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Let Justice be Done though the Heavens Fall

Content Analysis of the International Security Framing in the International Court of Justice

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Abstract

Nuclear weapons, a well-researched area in both IR and PIL, but are often researched separately. The objective was to fill the research gap by combining the fields to examine international nuclear security. The Nuclear Opinion made by the ICJ was chosen due to its intersection between the fields, thus the judges' statements constituted the data. The research question was: *how is international security framed by the judges of ICJ regarding nuclear weapons?* The statements were analyzed through qualitative content analysis alongside the deployment of framing theory, which analyses how decision-makers define and construct issues by using frames. The results of the study showed that the judges framed it differently. On the one hand, the declarations framed the judicial restrains to be the cause of the nuclear issue and left the responsibility to states, which they framed as international security, rather than stating non-existing laws. On the other hand, the dissenting and separate opinions framed the Court's incorrect judgment and its Conclusion as contributing to international insecurity. The security was framed as to judge correctly and not to challenge the use of force in IR. In sum, the legal reasoning was affected by international politics because nuclear weapons are in the intersection between IR and PIL.

Keywords: International Security, International Court of Justice, Nuclear Weapons, Advisory Opinion, Framing Theory
Words: 10 000

Abbreviations and Judicial Terms

Art.	Article
DO	Dissenting Opinion
ICJ	International Court of Justice
IR	International Relations
IHL	International Humanitarian Law
Lacuna	Legal gap
Lex lata	The current law
Lex ferenda	Future/desirable law
Non-liquet	Declared when there is no applicable law
NWS	Nuclear Weapons States
Opinio juris	Necessary to establish a legally binding custom
PIL	Public International Law
SO	Separate Opinion
UN	United Nations
UNGA	United Nations General Assembly
WMD	Weapons of Mass Destruction

Table of Content

1. Introduction

The principle of objectivity in courts, whether it is national or international, is essential in decision-making processes. It implies that courts must be factual, impartial, and nonpolitical.[1] However, scholars argue politics and law are inseparable because the latter is intertwined with the political reality and its controversies. In that sense, the objectivity of courts and its legal reasoning are affected by political interference.[2] Especially in public international law (PIL), it has been described as inevitable due to its horizontal judicial nature and its close relation to international politics.[3] According to Cerar, politics cannot exist without law since the latter forms and restrains politics within the limits of justice. Hence, the law cannot exist without politics because it gives law its driving force. The challenge is to maintain an appropriate balance between the two.[4]

Nuclear weapons, the highest category of weapons of mass destruction (WMD), challenge the balance between law and politics since they are often described as political rather than military.[5] Researchers argue it might be the most politically versatile instrument, thus difficult to remove from the international security landscape. It has been integrated into international politics and challenges international relations (IR) and law at every level.[6] The challenge was particularly visible when the United Nations General Assembly (UNGA), in a resolution from 1994, considered the disarmament of nuclear weapons as essential for the maintenance of international security. The UNGA turned to its principal judicial organ, International Court of Justice (ICJ or 'the Court'), for legal evaluation of nuclear weapons by requesting an advisory proceeding.[7] The Court accepted the request and its conclusions were

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[1] Feldman, H. (1994). "Objectivity in Legal Judgement". *Michigan Law Review*, 92(11), p. 1120.

[2] Feldman, 1994, p. 1250.

[3] Cerar, M. (2009). "The Relationship Between Law and Politics". *Annual Survey of International & Comparative Law*, 15(1), p. 35.

[4] Cerar, 2009, p. 23.

[5] Caughley, T. (2013). "Tracing Notions about Humanitarian Consequences", in Borrie, J., & Caughley, T. (eds), *Viewing Nuclear Weapons through a Humanitarian Lens* (pp. 14-29). Geneva: UNIDIR, p. 69.

[6] White, N. (2020). "Understanding Nuclear Deterrence Within the International Constitutional Architecture", in Black, J., & Fleck, D. (eds), *Nuclear Non-Proliferation in International Law: Legal Challenges to Nuclear Weapons and Nuclear Deterrence* (pp. 237-269). The Hague: T.M.C. Asser Press, p. 238.

[7] 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.

followed by controversies and divisions among the ICJ judges and researchers. One of the Court's major findings was conclusion E, where the judges had to weigh the conflicting principles: international humanitarian law (IHL) and self-defense. The Conclusion declared that the Court could not conclude if the threat or use of nuclear weapons would be unlawful in an extreme case of self-defense, where the survival of a nation would be at risk.[8] This is interesting from a peace and conflict perspective because the Court is closely describing a state of nature, where no laws apply.[9] Thus, nuclear weapons are in the intersection between laws and politics. Essentially, the principle of objectivity is challenged by the political nature of it, therefore, it proved difficult to rule the legality.[10]

1.1 Purpose and Research Questions

There is a gap in the research area where the study aims to contribute to the field. A gap in which the combination of the research fields IR (i.e. international security and politics) and PIL (i.e. the legality of nuclear weapons) have been used to examine international nuclear security. Hence, the objective is to fill the gap. To approach this issue, qualitative content analysis will be used to examine the judges' statements, which were published in 1996 with the Opinion. The Nuclear Case embodies the challenge between IR and PIL since nuclear weapons are in the intersection. By using the term international security it boils down to the principles IHL and self-defense, which is conclusion E. As mentioned, legal reasoning and the principle of objectivity are affected by international politics.[11] Therefore, the study will use framing theory, which analyses how decision-makers define and construct issues by using frames to be able to examine how the judges were affected.[12] Thus combining the two fields to examine how the judges (i.e. the legal aspect) frame the political aspect. The question to be examined is: *How is international security framed by the judges of ICJ regarding nuclear weapons?*

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[8] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996 (hereafter 'the Opinion'), para. 105 (2)E.

[9] 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.

[10] See for instance the Opinion, 1996.

[11] Feldman, 1994, p. 1250.

