||-	UNGA, res. 36/92 I, 9 December 1981	The UNGA urged the consideration of nuclear disarmament and the establishment of a convention.
6. Review of the implementation of the Concluding Document of the Twelfth Special Session of the General Assembly; Convention on the Prohibition of the Use of Nuclear Weapons	UNGA, res. 45/59 B, 4 December 1990	The UNGA noted that the Conference on Disarmament (COD) was unable to undertake negotiations on the prohibition of nuclear weapons. The UNGA decided that they should commence consultations again and report back.
7. -||-	UNGA, res. 46/37 D, 6 December 1991	The UNGA declared that the COD once again was not able to undertake negotiations.
8. General and Complete Disarmament; Request for an advisory opinion from the International Court of Justice on the legality of the threat or use of nuclear weapons	UNGA, res. 49/75 K, 15 December 1994	The UNGA noted that insufficient progress was made towards a prohibition of nuclear weapons. They decided to request an advisory opinion from the ICJ.

Document Title	Type	Description
9. Legality of the Threat or Use of Nuclear Weapons	Advisory Opinion, I.C.J. Reports 1996, 8 July 1996	The Opinion is a landmark international law case and the ICJ was the first court to ever evaluate the legality of nuclear weapons. The conclusions were that there are no source of law, customary nor treaty, that explicitly prohibits the threat or use of nuclear weapons.
10. Declaration of President Bedjaoui	Declaration, made in favor of the ICJ's Advisory Opinion: the Legality of the Threat or Use of Nuclear Weapons from 1996	President Bedjaoui argued that the Court stated the imperfect existing international laws, therefore the finding was *non-liquet.* In his opinion, the Court's role was to state the applicable law and not how it wishes it to be, consequently it followed its legal scope.
11. Declaration of Judge Bravo	-‖-	Judge Bravo argued that there was serious *lacuna* in international law regarding the use of nuclear weapons. In his opinion, the Court contributed to the legal development by stating the existing laws and indicated how the legal gaps should be filled by the international community.
12. Declaration of Judge Vereshchetin	-‖-	Judge Vereshchetin declared that the Opinion should be seen as a guide to action and that the Court was limited and unable to do more, due to its restrictions in its Statute.
13. Dissenting Opinion of Judge Koroma	Dissenting Opinion, made against the ICJ's Advisory Opinion: the Legality of the Threat or Use of Nuclear Weapons from 1996	Judge Koroma stated that the material and evidence available to the Court, made no room for a *non-liquet* finding. In his opinion, the Court deviated from its judicial function.

Document Title	Type	Description
14. Dissenting Opinion of Judge Shahabuddeen	-||-	Judge Shahabuddeen declared that the Court's *non-liquet* finding was wholly unfounded. In his opinion, the Court had a responsibility to answer one way or another.
15. Dissenting Opinion of Judge Weeramantry	-||-	Judge Weeramantry argued that the Court's *non-liquet* finding casted doubt on pre-existing international law and might even lead to repellent of it. The Court's dismissal of IHL was a deviation from its normal judicial performance.

The resolutions were used to investigate the UNGA's idea of the Court and its value to the international community, specifically why the Opinion was needed and their intention of requesting it to the ICJ. Note that only relevant parts of the resolutions were used, such as section K in the latter, which is a delimitation. The limitation was made because the Opinion only refer to the selected parts. The resolutions range from 1961 to 1994 and were selected because the Opinion refers to them in its introduction as background to it: "[r]ecalling resolutions… in which it declared that the use of nuclear weapons would be a violation of the Charter and a crime against humanity."[91] All resolutions derive from the United Nations Digital Library. The Opinion was used to examine the Court's idea and its value to the international community, how they conceptualized and framed it. Delimitations were also made in the Opinion, only paragraphs 1-23 and 105 were used, where the Court explains its jurisdiction, jurisprudence and competence to render an opinion and the latter is its findings. In paragraphs 24-104 the Court investigates the applicable laws and the examination was limited to the relevant part of the Opinion that believed to be necessary to understand the Court's role as a legal norm maker. The Opinion was collected from the ICJ's official website.

Moreover, six judges' declarations and dissenting opinions were used to investigate how the Court's idea and its value to the international community were conceptualized and framed. These were found on ICJ's website 'case-related' and were referred to in the Opinions *dispositif*[92]. The declarations and dissenting opinions were published at the same time as the Opinion from 1996. In

[91] The Opinion, 1996, p. 227-228.

[92] *Dispositif* a latin term for a Court's findings. See the Opinion, 1996, p. 266.

connection to the thesis aim and research question, the study chose to exclude separate opinions, which are used when judges are generally in favor of an advisory opinion, but have made reservations on specific parts. Instead, the focus was on the ones whom agreed with the Opinion's findings, using so-called declarations and the ones who were against it completely, which are dissenting opinions.[93] In normal circumstances there are 15 judges, but one judge passed away before they agreed upon the Opinion's findings, therefore they were only 14 in this case. This effected the Court's findings, specifically conclusion E where it was decided upon the casting vote of the ruling President Bedjaoui due to the seven votes to seven.[94]

Furthermore, declarations were made by President Bedjaoui, Judges' Herczegh, Shi, Vereshchetin and Bravo.[95] For reasons of space, I chose to examine President Bedjaoui's, Judges Bravo's and Vereshchetin's declarations. They were chosen because of their amount of applicable material for the study, the other declarations were about one to two pages of material, meanwhile Bedjaoui's declaration was seven, Bravo's five and Vereshchetin's was three pages. It is worth mentioning that the other declarations focused on other parts of the Opinion, e.g. the importance of environmental laws, policy of deterrence etc. The selected declarations focused on the idea of the Court, its value to the international community and its progress in legal development. Furthermore, dissenting opinions were made by Vice-President Schwebel, Judges' Oda, Shahabuddeen, Weeramantry, Koroma and Higgins.[96] For reasons of space, I chose to examine Shahabuddeen's, Weeramantry's and Korma's dissenting opinions. The other judges did not openly express that it was unlawful in all circumstances to use nuclear weapons, which the selected judges did. The chosen dissenting opinions argued that the Court deviated from its normal judicial function, went against its own Organization's essential aim and that conclusion E was a backlash for the legal development. The other judges argued about e.g. the lack of environmental law or they considered other resolutions of value. The sorting strategy was to find applicable material in relation to the thesis aim and research question. The selected declarations and dissenting opinions corresponded with the thesis aim to examine ICJ's role in international law as a legal norm maker to the international community and helped answer the research question of how the idea of the Court and its value to the international community were conceptualized and framed by these actors.

---

[93] The Statute of ICJ, art. 56 and art. 57.

[94] The Opinion, 1996, para. 105 (2)E.

[95] Ibid., para. 105 (2)E.

[96] Ibid., para. 105 (2)E.

The shortcomings of using the provided documents is that all judges' declarations, separate- and dissenting opinions were not included, therefore it can be a subjective assessment of the selected judgement. However, in general, and since reading all the judges' declarations, separate- and dissenting opinions and considered the applicable material, the chosen documents discussed the idea of the Court, its value to the international community and its legal impact, but had different focuses as mentioned.

2.2.2 Content Analysis and Procedures Followed

The study was performed by using a qualitative content analysis with an inductive approach. Erlingsson and Brysiewicz defines it as a research method that systematically analyzes the content, meaning and intentions of the data, which are done by reading, interpreting, coding and categorizing it, but also, finding correlations and patterns in it. In other words, systematically transform large amount of data into organized and concise summary of key results and findings.[97]

The initial step was to read and re-read the 15 documents multiple times to get a sense of the whole, to gain a general understanding of the UNGA's and judges' perceptions of the Court's idea and value to the international community as a legal norm maker. The study found the qualitative approach of content analysis suitable, because the data, the thesis aim and research question are of qualitative character. According to some researchers, there are disadvantages with the qualitative approach. They argue that the results of such study are to a large extent based on researchers' often unsystematic views on what is essential and what is not.[98] The issue of subjectivity was addressed by looking for perceptions of the Court's role and value to the international community, which guided the analysis of provided documents. When analyzing the material the focus was on important insights which followed the thesis aim and research question. The insights were considered important when mentioning: (a) the Court's jurisdiction, (b) its role/idea, (c) impact and (d) value to the international community, (e) code of conduct and (f) precedent, which are what influenced the analysis.

After that, main points or ideas of the Court and its value were noted and acknowledged, e.g. the Court's role is *lex lata* not *lex feranda*, while others argued that it went against its essential aim to contribute to world peace and legal development. The pieces with central messages, so-called

---

[97] Erlingsson, C., & Brysiewicz, P. (2017). "A hands-on guide to doing content analysis". *African Journal of Emergency Medicine*, 7(1), p. 93.