[12] Entman, R. M. (1993). "Framing: Toward Clarification of a Fractured Paradigm". *Journal of Communication,* 43(4), p. 52.

The sub-questions, inspired by Esaiasson's theory on framing, are used to structure and clarify the issue to be examined:

- How is the issue framed?
- How is the cause of the issue framed?
- How is the solution to the issue framed?[13]

1.2 Background

1.2.1 International Politics meets International Law

There were eight UNGA resolutions, ranging from 1961 to 1994, which led up to the request of an advisory opinion.[14] In its first resolution A/RES/1653 (XVI), it considered the disarmament of nuclear weapons, thus acknowledging its responsibility under the Charter in the maintenance of international security. The UNGA declared that the threat or use of it would be a direct violation of the United Nation's (UN) Charter and a crime against humanity since it would exceed the scope of war.[15] In resolution A/RES/33/71 B from 1978, it stated that nuclear disarmament was essential for the prevention of nuclear war.[16] Besides, in resolution A/RES/49/75 K from 1994, the UNGA was concerned about the insufficient progress towards a prohibition, therefore, it urgently needed the ICJ to render an opinion.[17] Throughout the eight resolutions, the general terminology used was of elimination, prohibition, and nuclear disarmament. In each resolution, the UNGA wanted the UN member states to submit their views of signing a convention on the matter but was met with silence, especially by the nuclear weapons states (NWS). According to David, this shows that the UNGA was in a nuclear and political deadlock.[18]

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[13] Esaiasson, P. (2017). *Metodpraktikan: konsten att studera samhälle, individ och marknad*. Stockholm: Wolters Kluwer, pp. 218-219.

[14] The Opinion, 1996, pp. 227-228.

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

[16] 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, p. 48.

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

[18] 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.

1.2.2 The ICJ and the Advisory Proceeding

The Court was established in 1945 by the Charter, to contribute to legal development by rendering contentious and advisory proceedings.[19] It is often referred to as the World Court since it constitute a source of PIL, where the UN's member states are *ipso facto* parties.[20] Advisory opinions are not legally binding according to art. 59 of the Statute, but has been treated by the member states as authoritative statements of law.[21] Furthermore, ICJ consists of fifteen judges, elected by the UNGA and the UN's Security Council.[22] The Court complies with the principle of majority when voting for findings in advisory opinions. If equal voting occurs, the ruling Court's President has the casting vote. Also, the judges may append statements, in which they explain their choice of voting.[23] The different types of statements depend on how they voted in a case. If a judge fully agrees with the Court's findings, the statement is a declaration and if one has made reservations on specific parts it is a separate opinion (SO). Hence, a dissenting opinion (DO) is used when a judge voted against the Court's findings.[24]

1.3 Previous Research

The study draws on two major research fields: IR and PIL. The field of IR-studies is broad and includes various areas. However, only the political and security aspects of nuclear weapons will be dealt with. The field of PIL is also broad, therefore, the legality of nuclear weapons was chosen. These were selected due to their relevance for the study of how complex international nuclear security is, which is connected to the political and legal nature of it. In this study, the fields will be integrated and their different positions will be outlined.

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[19] 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.

[20] Berman, 2013, pp. 8-10.

[21] 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'), art. 59.

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

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

[24] Anand, R. (2005). "The Role of Individual and Dissenting Opinions in International Adjudication". *The International and Comparative Law Quarterly*, 14(3), pp. 789-790.

1.3.1 The Political and Legal aspects of Nuclear Weapons

The international community has seen nuclear developments in different directions, both toward proliferation and disarmament. Datan and Scheffran explain these developments can be defined by various aspects, such as realpolitik, security, and laws, thus resulting in a broad literature.[25] In the IR literature, nuclear weapons are often described as political rather than military weapons due to their non-utility in war. Instead, as Caughley's research on the theory of deterrence shows, proponents of it argue they are used every day through their presence to deter conflicts. Thus, the value is assigned because of their political effect (i.e. deterrence).[26] As Wood's article concludes, it can be framed as legitimate to use deterrence but illegitimate to *de facto* use nuclear weapons, although the former implies the latter.[27] Therefore, it might be the most politically versatile instrument a nation can use.[28] However, legal scholars argue legal norms agreed to by states do not imply that every issue in IR is, or should be, seen as having a legal solution.[29] According to Hood, the political character of nuclear weapons, such as the deterrence practice should not be valued by an international court. Generally, researchers are cautious about using PIL as a tool to prohibit it. Opponents of nuclear weapons have achieved numerous treaties to constrain the possession and testing of it, thus channeling political disputes in IR into the international legal forum, which Hood problematizes.[30]

There is a general disagreement among researchers on which tools to use in order to restrain nuclear weapons. Some argue it is the international community's role to deem such a weapon as unacceptable by starting with political negotiations and establishing an *opinio juris*[31], hence the law is not optimal. While others argue PIL is essential to govern it.[32] In the

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[25] 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. 115.

[26] Caughley, 2013, p. 69.

[27] Ibid., p. 70.

[28] Wood, J. (2017). "Nuclear Weapons and Political Behavior". *Strategic Studies Quarterly*, 11(3), p. 115.

[29] Schneebaum, S. (2019). "What does international law have to say about nuclear weapons? And what does this have to say about international law?". *SAIS Review of International Affairs*, 39(2), p. 152.

[30] Hood, A. (2020). "Questioning International Nuclear Weapons Law as a Field of Resistance", in Black, J., & Fleck, D. (eds), *Nuclear Non-Proliferation in International Law: Legal Challenges to Nuclear Weapons and Nuclear Deterrence*. The Hague: T.M.C. Asser Press, p. 12.

[31] *Opinio juris* is a latin term meaning "an opinion of law", see the Opinion para. 64.