[98] Erlingsson & Brysiewicz, 2017, p. 93-94.

meaning units, were condensed. Note that it was important to keep the research question and the thesis aim in focus to divide the text into meaning units. The meaning units referred to different forms of text extracts, which were sentences, statements or paragraphs in the data.[99] The study used both manifest and latent approaches. The manifest approach centered on the written text, the pronounced and obvious content of the data, while the latent was interpretative and focused on the underlying and hidden content.[100] Therefore, both of these approaches were selected, because it enabled the finding of different views of the Court's idea and value to the international community, both in written text and underlying content. Note that the manifest content used in the study was e.g. quotes from the data. The process of condensation was shortening the text, but still retain the core meaning, which then were collected and coded.[101] The study used the inductive approach, which is a way of selecting categories in content analysis. The inductive approach was more suitable for the study because it enabled to first read the data multiple times and then creating codes and categories based on the results linked to the research question, instead of the deductive approach which views the data based on already selected categories. The next step was to label the condensed meaning units by formulating codes and then grouping them into categories.[102] They were formed by grouping together the codes that related to each other through their content and were an expression of the manifested content, which was the visible and obvious in the material. See figure 2 to see how the study selected the codes which were turned into categories, its results of the analysis and the themes that unified the data.

Figure 2.

Categories/Findings	**The Court's Role in Solving the UNGA's Deadlock - a Dispute**	**The Court's Contradiction between Promise and Performance**	**Controversies regarding the Court's Responsibility**
Codes	Deadlock - insufficient progress, a matter of priority, urgently	Contradiction - ICJ: shield of humanity, administers of legality vs. its Statute	Conclusion E: responsibility on states, annihilation of mankind and serious danger

[99] Erlingsson & Brysiewicz, 2017, p. 95-96.

[100] Ibid., p. 95.

[101] Ibid., p. 96.

[102] Ibid., p. 97.

Categories/Findings	The Court's Role in Solving the UNGA's Deadlock - a Dispute	The Court's Contradiction between Promise and Performance	Controversies regarding the Court's Responsibility
	Historical process - the Idea of ICJ and its value, principal judicial UN-organ	*Non-liquet*, *lacuna*, legal gaps, grey area	Legal development, contribution and impact
	Legal development - nuclear disarmament, prevention of nuclear war, code of peaceful conduct	ICJ's role/idea/value, jurisdiction, jurisprudence, competence	Limits of its Statute, inability to do more
Themes	The UNGA's Deadlock and its Need for a Conclusion	Controversies of the Non-liquet Finding - a Deviation from its Judicial Function?	The Opinion - a Guide to Action or a Repellent of International Law
	The Idea of the Court and its Value to the UNGA	The Court as a Creature of the UN - a Contradiction in conclusion E	A Divided Court leading to an even more Divided International Community

The categories reflect the results of the findings and was then turned into themes. The themes represented the latent content in the material, which are the hidden and underlying sentences and ideas, but was also found by the manifest approach which corresponded with the theme. The theme was the unifying in the data and where used to prevail underlying meanings, latent content and added another level of interpretation in the analysis.[103] Every category were analyzed separately with the concept applied, connected to the research review to answer the research question and fulfill the thesis aim. In chapter 4 Discussion and Conclusion, there is an overarching discussion in which the categories were linked, compared and contrasted with each other, so-called categorization.[104]

Graneheim and Lundman discusses the criticism that can be directed at the quality of the method and how it can be addressed by looking at four key criteria; *credibility, transparency, reliability* and *transferability*.[105] The first criteria, *credibility*, addresses how credible the results are

[103] Erlingsson & Brysiewicz, 2017, p. 97-98.

[104] Graneheim, U.H., & Lundman, B. (2017). "Methodological challenges in qualitative content analysis: a discussion paper". *Nurse Education Today*, 56(6), p. 33.

[105] Graneheim & Lundman, 2017, p. 32-33.

and whether it describes the core meaning of the material. For example, the documents should have the opportunity to describe the phenomenon examined and that there is an adequate amount of data to cover variation in content and diversity.[106] In this case, relevant data was selected regarding the Opinion, the reasoning behind requesting it, namely the resolutions and the outcome in form of judges' declarations and dissenting opinions. The number of documents considers to be sufficient to achieve the purpose of the study. Further, Graneheim and Lundman explain that the second criteria focus on the *transparency* of the results and replicability to find the same exact results. This has been done by using quotations from the original data, which enables the reader to follow the reasoning, which increases the study's credibility.[107] The replicability in content analysis follows a systematic procedure that can be replicable by other researcher, which give the findings reliability. To ensure overall *reliability* and replicability, it must be made clear whether it is the findings or the own interpretation that is presented in the study.[108] This was noted and addressed in the study by clarifying and consistently referring to the data. Further, there are challenges in the coding process regarding which category it should be sorted in. Graneheim and Lundman explain that this can be limited by clearly stating each category, explaining the criteria in every category and the difference between them. This was addressed by figure 2, where it outlines the codes and criteria for each category, as well as their differences. The last criteria is *transferability*, how the results can be applied in other contexts. In this study it is considered possible because it outlines the procedures followed and may be replicable to other researchers.[109]

[106] Graneheim & Lundman, 2017, p. 33.

[107] Ibid., p. 33-34.

[108] Ibid., p. 33.

[109] Ibid., p. 34.

3. Analysis

The findings, found by using the qualitative content analysis with an inductive approach, will be divided into three categories (a) The Court's Role in Solving the UNGA's Deadlock - a Dispute, (b) The Court's Contradiction between Promise and Performance and (c) Controversies regarding the Court's Responsibility. Each finding will have two sections which represents themes, found by both manifest and latent approaches. In connection to category (a): (a1) The UNGA's Deadlock and its Need for a Conclusion and (a2) The Idea of the Court and its Value to the UNGA. In connection to category (b): (b1) Controversies of the Non-liquet Finding - a Deviation from its Judicial Function and (b2) The Court as a Creature of the UN - a Contradiction in Conclusion E. In connection to category (c): (c1) The Opinion - a Guide to Action or a Repellent of International Law and (c2) Divided Court leading to an even more Divided International Community. The first section (x1) of each category aims to define and explain the finding, using evidence from the text, such as quotes and paraphrasing. The second section (x2) will make sense of the finding, linking it to the theme, concept, research review, the aim and the research question.

3. 1 The Court's Role in Solving the UNGA's Deadlock - a Dispute

3.1.1 The UNGA's Deadlock and its Need for a Conclusion

The UNGA has a responsibility under the Charter to maintain international peace and security, which lead them to consider disarmament of nuclear weapons. They acknowledged that WMD was in the past prohibited and violated the IHL principles, they also considered nuclear weapons as a direct violation of the Charter and a crime against humanity.[110] Generally the resolutions stated that the use of nuclear weapons exceed the scope of war and is not a war directed to an enemy but to mankind in general. In the first resolution from 1961 A/RES/1653 (XVI), the UNGA requested the Secretary-General to consult the member states on their views of signing a convention of nuclear weapons prohibition and required that they would report back the results.[111] This finding shows the UNGA's position on nuclear weapon, they were against it and wanted a convention on the matter. In

[110] UN General Assembly, *Declaration on the prohibition of the use of nuclear and thermonuclear weapons.*, 24 November 1961, A/RES/1653(XVI) (hereafter 'A/RES/1653 (XVI), 1961'), p. 4.

[111] A/RES/1653 (XVI), 1961, p. 5.

its second resolution from 1978 A/RES/33/71 B, they declared that nuclear disarmament was necessary for the prevention of nuclear outbreak and for strengthening the international peace and security. They required all states to actively participate in efforts to bring a code of peaceful conduct to the international community, which would impede the use or threat of nuclear weapons. The UNGA insisted that all states, especially NWS, should submit to the Secretary-General in order to establish a convention to prevent a nuclear war.[112] The third resolution from 1979 A/RES/34/83 G, the UNGA stated that they would transmit the results from the Secretary-General to the Committee on Disarmament. In order for them to consider the general views of states regarding non-use of nuclear weapons and report back.[113] The fourth resolution from 1980 A/RES/35/152 D, they once again required states which had not yet submitted to do so.[114] This is also shown in the fifth resolution from 1981 A/RES/36/92 I, where they urged the consideration of nuclear disarmament and the establishment of a convention.[115]

In the sixth resolution from 1990 A/RES/45/59 B, the UNGA were alarmed by the nuclear arms race and the danger of a nuclear war, in which they stated that ”[…]nuclear disarmament is the only guarantee against the use of nuclear weapons.”[116] Therefore, they argued, that a multilateral agreement was needed to strengthen the international peace and security, as well as undertaking negotiations resulting in a complete elimination. It also noted with regret that the Conference on Disarmament (COD) was not able to undertake negotiations on establishing a convention. Therefore, the UNGA decided to request the COD, as a matter of priority, to commence negotiations again and report back.[117] The seventh resolution from 1991 A/RES/46/37 D, they

---

[112] UN General Assembly, *Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session; Non-use of Nuclear Weapons and Prevention of Nuclear War.*, 14 December 1978, A/RES/33/71 B (hereafter ’A/RES/33/71 B, 1978’), p. 48.

[113] UN General Assembly, *Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session; Non-use of Nuclear Weapons and Prevention of Nuclear War.*, 11 December 1979, A/RES/34/83 G (hereafter ’ A/RES/34/83 G, 1979’), p. 56.