[32] Granoff, D., & Granoff., J. (2011). "International Humanitarian Law and Nuclear Weapons: Irreconcilable Differences". *Bulletin of the Atomic Scientists*, 67(6), p. 59.

security field, researchers argue it has been difficult to remove it from the international security landscape since its power and status have been integrated into international politics, hence challenging IR and PIL.[33] Especially in the security field of nuclear weapons, it is considered as a weapon of status and a strategic asset essential for security. The issue is thus within IR because the states value it as a currency for power and security.[34] Izmir concludes this is done by the improper classification of it, which was not conducted by using scientific tools; as against, rhetorical and exaggerated statements were made by politicians and not scientists.[35] As Ruzicka points out, no state has labeled landmines or cluster munitions as guarantors of national security. Yet, these labels are frequently invoked on nuclear weapons.[36] Thus, the law can be used to address the political characteristics of it, which otherwise has been immune to restrictions. The NWS have long been in political resistance, therefore, legal instruments might be the solution to the nuclear issue.[37] However, Goldblat concludes the dispute over the legality of it is political in nature, and legal instruments would not affect the political attitude of the NWS.[38] Legal scholars argue PIL does not ignore the realities of IR, it is preoccupied with them since its raison d'être is to safeguard mankind. Thus, the value of IR fulfills the purpose of PIL on the point of understanding the complexity of why the laws do not apply to devise better.[39] Christie problematizes that politicians often believe the law is a forum for political decisions to be subsumed as law.[40] A view that will be apparent in the analysis when the judges discuss the legal value of the theory of deterrence.

Historically, self-defense has been used as a blockade in disarmament processes, where the NWS claim their right to possess it. According to Lee, it is a security dilemma

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[33] White, 2020, p. 238.

[34] Singh, J. (2012). "Re-examining the 1996 ICJ Advisory Opinion: Concerning the Legality of Nuclear Weapons". *Cadmus*, 1(5), p. 158; Berry, K., Lewis, P., Pélopidas, B., Sokov, N., & Wilson, W. (2010). *Delegitimizing Nuclear Weapons: Examining the Validity of Nuclear Deterrence*. Monetary Institute of International Studies, p. 1; Fihn, B. (2017). "The Logic of Banning Nuclear Weapons". *Survival: Global Politics and Strategy*, 59(1), pp. 45-46.

[35] 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. 76.

[36] Ruzicka, J. (2019). "The Next Great Hope: The Humanitarian Approach to Nuclear Weapons". *Journal of International Political Theory*, 15(3), p. 390.

[37] Ruzicka, 2019, p. 391.

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

[39] Datan & Scheffran, 2019, p. 120.

[40] Christie, G. (1969). "Objectivity in the Law". *The Yale Law Journal*, 78(1), pp. 1349-1350.

because the principle is strong, in a sense that a state generally presumes the worst intentions of the enemy, guessing wrong could cost its sovereignty.[41] Self-defense is regulated in art. 51 of the UN Charter and does not propose a legal definition of what is considered as an armed attack, there are criteria but not strictly made. In effect, various interpretations of this right have been made. However, researchers agree that the principles of IHL should constitute requirements for the practical importance of art. 51.[42] According to Upeniece, self-defense is thus dual, on the one hand it poses a restriction to unrestrained use of force and on the other hand it is the right to wage war. Concerning the two principles, there are no strict definitions on neither, since they ought to apply to different contexts. In the IR-field, researchers often explain the action of self-defense as states' will to protect their national and political interests, which art. 51 dismisses.[43] Anand concludes: "[i]t is inconceivable that a nation would compromise its security, independence, power, and influence in order to play by the rules of international law."[44] This shows that the law dismisses the political aspects.

These different strands of research within the fields show that nuclear weapons are a question of law, security, and politics due to its duality of PIL and IR. Hence, with increasing diversity in the fields comes specialization. By simply focusing on one field, researchers find themselves at Almond's "separate tables", having separate conversations and lacking the progressing cross-field which can be conducted across the field as a whole.[45] The different strands of research will provide valuable insights into the legal and political aspects of nuclear weapons, thus the intersection between law and politics, where one might argue it should be placed.

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[41] Lee, T. (2004). "International Law, International Relations Theory and Preemptive War: the Vitality of Sovereign Equality Today". *Law and Contemporary Problems*, 6(7), pp. 159-160.

[42] Upeniece, V. (2018). "Conditions for the lawful exercise of the right of self-defence in international law". *EDP Sciences*, 1(8), pp. 2-3.

[43] Upeniece, 2018, pp. 4-5.

[44] Anand, R. (2009). *Self-Defense in International Relations*, UK: Palgrave Macmillan, p. 39.

[45] Keith, E., Whittington, R., Keleman, D., & Caldeira, G. (2018). "Overview of Law and Politics the Study of Law and Politics", in *The Oxford Handbook of Political Science*, Oxford: Oxford University Press, p. 2.

1.3.2 The Judicial and Political Issue of *Lacuna* in International Law

The concept of completeness in PIL is widely debated by both fields.[46] The Court had to answer one of the most burning legal and political questions and the finding was of a *non-liquet* character, meaning 'the law is not clear'.[47] The question of whether international courts should declare it when faced with *lacuna* (i.e. legal gaps) in PIL has puzzled researchers. Morita argues politics is the cause of why courts declare it because if an issue is political rather than legal in nature, then PIL is not suitable.[48] Bodansky agrees, the *non-liquet* enables courts to avoid political issues.[49] According to Berry et al. this was shown in the Opinion since the Court had to depart from its strictly legal reasoning to address a political issue.[50] Moreover, both fields agree general principles (i.e. IHL) are essential when filling the legal gaps because the function of international courts is to state the law as it is, *lex lata*[51], and not how it wishes it to be, *lex ferenda*[52].[53] However, there are different interpretations of this. Some researchers argue it would be problematic if the Court was to conclude nuclear weapons as illegal *per se* because it would be a departure from its judicial function to state non-existing law.[54] While others, the majority, believe IHL applies to nuclear weapons in the same sense as it applies to conventional arms and other WMD.[55] This view will be apparent in the analysis of the study, where the judges are divided on conclusion E and its *non-liquet*.