[114] UN General Assembly, *Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session; Non-Use of Nuclear Weapons and Prevention of Nuclear War.*, 12 December 1980, A/RES/35/152 D (hereafter ’A/RES/35/152 D, 1980’), p. 69.

[115] UN General Assembly, *Review of the implementation of the recommendations and decisions adopted by the General Assembly during its tenth special session; Non-Use of Nuclear Weapons and Prevention of Nuclear War.*, 9 December 1981, A/RES/36/92 I (hereafter ’A/RES/36/92 I, 1981’), p. 64.

[116] UN General Assembly, *Review of the implementation of the Concluding Document of the Twelfth Special Session of the General Assembly; Convention on the Prohibition of the Use of Nuclear Weapons.*, 4 December 1990, A/RES/45/59 B (hereafter ’A/RES/45/59 B, 1990’), p. 71.

[117] A/RES/45/59 B, 1990, p. 71.

announced that the COD once again were not able to to undertake negotiations.[118] In the last resolution from 1994 A/RES/49/75 K, they declared that the continuing existence and development of nuclear weapons was a danger to humanity. They referred to the seven resolutions mentioned above and stated that the use of nuclear weapons would be a direct violation of the Charter and a crime against humanity.[119] The UNGA also expressed concerns regarding the insufficient progress towards a prohibition and elimination of nuclear weapon and that they urgently needed the ICJ to render an advisory opinion regarding: ”[i]s the threat or use of nuclear weapons in any circumstances permitted under international law?”[120]

The Court concluded, after consideration and controversies regarding the political aspects of the question and its jurisdiction, to render an opinion. The Court noted that the UNGA had a long-standing interest in nuclear weapons and had only been able to make recommendations, which proved a deadlock.[121] Judge Shahabuddeen in his dissent, restate that the UNGA called for a conclusion on the matter to establish a convention.[122] The resolutions may reasonably be interpreted as the UNGA had taken a position of a nuclear weapon prohibition. This is because the vast terminology used in them were of prohibition and nuclear disarmament. Judge Koroma in his dissent, present the Opinion as a step forward in the historic process of imposing legal restrains on nuclear weapons.[123] The UNGA expected the Court, ”[…]as a guarantor of legality”[124], to affirm that nuclear weapons were unlawful, which the Court was not able to do.[125] Judge Weeramantry in his dissent, clarified that ”[t]he responsibility placed upon the Court is thus of an extraordinarily onerous Nature[…]its pronouncements must carry extraordinary significance.”[126] This finding shows that it was a milestone for the Court, if not in history *per se*, which shows the idea of the Court and also its value to the international community. No authoritative statement of law on the

---

[118] UN General Assembly, *Review of the implementation of the Concluding Document of the Twelfth Special Session of the General Assembly; Convention on the Prohibition of the Use of Nuclear Weapons.*, 6 December 1991, A/RES/46/37 D (hereafter ’A/RES/46/37 D, 1991’), p. 78.

[119] A/RES/49/75 K, 1994, p. 15.

[120] Ibid., p. 16.

[121] The Opinion, 1996, para. 12 and para. 23.

[122] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Dissenting Opinion of Judge Shahabuddeen (hereafter ’Dissenting Opinion of Shahabuddeen’), p. 169.

[123] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Dissenting Opinion of Judge Koroma (hereafter ’Dissenting Opinion of Koroma’), p. 357.

[124] Dissenting Opinion of Koroma, 1996, p. 359.

[125] Ibid., p. 359.

[126] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Dissenting Opinion of Judge Weeramantry (hereafter ’Dissenting Opinion of Weeramantry’), p. 217.

subject had been made, the request from the ”[…]world’s highest representative organization on the basis that a statement by the world’s highest judicial organization would be of assistance to all the world in the all-important matter.”[127] Weeramantry also stated that the request gave the ICJ a ”[…]unique opportunity to make a unique contribution to this unique question”[128], which shows the importance of the Opinion and the Court’s value in the UNGA’s deadlock. In the declaration of judge Bravo, he acknowledged that the Opinion should resolve the UNGA’s deadlock which perpetuated for over 50 years.[129]

3.1.2 The Idea of the Court and its value to the UNGA

The UNGA has a responsibility under the Charter to maintain international peace and security, which lead to numerous of resolutions on the matter. The resolutions used the vast terminology of a prohibition and they repeated throughout the eight resolutions that the use of nuclear weapons would be a direct violation of the Charter and a crime against humanity. This shows their position on nuclear weapon, what they expected the findings of the Opinion to be and the idea of the Court as well as its value. Reasonably, the UNGA turned to their principal judicial UN organ for them to solve the deadlock, which goes in line with the idea of the Court as a legal developer and norm maker.

The UNGA was in a deadlock, the resolutions and the COD did not go as planned. It could not commence negotiations of the non-use of nuclear weapons, due to NNWS and especially NWS reluctance to submit their views. In res. A/RES/45/59 from 1990 they stated that the nuclear arms race had intensified, which made it urgent to establish a convention and also decided to request the COD, as a matter of priority. This finding shows that the UNGA thought it was urgent and necessary to establish an international agreement of the non-use of nuclear weapons, due to the intensified nuclear arms race between NWS.[130] In the last res. A/RES/49/75 from 1994, they declared that insufficient progress had been made and that it ”[…]urgently needed the ICJ”[131] to render an opinion.[132] In connection to the concept, the Court’s Opinion was of importance for the

---

[127] Dissenting Opinion of Weeramantry, 1996, p. 331.

[128] Ibid., p. 332.

[129] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Declaration of Judge Bravo (hereafter ’Declaration of Bravo), p. 60.

[130] A/RES/45/59 B, 1990, p. 71.

[131] A/RES/49/75 K, 1994, p. 16.

[132] Ibid., p. 16.

UNGA and the international community, which were in a deadlock and needed the ICJ as an ’agent’ of legal development to solve it by rendering an opinion and stating existing laws. Hence, they are the principal judicial UN-organ which is why the UNGA turned to the Court when they could not go any further.[133] The Court shapes the field of international law and has a powerful influence on it as ’agents’ of legal development. It sets legal precedents which are important to move forward, therefore solving the deadlock. The Court contributes to progressive legal development in the interest of the international community, which can be applied in this case due to UNGA’s resolutions and long-standing interest.[134] Reasonably, the UNGA requested an opinion due to their interest and the disinterest of the international community, especially NWS, in the legal development of disarmament.

Furthermore, the UNGA wanted all states to actively participate and establish a code of peaceful conduct, which did not succeed because states would not submit their views.[135] This aligns with the research review. Nakanishi showed that states generally used sovereign equality as blockades in disarmament process in which they claim their rights to posses such weapons.[136] It was also revealed throughout the resolutions that states, especially NWS, were reluctant to submit their views. However, Greenwood’s research showed that the idea of the Court and its role is *lex lata* and not *lex feranda*. Indeed, the Court had a historical opportunity but was limited by its Statute and what it was actually capable of achieving.[137] Datan and Scheffran argued that the Court should state existing laws, even though they are imperfect, and that it is the international community’s role to correct them, which applies in this case.[138] Mohr’s article showed that there is a trend of a nuclear weapon prohibition, but also that NWS are reluctant because they refer to national security, which impedes the disarmament process.[139] This supports the finding, the UNGA was in a deadlock due to states.

In relation to the research question and the aim of the thesis, the idea and the value of the Court to the international community in this case depends on the perspective. The Court did solve a deadlock by rendering an opinion and stating applicable law, even though they made an exception

[133] Berman, 2013, p. 18.

[134] Ibid., p. 18-20.

[135] A/RES/49/75 K, 1994, p. 16.

[136] Nakanishi, 2012, p. 622.

[137] Greenwood, 1997, p. 61.

[138] Datan & Scheffran, 1997, p. 120-122.

[139] Mohr, 1997, p. 102.

in case of self-defense. Reasonably, maybe not the preferable way for the UNGA nor proponents of prohibition, but the idea of the Court as a legal norm maker and moving forward stands. By rendering an Opinion it solved the UNGA's deadlock. The judges' agreed that it was a milestone in the nuclear weapons legal history and also for the Court, which shows its value to the international community. The idea of the Court, can be interpreted as legal norm maker, even though they did not move in the prohibition direction. The concept added a perspective which shows that the Court contributed to the legal development, even though researches' argued that it was a disappointment for the international community. The Court still made a legal impact, which goes in line with the concept as 'agents'. The UNGA received a *non-liquet* finding to commence further negotiations, and as stated the Opinion sparked controversies.

3. 2 The Court's Contradiction between Promise and Performance

3.2.1 Controversies of the Non-liquet Finding - a Deviation from its Judicial Function?

In connection to the theme above, the Court had to consider whether it had jurisdiction and if the question was considered too political. The Court concluded that the question indeed was of legal character within the meaning of its Statute and the Charter, they were asked to rule if the threat or use of nuclear weapons were in any circumstances permitted under international law. Regardless of the political implications, the Court could not refuse to answer, thus it is their essential function as the principal UN Court, according to art. 92 of the Charter, to represent its participation in the activities within the Organization. If they were to refuse it, it would imply that they discharge its judicial function.[140] Judge Weeramantry in his dissent stated "[w]hatever may be the law, the question[…]is a political question, politically loaded, and politically determined."[141] It had to be clarified heedless of political implications and thus it would enhance the authority, idea and value of the Court to clarify and develop the law.[142]

However, conclusion E met resistance, which can be shown by the distribution of votes against it, the Court was divided. In judge Shahabuddeen's dissent, he declared that the Court failed to answer the substance of the question and the *non-liquet* finding should instead have led the Court

[140] The Opinion, 1996, para. 13.