Moreover, the use of *non-liquet* is connected to the principle of objectivity and the Court's function to state the legal reality. Legal scholars argue the principle is essential in judging. However, critics, often political scholars, argue the principle is naive since political neutrality is impossible to achieve. After all, the fields are inseparable, especially in PIL

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[46] Dekker, F., & Werner, W. (1999). "The Completeness of International Law and Hamlet's Dilemma - Non Liquet, The Nuclear Weapons Case and Legal Theory". *Nordic Journal of International Law*, 68(3), pp. 225-226.

[47] Bodansky, D. (2006). "Non Liquet". *Oxford University Press*, 5(1), p. 1.

[48] Morita, K. (2017). "The Issue of Lacunae in International Law and Non Liquet Revisited". *Journal of Law and Politics*, 45(1), p. 33.

[49] Bodansky, 2006, p. 5.

[50] Berry et al., 2010, p. 265.

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

[52] *Lex ferenda* is a latin phrase meaning "future law" and is the opposite to *lex lata* (see footnote 51). See Bodansky, 2006, p. 5.

[53] Bodansky, 2006, p. 4.

[54] See Schneebaum, 2019, p. 155.

[55] Turner, R. (1998). "Nuclear Weapons and the World Court: The ICJ's Advisory Opinion and Its Significance for U.S. Strategic Doctrine". *International Law Studies*, 72(1), p. 309.

where politics have a strong influence.[56] As Christie explains, judges cannot choose to be objective and not act accordingly. In that sense, objectivity is to understand the limitations of what one can achieve, to accept *lex lata* and to reject *lex ferenda*.[57] Feldman concludes the aim is to achieve a balance, but the unintentional mutuality of the fields challenges it.[58] As this study will show, nuclear weapons challenge the principle by its intersection. The starting point is to combine and integrate the fields since politics is essential for analyzing the leverage understanding of the law and legal institutions. As seen, law and politics can have overlapping or different views of an issue and as shown, researchers are divided on where the nuclear problem origins, what the causes are, and possible solutions to it. Nuclear weapons are multidisciplinary, and within the legal field this is often disregarded. In contrast, IR has not discussed it from a legal perspective, instead, it has highlighted that it is also a question of security. Keith et al. argue the fields do not communicate effectively, even though they examine a related issue.[59] The combination of fields will give valuable insights by taking the legal aspect, in the form of the ICJ judges, and examine how they frame the political aspect of international nuclear security. Hence, filling the research gap.

[56] Feldman, 1994, p. 1187; Cerar, 2009, p. 36.

[57] Christie, 1969, pp. 1349-1350.

[58] Feldman, 1994, p. 1120.

[59] Keith et al., 2018, p. 2.

2. Theory and Method

2.1 Theory

The purpose of this section is to explain the framing theory and discuss its appropriateness of the study. First, the framing theory will be explained, followed by the framing categories.

2.1.1 Framing Theory

The theory analyzes how decision-makers (i.e. the judges) communicate their actions in the statements. It assumes that an actor who conducts a framing consciously makes a selection and highlights information to construct a message of its perceived reality of an issue to frame the problem.[60] Subsequently, if a frame construction is considered successful, it can resonate with broader public understandings and create a way of resonating and understanding an issue.[61] As seen in the literature, the term *frame* can be used in two ways. Firstly, *frame communication*, which refers to the words, phrases, and presentation a judge uses when relaying information about an issue. The chosen frame reveals and highlights what the judge considers relevant regarding the principles in conclusion E.[62] It examines various linguistic descriptions of the original issue, by interpreting various formulations on the given issue, which transmits the same core information.[63] Second, an individual frame, concerns how public opinion is affected by the issue. However, the study will not use the second working definition, because it is not suitable: the research question aims to examine how the judges frame international security and not how the public opinion was affected. Therefore, the study will be viewing the *frame building*, which focuses on the dynamics of how judges choose specific frames in the written statements.[64]

The sub-questions, inspired by Esaiasson's theory on framing, which were stated in section 1.1, aim to structure and clarify the issue to be examined by actively asking questions to the statements. The first question aims to reveal how the judges define the issue and how it

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[60] Entman, 1993, pp. 52-53.

[61] Rein, M., & Schön, D. (1996). "Frame-Critical Policy Analysis and Frame-Reflective Policy Practice", in *Knowledge and Policy: The International Journal of Knowledge Transfer and Utilization* 9(1), p. 86.

[62] Chong, D., & Druckman, J. (2007). "A Theory of Framing and Opinion Formation in Competitive Elite Environments". *Journal of Communication*, 57(1), p. 101.

[63] Gideon, K. (2010). *Perspectives on Framing*. New York: Psychology Press, p. 2.

[64] Chong & Druckman, 2007, pp. 100-102.

is framed, thus examining the original issue. While the second aims to reveal how the causes are framed. The third question aims to reveal how the solution is framed, hence which action is highlighted as a solution.[65] Thus the theory will be apparent in the analysis when mentioning how and what the judges frame to be the issue, the cause, and the solution. In this Case, the nuclear issue originates from conclusion E and how legal reasoning was affected by international politics.

2.1.2 Framing Categories

The study will be using the *equivalent frame*, where logically equivalent alternatives are described in different ways. The information is based on the same facts, but the frame in which it is presented differs. In this context, a frame defines the presentation of information in a way to encourage specific interpretations of laws to discourage others; the judges present the same facts and laws in a way that implicates an issue that requires a solution. They frame it in a way to make their voting or solution to the nuclear issue most appealing and appropriate for their course of action in the Opinion.[66] Frames come with various interpretations and levels, thus language contains an *explicit* and *implicit* facet. The *explicit* facet is that the same idea or object can be described in different ways depending on the given context. In other words, an expression may be used in different situations and carry different messages depending on how the judge presents it. The *implicit* facet is concerned with the underlying intention or message in a frame, which Gideon argues is essential for comprehending its meaning.[67] Hence, the essence of framing is to direct attention to certain aspects by suppressing others to enhance their specific interpretation and reasoning.[68]

Furthermore, Gideon makes a distinction between three types of frames: *attribute framing, risky choice framing,* and *goal framing*. See Table 1 for the details of how they prevail in text.