[141] Dissenting Opinion of Weeramantry, 1996, p. 328.

[142] Ibid., p. 328.

to answer it one way or another.[143] Shahabuddeen expressed concerns regarding the Conclusion, because the Court suggested that there are circumstances where the use or threat of nuclear weapons are lawful, when they still were not able to give a definite conclusion on the main issue.[144] On the one hand, for a 'world court' to decide that NWS have the rights to embark on a course of conduct which could lead to extinction of mankind or on the other hand deny the existence of the *lotus*[145] principle. In this view, the Court took on the latter due to the fact that a specific prohibition of nuclear weapons did not exist.[146] However, Shahabuddeen explains that this view and idea of the Court as a "[…]creature of the Charter and its Statute"[147] is a contradiction, because both the Charter and the Statute does not embark on a course of conduct which could possible be the annihilation of civilization.[148] The use of nuclear weapons would bring untold sorrow to mankind, which is the primary objective for the UN to prevent, therefore the Court should comply with its Organization's interest according to Weeramantry.[149] He argued that the disastrous effects produced by nuclear weapons, should not be beyond the pre-existing international law. However, the Conclusion shows something else, namely the literal application of the *maxim fiat justitia ruat coelum*[150] and *fiat justitia, pereat mundus*[151].[152] Shahabuddeen argued that these maxims should not be used by a 'world court'.[153] He also states that "[i]t would[…]seem curious that a world court should consider itself compelled by the law to reach the conclusion that a state has the legal right, even in limited circumstances, to put the plant to death"[154], which is the danger of these maxims. The application of maxims would allure the Court into legislating, which is not their role nor the idea of it. On the one hand, there is a danger to legislate where the Court state laws that does not

---

[143] Dissenting Opinion of Shahabuddeen, 1996, p. 153.

[144] Ibid., p. 156.

[145] The *Lotus* principle declares that states have a sovereign right to do whatever is not prohibited under international law. See The Opinion, 1996, para. 21.

[146] Dissenting Opinion of Shahabuddeen, 1996, p. 169.

[147] Ibid., p 175.

[148] Ibid., p. 175.

[149] Dissenting Opinion of Weeramantry, 1996, p. 330.

[150] *Maxim fiat justitia ruat coelum* is a latin phrase meaning "let justice be done though the heavens fall". See Dissenting Opinion of Weeramantry, 1996, p. 330.

[151] *Fiat justitia, pereat mundus* is a latin phrase meaning "let justice be done, though the world perish". See Dissenting Opinion of Weeramantry, 1996, p. 330.

[152] Dissenting Opinion of Weeramantry, 1996, p. 330.

[153] Dissenting Opinion of Shahabuddeen, 1996, p. 190.

[154] Ibid., p. 203.

exist or on the other hand, fails to apply existing applicable law, which might lead to repellent of international law.[155]

Furthermore, the Court was in a position were it could not definitely conclude if a prohibitory rule existed, on that basis according to Shahabuddeen, the presumption should be that states should refrain from using nuclear weapons. However, this was not the course the Court embarked on. The position was that NWS had the right to use nuclear weapons in circumstances of self-defense and if that was not the intended conclusion, it was not well conceived by the UNGA nor the international community.[156] Weeramantry explains that the Conclusion implied a ”[…]window of permissibility”[157], which did not reflect international law and that the Court applied a ”[…]veil of ignorance”[158] of its legal capacity.[159] It is better to uphold a prohibition on the matter than to inflict on future nuclear wars, Weeramantry argued.[160] Koroma stated, this might destabilize the existing international legal order.[161] He also expressed concern regarding the idea of the Court as a ”[…]guardian of legality in the UN system”[162] and as ”[…]administers of legal development.”[163] The Court should have made a legal impact and contribution to prevent nuclear wars by undertaking respect of international law. According to Koroma, the Court should have strengthened the disarmament process like ”[…]a shield for humanity”[164], which is his interpretation of the Court’s idea.[165] In the declaration of judge Bravo, he explains that the counterpoints under the Charter, namely art. 2 para. 4 was reduced while the scope of art. 51 was extended as a result of the great obstacle of deterrence.[166] According to Koroma this shows that the Court deviated from its normal judicial function and therefore the idea of it. The *non-liquet* response was wholly unfounded and included a new category in self-defense called ’the survival of

---

[155] Dissenting Opinion of Shahabuddeen, 1996, p. 203.

[156] Ibid., p. 204.

[157] Dissenting Opinion of Weeramantry, 1996, p. 213.

[158] Ibid., p. 300.

[159] Ibid., p. 213; p. 300.

[160] Ibid., p. 328.

[161] Dissenting Opinion of Koroma, 1996, p. 334.

[162] Ibid., p. 335.

[163] Ibid., p. 335.

[164] Ibid., p. 335.

[165] Ibid., p. 335-336.

[166] Declaration of Bravo, 1996, p. 61-62.

the state', a concept the Court invented. The Court repealed international law in armed conflicts and the present restrains of WMD. It affirmed that it cannot legislate, but in this case it did according to Koroma, because self-defense "[…]exists within and not outside or above the law."[167] Since self-defense is not a license to use force, it is regulated by international law.[168]

The *non-liquet* finding is legally untenable, unsustainable and superfluous. Koroma explains conclusion E as a throwback to laws before the establishment of the Charter and even a long period of time before that.[169] Weeramantry declares that it is "[…]international law on terror[…]setting the clock back to the state of nature described by Hobbes and the rule of law visualized by Grotius."[170] It can be explained as a grotian moment in ICJ's history and in international law.[171] In the *dispositif* of the Opinion the Court deviated from its own jurisprudence by misconceiving the question, which resulted in a *non-liquet* finding according to Koroma.[172] He describes it as a 'judicial odyssey', were the Court searched for a specific prohibitory rule, which it concluded did not exist. However, if it did exist it is highly unlikely that the UNGA would request the Court to render an opinion at all.[173] In the declaration made by judge Vereshchetin the grey area, *lacuna*, in the *dispositif* indicated further development of laws prohibiting nuclear weapons in armed conflicts and that the Court's role is *lex lata* not *lex desiderata*.[174] Therefore, the idea of the Court and its role is not to fill gaps, for that reason it cannot be blamed for being indecisive or evasive, because the laws were imperfect and the function of it is not to assume the burden of law-creation.[175] Vereshchetin argues that the findings should be regarded as a guide to action and is a matter of legal development, thus its not the Court's fault that there is obscurity in the current international legal system.[176] In the declaration of President Bedjaoui, which had the casting vote in conclusion E, it is argues that the

---

[167] Dissenting Opinion of Koroma, 1996, p. 338.

[168] Ibid., p. 338.

[169] Ibid., p. 338.

[170] Dissenting Opinion of Weeramantry, 1996, p. 329.

[171] Ibid., p. 329.

[172] Dissenting Opinion of Koroma, 1996, p. 348.

[173] Ibid., p. 353.

[174] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Declaration of Judge Vereshchetin (hereafter 'Declaration of Vereshchetin'), p. 57.

[175] Declaration of Vereshchetin, 1996, p. 58.

[176] Ibid., p. 59.

Court due to its restrictions in the Statute is why they declared a *non-liquet* finding.[177] The idea of the Court and its role is to state the law, and it cannot go beyond.[178] Bedjaoui explained that the Conclusion was not a *ultra petita*[179], instead it represented a collision between fundamental legal principles, but cannot be interpreted as leaving the door ajar, thus the Court is limited in its judicial function.[180] Bravo argues that the Court contributed to the legal development even though there was serious *lacuna* in the laws and due to the fact that the Court rendered an advisory opinion and not a judgement.[181]

3.2.2 The Court as a Creature of the UN - a Contradiction in conclusion E

In view of the concept, the Court as an 'agent' sets legal precedents and code of conducts, through its opinions and enabled by its jurisprudence, which contributes to legal development.[182] In this case, the Court effected the UNGA's deadlock and made a legal impact to the international community. Its Statute is an integral part of the Charter to preserve continuity and contribute to international justice and legal development, by clarifying, systematize and state the applicable laws, which applies in this case. However, one of the major conclusions was of *non-liquet* character.[183] Conclusion E shows that the Court was divided seven to seven, which the concept believes shows the divergence of it and thus harms the legal impact. Five of them were dissenting opinions, which wholly disagreed with the finding. Decisions agreed upon by the President's casting vote does not have the great impact as an unanimous Court.[184] Therefore in this case, it affected the authority of the Opinion due to the high amount of dissents, the authority of the Court and its decision are considered to be weakened. [185] This follows the view, which was stated in the concept, that political questions harms the Court's role and international law. This is done by addressing political question as legal and expect the Court to answer by legal procedures.[186] This is a possible explanation to why

---

[177] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Declaration of President Bedjaoui (hereafter 'Declaration of Bedjaoui'), p. 47.