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[65] Esaiasson, 2017, pp. 218-219.

[66] Gideon, 2010, pp. 21-22.

[67] Ibid., pp. 2-3.

[68] Ibid., p. 20.

Table 1 Framing Categories

Type	Characteristics
Attribute framing	Used when a specific attribute of the issue is presented in either positive or negative terms. In addition, the judge highlights the positive or negative side by using associations triggered by the positive or negative frame, which results in selective attention bias, where the positive or negative aspects are predominant.
Risky choice framing	Involves a change of reference point that dispose of whether outcomes are interpreted as losses or gains. These are defined in the given issue as a description of outcomes, e.g. lives lost or saved or the (in)security of nuclear weapons. Thus, reference points can be shifted in various ways and embedded in the frame of description.
Goal framing	Described in terms of presenting the goal in either positive consequences of achieving it or negative consequences of not achieving it. Generally, it involves a negativity bias with a tendency to selective attention bias concerning information posed as negative that supposedly results in loss aversion.

Note that the frames and categories are defined by what they include, exclude, and the way the problem is defined, followed by their explanations. Besides, frames exert power by selective description and how the causes and consequences of a given issue are presented. Therefore, the frame analysis enables the researcher to uncover *dominant frames*.[69] The frames will be used in the analysis to determine which type of framing was dominant in each type of statements (i.e. declaration, dissenting or separate opinion) by answering the sub-questions: which type of problems, causes and solutions were framed. The framing categories aim to connect the statements and findings of the study.

[69] Entman, 1993, p. 54.

2.2 Method

The purpose of this section is to outline the qualitative content analysis and why it is suitable for the thesis. Firstly, the research design and its shortcomings will be addressed. Secondly, the selected data will be explained and justified, whereas, delimitations and extensions of the material will be outlined. Thirdly, the methodological framework will be explained.

2.2.1 Research Design

By viewing the statements, the primary advantage is to deeply examine and understand the Nuclear Case in-depth.[70] However, a considered weakness when analyzing a single case is the external validity and generalizability.[71] Since the ICJ is a highly unique Court, often referred to as the World Court, all ICJ cases are considered unique, therefore, the generalizability is a possible limitation. Based on the study in the area of WMD, it is difficult to draw any far-reaching generalizations which can be applied to other advisory opinions made by the ICJ or other international courts. Since the study is interested in details of a case it is difficult to argue beyond that case, hence having high internal validity, but low external validity.[72] However, the study may draw conclusions about the framing of international nuclear security and the intersection of nuclear weapons in general since the findings might not be exclusively applicable to the ICJ, but must be investigated and tested by further research on other international institutions' evaluations of such a weapon.

Furthermore, there are shortcomings in the study. For reasons of space, the study only used the frames presented in section 2.1.2, which were considered relevant and applicable to the data. As mentioned, the study chose to exclude the individual part of the framing, which is used to analyze how the public opinion is affected by a given issue. The exclusion was done because the data does not approve of such a study. Also, due to word limitations, the study will be excluding how the judges frame individually, instead, generalizations will be made regarding their type of statement.

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[70] Halperin, S., & Heath, O. (2017) *Political research - Methods and practical skills*. Glasgow: Oxford University Press, p. 153.

[71] Halperin & Heath, 2017, p. 217.

[72] Ibid., pp. 217-218.

2.2.2 Data

The Opinion made by the ICJ was chosen due to its intersection between the fields. The data consists of five declarations, three separate opinions, and six dissenting opinions of the judges who judged in the Case. In *Appendix 1* the data is outlined and described. The statements were found on ICJ's website 'case-related' and were referred to in para. 105 in the Opinion.[73] In normal circumstances, there are 15 judges, but in this Case, one judge passed away before it was accepted. The Opinion was effected by this because conclusion E was decided upon the casting vote of President Bedjaoui.[74] Furthermore, the statements are subjective, in the sense that they explain why they voted in favor or against the findings, in other words, one's opinion about the Case and how they interpret the laws concerning nuclear weapons. As Anand explains, the law is interpretative and not a science.[75] However, the study does not view this as a shortcoming since the research questions aim to examine how they frame international security, thus their interpretation. Delimitations were made in the data, the concept of international security is defined with the starting point of the Case, thus focusing on the principles IHL and self-defense.

2.2.3 Methodological Framework

According to Erlingsson and Brysiewicz, the method is used to systematically analyze the content of the data, which is done by coding and categorizing it, hence examining correlations in it (i.e. the *dominant frames*). Besides, the method systematically transforms a quantity of data into organized key findings.[76] Initially, the 14 statements were examined to get a sense of the general understanding of the judges framing of international security. The qualitative approach was found suitable, since the statements, the study's aim, and the research questions are qualitative. However, some researchers argue there are disadvantages which the approach since the findings are based on the researcher's unsystematic view on what is considered important.[77] The issue of subjectivity was addressed by looking for important insights, which

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[73] The Opinion, 1996, para. 105.

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

[75] Anand, 2005, p. 791.

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

[77] Erlingsson & Brysiewicz, 2017, p. 93.

corresponded with the study, thus operationalizing the conceptualization. The working definition for the thesis, regarding the conceptualization of international security, was ”the state of being free from danger or threat of nuclear weapons”, hence the security risk was ”the risk of being in a state of danger or threat of nuclear weapons.” Thereby, operationalization was necessary to guide the analysis of the statements. The insights were considered important when mentioning: (a) responsibility regarding developing and stating nuclear laws, (b) the issue of *non-liquet* and the *lacuna* in PIL, (c) the principles of IHL and self-defense, (d) legal or political aspects of nuclear weapons, and (e) the implications of the Opinion, which are what influenced the analysis. Note that the insights were within the international security aspect and connected to nuclear weapons' intersection between PIL and IR.