[178] Declaration of Bedjaoui, 1996, p. 48.

[179] *Ultra petita* is a latin term meaning "not beyond request". See Declaration of Bravo, 1996, p. 50.

[180] Declaration of Bedjaoui, 1996, p. 50.

[181] Declaration of Bravo, 1996, p. 62.

[182] Berman, 2013, p. 18.

[183] Ibid., p. 18-20.

[184] Anand, 2005, p. 790-792.

[185] Berman, 2013, p. 14.

[186] Kreß, 2013, p. 291-292.

the Court sometimes has political tendencies, because it is requested to render a political question, which applies in this case.

However, in the past the Court has been accused of being too political and diplomatic when avoiding controversial issues of political sensitivity, but this time it answered and the findings were *non-liquet* with both political and diplomatic tendencies.[187] The concept applies the Opinion as a group of diplomats trying to overcome the divergence, rather than judges in a court. It applied the diplomatic strategy of constructive ambiguity in the crucial moment of agreeing upon the Conclusion. It was an exercise in the fine art of judicial diplomacy.[188] The findings showed that even the judges were unclear about the interpretation of the Court's jurisprudence and role in international law. Judges Koroma, Shahabuddeen and Weeramantry argued that the *non-liquet* was wholly unfounded because the Court deviated from its own jurisprudence.[189] While Bedjaoui, Bravo and Vereshchetin declared that it had limits upon its Statute and were unable to go beyond.[190] In view of the concept, the *non-liquet* finding was an exercise in diplomacy due to the political sensitivity in the question.[191] Therefore, the Court deviated from its judicial role and entered the diplomatic scene acting as political agents in the controversy of conclusion E. In the concept it was explained that states have a tendency, through the UNGA, to request opinions framed as legal but are highly political.[192] This applies to the Opinion, which put the Court in a difficult position. In this case, the question posed required a yes or no answer, but the *non-liquet* finding shows a divided Court. The concept interpret it as if the failure is within the UNGA, who do not understand and respect the integrity of their own Court. Their idea of the Court's role does not correspond with its findings and what it actually was able to achieve.[193]

Sovereign equality is applied to all states and should be treated as equal, but conclusion E shows something else. This aligns with the research review, the number of states allowed to possess nuclear weapons are limited to the 'international policemen'/P5 along with veto right and the other four NWS, which Nakanishi's article argued was a restriction of sovereign equality.[194] The

---

[187] Kreß, 2013, p. 292.

[188] Ibid., p. 292-293.

[189] Dissenting Opinions' of Koroma, 1996, p. 348, Shahabuddeen, 1996, p. 190 and Weeramantry, 1996, p. 329.

[190] Declarations' of Bedjaoui, 1996, p. 48, Bravo, 1996, p. 62 and Vereshchetin, 1996, p. 58.

[191] Kreß, 2013, p. 292.

[192] Berman, 2013, p. 14-15.

[193] Ibid. p. 15-16.

[194] Nakanishi, 2012, p. 622.

Conclusion makes it hard to see how any case can be made against it, because if the 'survival of states' are in danger, NWS can use nuclear weapons as a mean of self-defense. This supports Lee's article which compared art. 51 of the Charter to pandora's box, and the Conclusion certainly shows it. This is because the Conclusion showed that IHL was inapplicable, which almost refers to a state of nature.[195] Koppe's research revealed that there is a general inequality of NWS and that sovereign equality is an illusion, which goes in line with conclusion E.[196] Reasonably, the Conclusion is in favor for NWS.

Furthermore, the research review showed that IHL is flexible with general principles and its aim is to function in legal gaps and contribute to the implementation and applicability in relation to specific categories of weapons as Kolb's article investigated.[197] However, in the Conclusion, the most destructive weapon of WMD, namely nuclear weapons, may be lawful and dismisses IHL. The very principles which have been developed in line with the demands of humanity, does not apply in extreme circumstances of self-defense where nuclear weapons may be permitted.[198] Greenwood argued that the Opinion is compatible with IHL and that the Court fulfilled its legal obligations because they stated the law as it was and not how it wishes it to be.[199] IHL consists of a balance between military necessity and humanity.[200] The agreement of the Conclusion, shows that the balance was not retained because military necessity was heavier, "[…]a collision of fundamental principles"[201] as Bedjaoui explained.[202] Bugnion's article showed that the Court's divided finding led to an even more divided international community. Some states argued that nuclear weapons in certain circumstances was permitted without violating IHL, while other disagreed.[203] This aligns with the study, the value of the Court and its Opinion were of different value to the international community.

In relation to the research question and the aim, the idea and value of the Court to the international community in this case depends on whether the state is a NWS or a NNWS in

---

[195] Lee, 2004, p. 158-159.

[196] Koppe, 2008, p. 103-105.

[197] Kolb, 2014, p. 76-77.

[198] Oeter, 2008, p. 126-127.

[199] Greenwood, 1997, p. 61.

[200] Oeter, 2008, p. 126.

[201] Declaration of Bedjaoui, 1996, p. 50.

[202] Ibid., p. 50.

[203] Bugnion, 2005, p. 523.

connection to conclusion E. It can be argued that the Conclusion was in favor to the NWS and justified the inequality within the international community and the Charter. It was a contradiction between promise and performance. On the one hand, the resolutions reveled that the UNGA already had an idea that nuclear weapons was a direct violation of the Charter and a crime against humanity. On the other hand, the Court stated the law as it was, *lex lata*, and not how it wished to be, *lex desiderata*. There are different perceptions of the Court's idea and value, which the resolutions, judges' declarations and dissenting opinions showed. Some believes that the Court, as a 'world court' and as the principal judicial organ of the UN should also have acted like it to comply with the activities and interest of its Organization. However, the Court is limited by its Statute and stated the laws as they were and not how they wanted them to be, it fulfilled its legal scope of obligations and viewed it as a guide to action. There is a contradiction between promise and performance. The Court cannot go beyond its legal framework, but judge Koroma argued that it did in conclusion E. The Court reduced art. 2 para. 4, extended the scope of art. 51 and even included a new category, the so-called 'survival of states'.[204]

3.3 Controversies regarding the Court's Responsibility

3.3.1 The Opinion - a Guide to Action or a Repellent of International Law

In connection to the theme above, the divided Court agreed upon a divergent conclusion which led to an even more divided international community. The international community was already divided on the subject and therefore the UNGA requested an opinion from ICJ to achieve a definite conclusion.[205] In the Opinion it states that the Court will conclude the possible conduct of states regarding their obligations imposed under international law.[206] Indeed, the outcome showed the conduct of states, but maybe not the preferable option Shahabuddeen argues that the Court should have concluded that the use of nuclear weapons should be unacceptable in the international community, regardless of circumstances.[207] The material before the Court showed that there was a revulsion in the international community to use nuclear weapons and that they considered it is as unacceptable, which he argues is an established fact. However, the Court cannot "[…]transform

[204] Dissenting Opinion of Koroma, 1996, p. 338.

[205] A/RES/49/75 K, 1994, p. 16.

[206] The Opinion, 1996, para. 13.

[207] Dissenting Opinion of Shahabuddeen, 1996, p. 165.

public opinion into law: that would lead to ’government by judges’”[208], which is not the idea nor role of the Court according to Shahabuddeen.[209]

The Conclusion might destabilize the existing international legal order, as Koroma argued, but also go against the achievements already done on the matter. Both NWS and NNWS have agreed that IHL should apply in the use of nuclear weapons, but the Conclusion embarks on another course.[210] It implies that it should be ”[…]left to individual States to determine whether or not it may be lawful to have recourse to nuclear weapons”[211], which Koroma means leads to serious danger and is not legally reprehensible. The Court should not put the responsibility on states and the question posed was not about the ’survival of states’.[212] Reasonably, this finding gives another spectrum of use of force to the international community. The purpose of advisory opinions is to give an authoritative legal opinion and provide interpretations of the provisions under the Charter and act as a medium of participation to achieve the Organizations objectives. This is questionable if the Court did in conclusion E. Historically, opinions have enabled the Court to contribute to legal development and crystallization of international law. According to Koroma, in this case the Court deviated from its normal practice on a vital area of importance to the UNGA and to the international community. The Opinion casted doubt on pre-existing law, which might lead to repellent of international law.[213]

Moreover, the essential judicial function of the Court is to set legal standards and codes of conducts for the international community. Koroma asks if this is the course the Court wants the international community to take?[214] The Conclusion leaves it to states to decide on the matter. Vereshchetin and Weeramantry agrees with Koroma, the Court’s code of conduct in the Opinion moves in another direction than both the UNGA and the international community wanted from it.[215] Indeed, Weeramantry notes, the Court cannot envisage the future, it can only state existing laws, however, when the Court ”[…]determines what the law is it ploughs its furrow in that direction, it cannot pause to look over its shoulder at the immense global forces ranged on either side of the

---

[208] Dissenting Opinion of Shahabuddeen, 1996, p. 187.

[209] Ibid., p. 187.

[210] Dissenting Opinion of Koroma, 1996, p. 334-335.

[211] Ibid., p. 337.

[212] Ibid., p. 337-339.

[213] Ibid., p. 351.

[214] Ibid., p. 352.

[215] Declaration of Vereshchetin, 1996, p. 57 and Dissenting Opinion of Weeramantry, 1996, p. 211.

debate."[216] This finding shows that the responsibility, progressive development and the Opinion's value lays within the international community, how they interpret it and how they 'plough the direction'. However, Vereshchetin agues that the Conclusion indicates further development of international law by the international community and the responsibility is not on the Court, due to its limits in the Statute.[217] The Opinion is a guide to action because the Court showed the *lacuna* and its up to the states to fill them. According to Vereshchetin the states must "[…]shoulder the burden of bringing the construction process to completion."[218] The Court followed its legal scope of obligations and stated the legal reality, but the international community bears the responsibility to complete the prohibition of nuclear weapons. Uncertainties still exists and Bedjaoui insist that states should legislate urgently.[219]

3.3.2 A Divided Court leading to an even more Divided International Community

The Court was divided on the Conclusion, which lead to an even more divided international community. According to the dissents, the Court deviated from its jurisprudence and went against what the UN stands for, which affects its value to the international community.[220] While, the declarations argued that the Opinion represented a guide to action, which urged states to legislate, because it is beyond the Court's legal framework to act like legislators.[221] The dissents expressed disappointment of the Court's findings, which according to the concept, derives from dissatisfied political figures, because the Opinion did not respond as they wanted. In other words, how they view the Court and what it actually can do did not correspond.[222]

In connection to the concept, the ICJ as an 'agent' of legal development and its value to the international community, sets these code of conducts, enabled by their jurisprudence, to preserve continuity on international issues. The legislative intent of the Court has remained intact since its predecessor PCIJ, which is to contribute to world peace.[223] However, this does not apply in the Opinion, the Conclusion shows otherwise. It enables NWS in extreme circumstances of self-defense

---

[216] Dissenting Opinion of Weeramantry, 1996, p. 218.

[217] Declaration of Vereshchetin, 1996, p. 57.

[218] Ibid., p. 59.

[219] Declaration of Bedjaoui, 1996, p. 51-52.

[220] Dissenting Opinion's of Koroma, 1996, p. 351, Shahabuddeen, 1996, p. 165 and Weeramantry, 1996, p. 211.

[221] Declaration's of Bedjaoui, 1996, p. 51-52, Bravo, 1996, p. 64 and Vereshchetin, 1996, p. 57.

[222] Anand, 2013, p. 242.

[223] Berman, 2013, p. 8; p. 18.

to use nuclear weapons, which is contrary to its main purpose and almost refers to a state of nature. This also aligns with the research review, the Conclusion shows that states can decide whether it is lawful if their 'state of survival' is at risk to use it as a means of self-defense according to Nakanishi. The Court opened pandora's box art. 51 of the Charter and could not definitely conclude whether is was lawful or unlawful for NWS to use such weapons. It is a shown inequality between NWS and NNWS, which conclusion E is evidence for. States' should posses the same legal rights in international law, but the Court implied a legal maxim *nemo judex in causa sua*, which should not be used by a 'world Court' as Nakanishi's article argued.[224]

Furthermore, the concept acknowledge that the Court is an optional instrument to the international community and its jurisdiction is based on consent, but believes that legal opinions come with legal effect.[225] When the Court has declared an opinion judicially, it tends to outrun due to the fact that it sets code of conducts and has powerful influence on it in a broader legal landscape. It argues that the decisive control does not solely lay within the Court, it is how the international community goes further and interpret the Opinion. The concept explains it as progressive legal development to the interest of the international community, which is the essential function of the ICJ.[226] However, as stated, conclusion E had minimal majority, which according to the concept weakens the Opinion and reduces its legal impact and value in the international community.[227] In view of the research review, the LON collapsed due to its failure of disarmament, which shows that it is a highly controversial question.[228]

In relation to the research question and the aim, the idea and the value of the Court to the international community in this case depends on the perspective. The concept added a perspective that the Opinion had minimal majority which effects the value negatively.[229] While seen by the research review, the Opinion created a divided international community due to the divergence of the Court, but still had an impact on the legal development.[230] Indeed, the Court as a legal norm maker rendered an Opinion on the matter, which was of importance for the UNGA and had a legal impact to the international community. However, conclusion E sparked controversies, which divided the

[224] Nakanishi, 2012, p. 622.

[225] Berman, 2013, p. 18.

[226] Ibid., p. 20-21.

[227] Anand, 2005, p. 790.

[228] Nakanishi, 2012, p. 622.

[229] Anand, 2005, p. 790.

[230] Condorelli, 1997, p. 15.

Court, the international community and researchers. As stated, the value of the Opinion and the Court depends on the perspective, if it is a NWS or a NNWS. This was also shown by Mohr's article in the research review, where the Opinion represented a disappointment or a triumph.[231] The Opinion's value is not the only one whose divided, the idea of the Court as well. Dissentst argued that the Court as a creature of the UN should follow its main objective and contribute to world peace and legal development.[232] The question stands: in what legal direction? The Court, the UNGA and the international community were divided. While the declaration's argued that the idea of the Court is *lex lata* and that it is bound by its Statute.[233] In line with the concept, the international community is in need of an unanimous Court to give a definite conclusion, which it was not able to achieve.[234] How some view the idea and value of the Court and what it actually can do does sometimes not correspond, which the Opinion is evidence for.

[231] Mohr, 1997, p. 102.

[232] Dissenting Opinions' of Koroma, 1996, p. 351, Shahabuddeen, 1996, p. 165 and Weeramantry, 1996, p. 211.

[233] Declarations' of Bedjaoui, 1996, p. 51-52, Bravo, 1996, p. 64 and Vereshchetin, 1996, p. 57.

[234] Anand, 2005, p. 790.

4. Discussion and Conclusion

The objective of the thesis was to examine ICJ's role in international law as a legal norm maker to the international community. To explore this issue the study examined the Opinion and the political context surrounding it. The study used a qualitative content analysis with inductive approach and the results were interpreted with a concept viewing the ICJ as an 'agent' of legal development, which shapes international law. This chapter includes a discussion of major findings, which will be linked to the research review and the concept. It is an overarching discussion in which categories are linked to themes, where they are compared and contrasted with each other, a so-called categorization in content analysis. Also, there will be suggestions for further research and how the study contributed to the wider research field, in connection to human rights studies. It contains a discussion to help fulfill the aim and answer the research question of the study: *how is the idea of the Court and its value to the international community conceptualized and framed by the UNGA and the judges of ICJ in connection to the Opinion?*

The first category 'The Court's role in Solving the UNGA's deadlock' may reasonably be interpreted as the UNGA had declared the use or threat of nuclear weapons as unlawful, by stating that it would be a direct violation of the Charter and a crime against humanity.[235] This shows their position on nuclear weapon as assuming prohibition under international law, which was evident by their terminology of prohibition and nuclear prevention/disarmament. It may be interpreted as they wanted the Court to affirm that the threat or use of nuclear weapons were unlawful, which the Court was unable to do. In its connected theme 'The UNGA's Deadlock and its Need for a Conclusion' it was shown that the UNGA numerous times expressed concern about the use of such weapons and wanted to establish a convention and a code of peaceful conduct on the matter.[236] The Court was shown to be of value, because the UNGA had only been able to make recommendations and was in a deadlock due to the reluctance of NWS. This supports David's research, which showed that the NWS which supported the legality of nuclear weapons questioned the Court and its competence to render an opinion on the subject, because it may lead to unfavorable outcome concerning disarmament.[237] This aligns with the examined UNGA resolutions, which were in a deadlock due to states who were in favor of nuclear weapons.

[235] A/RES/1653 (XVI), 1961, p. 4-5.

[236] A/RES/33/71 B, 1978, p. 48.

[237] David, 1997, p. 22.

The Court rendered an opinion and stated existing laws, therefore solving the deadlock, which the theme uncovered. It also gave insight to the dissent's and declarations' idea of the Court and its value. The Opinion was a milestone both for the Court and the legal history of nuclear weapons, no authoritative statement of law had been made on the matter and should be of both interest and value to the international community.[238] The declarations' added that the Opinion might solve the deadlock.[239] This was also shown by the theme 'The Idea of the Court and its Value to the UNGA'. Reasonably, the UNGA turned to the Court in order to solve the deadlock, which follows the idea of it as a legal norm maker and developer. It aligns with the concept, that the Court as an 'agent' of legal development was needed by the UNGA, for them to render an opinion and state existing law. The Court sets legal precedents and is a powerful influence in shaping international law, thus important for moving forward and solving a deadlock.[240] This shows the value of the Court as an 'agent' which contributes to legal development in the interest of the international community.