Subsequently, perceptions of international security were noted and acknowledged. The central messages, so-called meaning units, were condensed.[78] The meaning units were divided into three sections, following the thesis' sub-questions inspired by the framing theory: (a) problem: how the judges frame the issue, (b) cause: what they frame as the cause of the issue, and (c) solution: what they frame as the solution. Actively asking questions to the statements and using the framing theory, in form of the sub-questions, made a clear connection between the theory and method. Another connection is the manifest and latent approaches in the content analysis which the study used. As mentioned, the framing theory uses *explicit* and *implicit* facet to analyze data, thus the manifest and latent approaches are a way for them to be analyzed. The manifest approach analyzed the written text, the pronounced and evident part of the statements, whereas the latent approach was used to interpret and examine the underlying facet of it.[79] Hence, both approaches were used since they enabled the finding of different framing of international security in the written and underlying facet. It is worth mentioning that the *explicit* facet is apparent when quoting from the statements. Moreover, the process of condensation was to condense the statements, but still maintain the core meaning, which was coded.[80] The inductive approach to select categories in content analysis allowed to first examine the statements to then create codes and categories. The open coding allowed the categories to emerge from the data throughout the coding process.[81]

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[78] Erlingsson & Brysiewicz, 2017, pp. 95-96.

[79] Ibid., p. 95.

[80] Ibid., p. 96.

[81] Ibid., p. 94.

After that, the condensed meaning units were labeled by the codes, to organize them into categories. In the process of creating the coding table, there was a set of rules to ensure the coding was considered reliable. This was done by organizing the codes that connected through their content and coding for words that might imply that word, hence being the manifest facet in the statements.[82] The categories represent the results of the analysis and were turned into themes. In explanation, the themes unified the statements and were found by the latent facet. Each theme was analyzed with the framing theory. The process of categorization was to compare the categories by looking for patterns and insights, which is done in chapter 4.[83] In Table 2 the procedures followed are outlined, such as the selection of codes, categories, and themes.

Table 2 Findings, categories and themes

Categories/Findings	**Controversies regarding the Principles**	**Nuclear Weapons — a Legal or a Political Issue**
Codes		
Problems	**Declaration (D)**: - Conflicting principles - *Non-liquet* = the Court cannot go beyond its legal framework **Separate Opinion (SO)**: - Conclusion E - The Court's incorrect judgment - *Non-liquet* = the Court departed from its jurisdiction **Dissenting Opinion (DO)**: -||- - The Court did not answer the question	**D**: - IR (i.e. politics) - NWS - Theory of deterrence = no legal validity - States **SO**: -||- **DO**: -||- - The Charter - The Court

[82] Erlingsson & Brysiewicz, 2017, p. 97.

[83] Ibid., pp. 97-98.

Categories/Findings	Controversies regarding the Principles	Nuclear Weapons — a Legal or a Political Issue
Causes	**D**: - *Lacuna* + *non-liquet* = unable to declare illegality - Collision of principles **SO**: - False dichotomy - Realpolitik - No *lacuna* **DO**: - *Non-liquet* = the incorrect interpretation of UNGA's question - Realpolitik	**D**: - IR - NWS - States' unwillingness **SO**: -||- **DO**: -||- - The Court
Solutions	**D**: - The Opinion's contribution - States **SO**: - Laws are sufficient = nuclear weapons are unlawful - States **DO**: - Judge correctly - States - Establish *opinio juris*	**D**: - Legal instruments - The Opinion = a guide to action - States **SO**: A combination of law and politics **DO**: - States - Law - Politics
Themes	The Issue of *Non-liquet*	The Opinion as a Guide to Action or International Insecurity

To clarify, the columns show different explanations of the problems, causes, and solutions, which is due to the different framing in the statements.

3. Analysis

3.1 Controversies regarding the Principles

3.1.1 The Issue of *Non-liquet*

The UNGA's question to the Court was "[i]s the threat or use of nuclear weapons in any circumstances permitted under international law?"[84] After contemplating, the Court proceeded by a bare majority to reply, in which the major finding was conclusion E. It states:

> […] in view of the current state of international law […] the Court cannot conclude definitely whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a [s]tate would be at stake.[85]

The declarations frame the Conclusion and the Opinion as the solution. Bravo in his declaration acknowledges that the UNGA had been in a political deadlock for almost 50 years, hence the Court answered a question which was both asked and avoided by its member states.[86] Accordingly, the Court admitted a legal gap, therefore, showed the appropriate means to fill the gaps towards achieving nuclear disarmament.[87] President Bedjaoui who had the casting vote states that the Court did its duty by answering and did so while bearing in mind the humanitarian aspects, even though it is limited by its Statute and only able to state the applicable law.[88] Given the framing theory, the action of answering UNGA's request is highlighted as the solution in the declarations. It is a form of *goal framing*, thus highlighting and describing the positive outcome of answering the request.[89]

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

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

[86] *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.

[87] *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. 59.

[88] *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.

[89] Gideon, 2010, p. 21.

As against, the dissenting and separate opinions do not agree since the Court did not answer the substance of UNGA's question.[90] The Conclusion was of a *non-liquet* character, which the dissents frame as a non-pronouncement; it leaves the possibility open that the use of nuclear weapons *might* be lawful.[91] Higgins highlights it is not part of the Court's jurisprudence to declare it in advisory proceedings. The Conclusion, as formulated, does not serve to protect humanity against the threat of nuclear weapons.[92] According to Schwebel, the use of it declares that international law and the Court have no opinion on the matter. The Court disregarded the provisions of the Charter of which it constitutes as the principal judicial organ, by proclaiming, in a way of realpolitik, a *non-liquet* on one of the most important questions posed.[93] In view of the theory, these statements describe the Opinion in negative terms by highlighting that the Conclusion was affected by realpolitik (i.e. international politics) and did not answer the question, which implies insecurity of the Court's judgment.[94]

The declarations highlight that the Court did not overplay its function by urging states to legislate. Bedjaoui hopes the international community will give it credit for rendering the request and that the states correct the legal imperfections the Court outlined. Herczegh frames the cause to the *non-liquet* to be the Court's judicial function: "[i]t could not say what the law does not say."[95] The declarations point to the fact that other WMD have been restricted in the past by specific treaties made by the international community and that this shows a trend of prohibition, which is presented as a solution.[96] Given the theory, the different statements highlight and make a selection of information to correspond with their perceived reality of the issue.[97] On the one hand, the dissents frame the Court to be the problem, which they believe went against the UN's interest in protecting humanity — insecurity.[98] On the other hand, the

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[90] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Separate Opinion of Judge Ranjeva (hereafter 'SO of Ranjeva'), p. 72.

[91] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Dissenting Opinion of Judge Higgins (hereafter 'DO of Higgins'), p. 369.

[92] DO of Higgins, 1996, pp. 370-371.

[93] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Dissenting Opinion of Vice-President Schwebel (hereafter 'DO of Schwebel'), p. 101.

[94] Gideon, 2010, p. 2.

[95] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Declaration of Judge Herczegh (hereafter 'Declaration of Herczegh'), p. 54.

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

[97] Gideon, 2010, p. 2.

[98] DO of Schwebel, 1996, p. 101.

declarations frame the problem to be its limitations upon the Statute, they cannot apply laws that do not exist — security.[99] In this sense, the statements used the *risky choice framing* when describing the outcome of it. They have different reference points of how it should be interpreted which are given by the negative or positive description.[100]

Moreover, the dissents describe the Opinion as a ”judicial odyssey” where the Court searched for a specific prohibition of nuclear weapons, which only led to the realization that there is none.[101] Oda argues this affects the Court’s credibility because the UNGA would not urge the ICJ to render an opinion on a matter already solved.[102] According to Koroma, the *non-liquet* might have destabilized the existing international legal order: ”[t]hese weapons, if used massively, could result in the annihilation of the human race and the extinction of human civilization.”[103] Instead, the Court should have, as the guardian of legality in the UN, contributed to empowering the régime of illegality by acting as a shield of humanity and ensuring respect for the rule of law.[104] This shows that the dissenting opinions framing of international security, to empower the régime of illegality. Generally, the solution framed by the dissents, is that no new legal principles are needed, the laws were sufficient to rule the illegality. Another solution framed is that the states should establish an *opinio juris* on the matter, which the dissents also problematize because historically, the Court has taken the burden of establishing the law on themselves and not the parties.[105] Given the theory, the solution presented in the statements is the trend of prohibition in the international community, but that it is far from complete.[106]

Furthermore, in the first section of the Conclusion, the Court states that nuclear weapons ”[…] would *generally* be contrary to […] the principles and rules of humanitarian

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

[100] Gideon, 2010, p. 8.

[101] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Dissenting Opinion of Judge Koroma (hereafter ’DO of Koroma’), p. 353.

[102] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Dissenting Opinion of Judge Oda (hereafter ’DO of Oda’), p. 110.

[103] DO of Koroma, 1996, p. 334.

[104] Ibid., p. 335.

[105] Ibid., pp. 335-336.

[106] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Separate Opinion of Judge Guillaume (hereafter ’SO of Guillaume’), p. 70; Gideon, 2010, p. 20.

law [my italics].”[107] The dissents criticize the Court for judging that nuclear weapons would ”generally” be contrary to IHL. Higgins emphasizes that such a weapon, regardless of circumstances, is unlawful and contrary to humanitarian laws. IHL aims to restrain the violence by providing a balancing set of norms between the needs of humanity and military necessity, but in the Conclusion, this was disregarded.[108] In sum, according to the dissents, the Court’s true conclusion was that it does not know if nuclear weapons are contrary to IHL, which implies international insecurity.[109] Therefore, the Court failed its basic judicial function to apply general principles of international law, to develop their intentions and apply them to different contexts. Especially, this is the role of the ICJ.[110] The problem lies within the Court for creating a false dichotomy between the principles.[111] Shahabuddeen concludes that it resembles the application of the legal maxim *fiat justitia ruat coelum*[112], which he argues should not be used by the Court. The danger of the maxim application is that the Court reached a Conclusion that can put the planet to death in order to provide justice, hence allure it to legislate which is not part of its judicial function. In essence, the risk of legislating does not only arise when the Court tries to legislate where there are no applicable laws but also when it fails to apply existing, which might lead to repellent of existing international laws.[113] In view of the theory, the way the dissents highlight information is a way to enhance their perceived reality of the Conclusion, in a way to discourage and criticize the Court’s interpretation of laws.[114] Implicitly, it also implies that the Opinion, the *non-liquet,* and the Court’s judgment should be regarded as contributing to international insecurity.

However, the declarations do not agree, because in international law oppositions can occur, it was a head-on collision of fundamental principles, which was the cause of the

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

[108] DO of Higgins, 1996, pp. 364-365.

[109] Ibid., p. 366.

[110] Ibid., p. 369.

[111] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Dissenting Opinion of Judge Weeramantry (hereafter ’DO of Weeramantry’), p. 292.

[112] *Fiat justitia ruat coelum* is a latin phrase meaning ”let justice be done though the heavens fall”. See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Dissenting Opinion of Judge Shahabuddeen (hereafter ’DO of Shahabuddeen’), p. 203.

[113] DO of Shahabuddeen, 1996, p. 203.

[114] Gideon, 2010, p. 21.