In connection to the second finding 'The Court's Contradiction between Promise and Performance' and its theme 'Controversies of the Non-liquet Finding - a Deviation from its Judicial Function', the UNGA expected the Court to declare nuclear weapons as unlawful, a conclusion it was not able to make. The Court's idea and value had different perspectives. On the one hand, the dissents argued that the Court made a deviation from its judicial practice and went against its own Organization's interest, which does not embark on a course leading to annihilation of mankind, it was a contradiction.[241] On the other hand, the declarations argued that the Court was unable to achieve a different finding due to its Statute, which is *lex lata* not *lex feranda*. In order, the laws were imperfect and the idea of the Court is to state existing laws not fill legal gaps, therefore the Opinion represents a guide to action.[242] In the second theme 'The Court as a Creature of the UN - a Contradiction in conclusion E', it was found that the Court was divided which aligns with the concept. The Conclusion was agreed upon by the President Bedjaoui's casting vote, which reduced the Court's legal impact to the international community, due to the high amount of dissents.[243] The

[238] Dissenting Opinion of Weeramantry, 1996, p. 331.

[239] Declaration of Bravo, 1996, p. 60.

[240] Berman, 2013, p. 14-15.

[241] Dissenting Opinions' of Koroma, 1996, p. 351, Shahabuddeen, 1996, p. 165 and Weeramantry, 1996, p. 211.

[242] Declarations' of Bedjaoui, 1996, p. 51-52, Bravo, 1996, p. 64 and Vereshchetin, 1996, p. 57.

[243] Anand, 2005, p. 790-792.

concept offers an explanation to this, political questions posed as legal, harms the Court's idea and value. The Court deviated from its judicial role and entered the diplomatic scene as political agents, due to the political implications in the question. Its jurisdiction and integrity were not respected by the UNGA and their idea of the Court did not correspond with what it was able to achieve.[244] Due to the political sensitivity in the question, the Court had both political and diplomatic approaches in the Opinion, because it could not give a definite conclusion on the matter.[245] However, as argued by the declarations and parts of the Opinion, the Court was unable to achieve a differentiated result due to restrictions in its Statute.[246] It can be concluded that hard cases make bad laws, even though the Court is not a legislator. Conclusion E was of *non-liquet* character and the research review showed that the Court opened pandora's box when agreeing upon it, it almost referred to a nuclear sovereignty.[247] Bugnion argued that the Conclusion led to an even more divided international community. Some states argued that it was lawful to use nuclear weapons in self-defense, while others disagreed.[248] This aligns with the study, the Court were considered to have different value in the international community.

In comparison, the third finding 'Controversies regarding the Court's Responsibility' and its themes 'The Opinion - a Guide to Action or a Repellent of International Law' and 'A Divided Court leading to an even more Divided International Community', the Court's divergence lead to a divided international community. In connection to the first category, the UNGA and the international community were already divided on the matter and wanted a definite conclusion to establish a convention.[249] However, the themes showed that the Conclusion might destabilize the existing legal order and even lead to repellent of international law. It implied that NWS could decide for themselves when the use of nuclear weapons would be lawful in circumstances of self-defense.[250] The dissents argued that it was wrong of the Court to put the responsibility on states and that it was not legally reprehensible.[251] They also argued that the Court should, as a medium of

[244] Berman, 2013, p. 14-15.

[245] Kreß, 2013, p. 292.

[246] Declarations' of Bedjaoui, 1996, p. 51-52, Bravo, 1996, p. 64 and Vereshchetin, 1996, p. 57.

[247] Lee, 2004, p. 158.

[248] Bugnion, 2005, p. 523.

[249] A/RES/49/75 K, 1994, p. 15-16.

[250] Dissenting Opinion of Koroma, 1996, p. 334.

[251] Dissenting Opinions' of Koroma, 1996, p. 348. Shahabuddeen, 1996, p. 190 and Weeramantry, 1996, p. 329.

participation comply with its Organization's interest, which is questionable in this case.[252] The concept explains that the dissents' disappointment derives from dissatisfied political figures because the Court was not able to achieve what they wished.[253]

In view of the concept, the Court set a code of conduct, maybe not the preferable option for the UNGA nor proponent of prohibition, to preserve continuity on international issues. However, when the Court has declared an opinion judicially it tends to outrun, because they operate in a broader legal landscape. The international community has the responsibility to go further with its decision, which shows that the decisive control does not solely lay within the Court. However, the concept believed that the legislative intent has remained intact since the PCIJ, which was to contribute to world peace.[254] In this case, conclusion E makes it questionable, it is contrary to its main purpose. In this aspect, the concept did not apply. The Conclusion almost refers to state of nature, expressed by the dissents as a throwback to laws before the establishment of the charter and described as a grotian moment in the Court's history.[255]

As stated in the very beginning of this thesis, countless articles, official statements and resolutions have dealt with the status of nuclear weapons. The majority of them agrees that it is the most destructive weapon of WMD. To this day, few rules of international laws have been adopted to regulate it. The Opinion was a landmark international law case that evaluated nuclear weapons under the area *jus in bello*, which previously had not been done.[256] This shows its value to the international community and its role in international law as a legal norm maker. However, conclusion E sparked controversies and casted doubt on the Court's idea and value. In relation to the research question and the aim, the Court's idea and its value to the international community in this case depends on the perspective. Indeed, the Court rendered an opinion, stated existing laws and was of value to the UNGA's deadlock, which was shown by the first category and its themes.[257] However, it made an exception in extreme circumstances of self-defense.[258] It may be interpreted as the Court embarked on a course that the UNGA did not expect. Their idea of the Court and what it

---

[252] Dissenting Opinion of Koroma, 1996, p. 352.

[253] Anand, 2013, p. 242.

[254] Berman, 2013, p. 8.

[255] Dissenting Opinion of Weeramantry, 1996, p. 329.

[256] Koppe, 2008, p. 30.

[257] Declaration of Bravo, 1996, p. 60.

[258] The Opinion, 1996, para. 105 (2)E.

was able to achieve did not correspond, which the concept implied. The UNGA had reasonably already taken the position that it was unlawful regardless of circumstances. The Court as a legal norm maker and moving forward stands, but maybe not in the preferable way for the UNGA nor the international community, which was argued by the dissenting opinions.

The Court's idea and value also depends on if the state is a NNWS or a NWS, which the second category and its themes showed. Conclusion E may reasonably be interpreted as in favor of the latter. It can be considered as a contradiction with the Court's promise and performance.[259] Also, that the sovereignty principle and self-defense is above IHL. The Court is almost referring to a state of nature, despite being a creature of the UN. Is conclusion E where the laws end? This supports the research review that art. 51 was pandora's box, which the Conclusion is evidence for, if you open it anything can happen.[260] It was a collision between fundamental principles, where the self-defense and sovereignty weight more.[261] It can be concluded that under the weapons the laws remain silent. The very IHL principles which have been developed in line with the demands of humanity, was concluded inapplicable in extreme circumstances of self-defense, this is problematic for a 'world court' and as a UN-organ to conclude.

Moreover, it could be condensed through the material, that the collided idea's of the Court were of *lex lata* and *lex desiderata*. On the one hand, the declarations and parts of the Opinion argued that the Court was restricted by its Statute, therefore unable to achieve a different finding. They argued that the idea of the Court and its judicial function is *lex lata*.[262] However, the dissents argued that the Court, as a creature of the UN should not have agreed upon conclusion E because it contradicts with its Organization's primary objective, which is to contribute to world peace - *lex desiderata*.[263] It shows that even the judges were divided. In the declarations, the Opinion represented a guide to action, while the dissents framed it as a repellent of international law.[264] Conclusion E sparked controversies within the Court, among researchers and the international community, which the third category and its themes showed. This also aligns with the research review, Mohr's research showed that the Court's Opinion either represented a disappointment or a

[259] Dissenting Opinion of Shahabuddeen, 1996, p. 169.

[260] Lee, 2004, p. 153.

[261] Oeter, 2008, p. 126-127.

[262] Declarations' of Bedjaoui, 1996, p. 51-52, Bravo, 1996, p. 64 and Vereshchetin, 1996, p. 57.

[263] Dissenting Opinions' of Koroma, 1996, p. 351, Shahabuddeen, 1996, p. 165 and Weeramantry, 1996, p. 211.

[264] Declaration of Vereshchetin, 1996, p. 57 and Dissenting Opinion of Koroma, 1996, p. 351.

triumph for the international community.[265] However, the concept added a perspective that its legal impact was reduced to the international community due to the high amount of dissents. In order, the Opinion had both political and diplomatic tendencies, which harms the idea and value of the Court by not clearly stating the legality of nuclear weapons.[266] The question of nuclear weapons is a controversial matter, which divides the international community and indeed the Court. It is a question more connected to politics rather than law. The immense influence NWS hold, as P5 in the UNSC, makes it difficult to achieve boundary legal restraints on nuclear weapons. The UNGA wanted a definite conclusion, which the Court was not able to make. It can be concluded that how some view the idea and value of the Court and what it actually can achieve do sometimes not correspond, which the Opinion is evidence for.

When reflecting on my contribution to the research field, attempts have been made to give a more nuanced view of the Court's idea and value to the international community, thus highlighting controversies, contradictions and how these were conceptualized and framed by the UNGA and the judges. By examining the Opinion, the political context surrounding it, judges' declarations and dissenting opinions collectively, to get a deepened knowledge of the different perceptions of the Court as a legal norm maker and its contributions in the case. Through applying the concept, attempts have been made to show how the Court as an 'agent' shapes international law, its powerful influence and therefore questioned both its idea and value, as well as highlighting it. It was shown that the impact differs and it is how the international community goes further in the legal development, by proclaiming and devising better laws. The Court is limited by its Statute and operates in a broader legal landscape.[267] In order, the Court's political and diplomatic tendencies were shown, to highlight when its value is reduced in the international community, due to the political implications in the question.[268]

On a last note, I believe that the study provides new and important insights of the Court, its controversies and its difficulties of being a divided 'world court', which can be of value for the human rights studies. The study's results have strengthened and extended the research area of the Court's idea and value to the international community as a legal norm maker, by analyzing the data and confirming the previous research. The study has given rise to questions concerning; does the

[265] Mohr, 1997, p. 102.

[266] Berman, 2013, p. 8; p. 18.

[267] Anand, 2005, p. 790.

[268] Kreß, 2013, p. 292-293.

Court comply with its Organization's interest? What can we expect of it? Does it align with human rights and IHL? The IHL-principles, which stands for the demands of humanity, were shown to be inapplicable in the Conclusion, which is problematic for a UN-organ to conclude. Therefore, further research should be made in human rights studies to examine these questions further for a more conclusive view. I would also like to suggest that further research should be made regarding the UNGA resolutions, where it states that nuclear disarmament is essential for the prevention of nuclear outbreak. The NWS and proponents of nuclear weapons disagrees, which was briefly shown in the resolutions, where they argued that nuclear weapons were for national security assurances. Therefore, it would be interesting to examine this issue with a securitization theory. The theory implies that nuclear weapons are a securitization for maintenance of peace. It argues that nuclear weapons are necessary for international/national security assurances, which the UNGA resolutions argued against. If such a study would be initiated, hopefully this study could be of some assistance in the continuing research.

Bibliography

Literature

Anand, R.P. (2013). ”The International Court of Justice and the Development of International Law”. *International Studies*, 7(2), p. 228-261.

Anand, R.P. (2005). ”The Role of Individual and Dissenting Opinions in International Adjudication”. *The International and Comparative Law Quarterly*, 14(3), p. 788-808.

Anastassov, A. (2009). ”Are Nuclear Weapons Illegal? The Role of Public International Law and the International Court of Justice”. *Journal of Conflict & Security Law*, 15(1), p. 65-87.

Berman, F. (2013). ”The International Court of Justice as an ’Agent’ of Legal Development”. In Tams, C.J., & Sloan, J (eds.), *The Development of International Law by the International Court of Justice*. OUP Oxford; 1 Edition, p. 7-21.

Bugnion, F. (2005). ”The International Committee of the Red Cross and nuclear weapons: From Hiroshima to the dawn of the 21st century”. *International Review of the Red Cross*, 87(859), p. 511-524.

Condorelli, L. (1997). ”Nuclear Weapons: A Weighty Matter for the International Court of Justice”. *International Review of the Red Cross*, 316(37), p. 9-20.

Datan, M., & Scheffran, J. (2019). ”The Treaty is Out of the Bottle: The Power and Logic of Nuclear Disarmament”. *Journal for Peace and Nuclear Disarmament*, 2(1), p. 114-132.

David, E. (1997). ”The Opinion of the International Court of Justice on the legality of the use of nuclear weapons”. *International Review of the Red Cross*, 316(37), p. 71-100.

Erlingsson, C., & Brysiewicz, P. (2017). ”A hands-on guide to doing content analysis”. *African Journal of Emergency Medicine*, 7(1), p. 93-99.

Goldblat, J. (1994). ”Legal or Illegal? The Perennial Controversy Over Nuclear Weapons”. *Sage Journals,* 25(4), p. 397-403.

Graneheim, U.H., & Lundman, B. (2017). ”Methodological challenges in qualitative content analysis: a discussion paper”. *Nurse Education Today*, 56(6), p. 29-34.

Greenwood, C. (1997). ”The Advisory Opinion on Nuclear Weapons and the Contribution of the International Court to International Humanitarian Law”. *International Review of the Red Cross*, 316(37), p. 65-75.

Hambro, E. (1954). ”The Authority of the Advisory Opinions of the International Court of Justice”. *The International and Comparative Law Quarterly*, 3(1), p. 2-22.

Izmir, O. (2016). ”What are the Laws of War? Legality of the Threat or Use of Nuclear Weapons”. *The Journal of International Scientific Researches*, 1(1), p. 63-77.

Jasjit, Singh. (2012). ”Re-examining the 1996 ICJ Advisory Opinion: Concerning the Legality of Nuclear weapons”. *Cadmus*, 1(5), p. 158-165.

Kolb, R. (2014). *Advanced Introduction to International Humanitarian Law*, Geneva: Edward Elgar Publishing.

Koppe, E. (2008). *The Use of Nuclear Weapons and the Protection of the Environment during International Armed Conflict*, Oxford: Hart Publishing.

Kreß, C. (2013). ”The International Court of Justice and the Law of Armed Conflicts”. In Tams, C.J., & Sloan, J (eds.), *The Development of International Law by the International Court of Justice*. OUP Oxford; 1 Edition, p. 263-298.

Lee, T. (2004). ”International Law, International Relations Theory and Preemptive War: the Vitality of Sovereign Equality Today”. *Law and Contemporary Problems*, 67(1), p. 147-167.

McNeill, J. (1997). ”The International Court of Justice Advisory Opinion in the Nuclear Weapons Cases - A First Appraisal”. *International Review of the Red Cross*, 316(37), p. 103-117.

Mohr, M. (1997). ”Advisory Opinion of the International Court of Justice on the Legality of the Use of Nuclear Weapons Under International Law - A Few Thoughts on its Strengths and Weaknesses”. *International Review of the Red Cross*, 316 (37), p. 92-102.

Nakanishi, H. (2012). ”Towards a Nuclear-Weapon-Free World: How Can the World Resolve the Disharmony between the UNSC and UNGA”. *Victoria University of Wellington Law Review*, 43(4), p. 617-644.

Oeter, S. (2008). ”Methods and Means of Combat”. In Fleck, Dieter (ed.) *The Handbook of International Humanitarian Law*, Oxford University Press, p. 119-232.

Onur, I. (2016). ”What are the Laws of War? Legality of the Threat or Use of Nuclear Weapons”. *The Journal of International Scientific Researches,* 1(1), p. 64-77.

Tams, C.J. (2013). ”The ICJ as a ’Law-Formative Agency’: Summary and Synthesis”. In Tams, C.J., & Sloan, J (eds.), *The Development of International Law by the International Court of Justice*. OUP Oxford; 1 Edition, p. 377-396.

Official Documents

Charter of the United Nations, adopted at San Francisco, on 26 June 1945.

Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. Saint Petersburg, 29 November/11 December 1868.

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996.

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996. Declaration of President Bedjaoui.

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996. Declaration of Judge Bravo.

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996. Dissenting Opinion of Judge Koroma.

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996. Dissenting Opinion of Judge Shahabuddeen.

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996. Declaration of Judge Vereshchetin.

Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996. Dissenting Opinion of Judge Weeramantry.

Moscow Conference, Joint Four-Nation Declaration, October 1943.

Statute of the International Court of Justice, adopted at San Francisco, on 26 June 1945.

United Nations General Assembly, *Declaration on the prohibition of the use of nuclear and thermonuclear weapons*, 24 November 1961, A/RES/1653(XVI).

United Nations General Assembly, *General and Complete Disarmament; Request for an advisory opinion from the International Court of Justice on the legality of the threat or use of nuclear weapons,* 15 December 1994, A/RES/49/75 K.

United Nations General Assembly, *Review of the implementation of the Concluding Document of the Twelfth Special Session of the General Assembly; Convention on the Prohibition of the Use of Nuclear Weapons*, 4 December 1990, A/RES/45/59 B.

United Nations General Assembly, *Review of the implementation of the Concluding Document of the Twelfth Special Session of the General Assembly; Convention on the Prohibition of the Use of Nuclear Weapons*, 6 December 1991, A/RES/46/37 D.

United Nations General Assembly, *Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session; Non-use of Nuclear Weapons and Prevention of Nuclear War*, 14 December 1978, A/RES/33/71 B.

United Nations General Assembly, *Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session; Non-use of Nuclear Weapons and Prevention of Nuclear War*, 11 December 1979, A/RES/34/83 G.

United Nations General Assembly, *Review of the implementation of the recommendations and decisions adopted by the General Assembly at its tenth special session; Non-Use of Nuclear Weapons and Prevention of Nuclear War*, 12 December 1980, A/RES/35/152 D.

United Nations General Assembly, *Review of the implementation of the recommendations and decisions adopted by the General Assembly during its tenth special session; Non-Use of Nuclear Weapons and Prevention of Nuclear War*, 9 December 1981, A/RES/36/92 I.