Conclusion and how it was formulated.[115] The SO's highlights that self-defense is not weapon-specific, however, there is no rule in PIL in which one conflicting principle should overrule another. Therefore, according to Fleischhauer, the Court did not state the current state of international law. None of the principles are above the law; they are of equal rank.[116] According to Guillaume, no state has questioned the relations between the principles. They are independent and do not have any form of relation. Essentially, the Court concluded that in extreme circumstances, the law provided no guide to states, which implies a security risk.[117] In these cases, as Higgins acknowledges in her dissent, the judicial lodestar in conflicting principles should be to promote those values PIL seeks to protect.[118] The values of humanity constitute the basis of international law, in which it is expected to uphold and defend. In essence, nuclear weapons are the negation of these humanitarian values, and intrinsically cannot distinguish between combatants and non-combatants nor civilians and military targets. Historically, the Court has not imposed such restriction upon its judicial function to judge disputes.[119] In connection to the theory, the dissenting and separate opinions share the framing: the problem is conclusion E and the cause of the issue to be the Court's incorrect judgment and opposition of the principles. The solution would be to judge as the Court has done in past cases, where conflicting principles have occurred.[120] Another solution framed is that the laws were sufficient to declare illegality. Hence, they direct the attention to specific aspects, e.g. IHL is applicable, to suppress the findings and the judges who argued the laws were insufficient.[121]

In comparison, the declarations do not agree with the other statements. Nuclear weapons are blinding in nature for IHL, hence causing a destabilizing effect. Bedjaoui states: "[n]uclear weapons, the ultimate evil, destabilize humanitarian law which is the law of the

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[115] Declaration of Bedjaoui, 1996, p. 53.

[116] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Separate Opinion of Judge Fleischhauer (hereafter 'SO of Fleischhauer'), pp. 85-86.

[117] SO of Guillaume, 1996, pp. 68-69.

[118] DO of Higgins, 1996, p. 371.

[119] SO of Fleischhauer, 1996, pp. 83-84.

[120] DO of Koroma, 1996, p. 354.

[121] Gideon, 2010, p. 20.

lesser evil"[122], which shows it challenges IHL, hence it is a blind weapon blinding IHL.[123] Concerning the theory, the statements relay on the same information and sometimes the same view of the problem. The declarations are not proponents of nuclear weapons, rather they regret there is a legal gap.[124] The declarations contain the same core information but enhance another interpretation of laws.[125] In contrast, the other statements use the same type of framing, they state that IHL cannot be interpreted as containing any legal gaps and that it is not legally reprehensible if nuclear weapons are an exception to it.[126]

On the contrary, the declarations do not share the interpretation of the *non-liquet*. Vereshchetin problematizes the other judges for criticizing the Court for declaring it. He argues international law is not complete, and those who believe different are in denial. The declarations frame the cause of the *non-liquet* to be the judicial function of the Court, because it is engaged with *lex lata* and not *lex ferenda*. In these cases, if the Court finds legal gaps or imperfections in the law, it ought to state it and not fill it.[127] The Court showed the appropriate means for filling the gaps by declaring a *non-liquet,* thus it should be the states' responsibility to fill it.[128] Given the theory, frames exert power by a selective description of how the causes and consequences are presented.[129] Generally, it can be concluded that the declarations did not criticize the Conclusion, rather they criticized the judges who did not vote in favor of it.[130] This finding shows that the declarations excluded the evaluation and criticism of how it was received in the international community and how it would affect international security. It can also be concluded that the *dominant frame* in the separate and dissenting opinions was *attribute framing*. The judges by those statements described and highlighted the Conclusion in negative terms and used associations triggered by the negative frame, e.g. nuclear weapons is the negation to humanitarian values.[131] Thus, using the selective attention bias, where the

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

[123] Ibid., p. 50.

[124] Ibid., p. 46.

[125] Gideon, 2010, p. 2.

[126] SO of Ranjeva, 1996, p. 79; DO of Koroma, 1996, p. 340.

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

[128] Ibid., p. 59.

[129] Entman, 1993, p. 54.

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

[131] SO of Fleischhauer, 1996, pp. 83-84.

negative aspects were predominant, which is what characterizes *attribute framing* according to Gideon.[132] Another conclusion drawn is that the declarations used the *goal framing* when describing the Opinion, but also the *risky choice framing* when comparing it to the other statements. Thus, the different statements had different reference points when referring to its consequences and contributions, e.g. the (in)security of nuclear weapons.

3.2 Nuclear Weapons — a Legal or a Political Issue

3.2.1 The Opinion as a Guide to Action or International Insecurity

Nuclear weapons have entered into all calculations, all scenarios, and all plans. As Bedjaoui puts it ”[…] fear has gradually become man’s first nature”.[133] Thus, the Opinion represents a titanic tension between state practice and legal principles, even a titanic tension between law and politics.[134]

The declarations frame the states, more specifically the NWS, for preventing the development of illegality after the Cold War. Bravo notes that no such rule would have come into existence due to the political situation prevailing between 1945 and 1985. The states focused on the theory of deterrence, which has no legal force or validity. He highlights it is a practice used by the NWS and its allies, which is contrary to PIL. The declarations frame this as the cause of why, at the current stage of international law, the Court could not conclude illegality.[135] Shi explains that the deterrence theory is a political means used by the NWS in their relations between other states, intending to prevent war and maintain international security. However, this practice is within international politics and not of law. Thus, it should constitute an object of regulation by PIL. If the Court was to take into account the theory of deterrence, it would be involving itself with international politics, which is not its judicial function.[136] The solution framed by the declarations is that legal instruments must be adopted to prohibit it because in the past the political means have only hindered legal development.[137]

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[132] Gideon, 2010, p. 8.

[133] Declaration of Bedjaoui, 1996, p. 46.

[134] DO of Schwebel, 1996, p. 89.

[135] Declaration of Bravo, 1996, pp. 61-62.

[136] *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion,* I.C.J. Reports 1996. Declaration of Judge Shi (hereafter ’Declaration of Shi’), p. 55.

[137] Declaration of Bravo, 1996, p. 64.

According to Vereshchetin, in his declaration, states are fundamentally divided on the matter in IR, which caused the *non-liquet* and uncertainties.[138] Bedjaoui argues treaties regarding nuclear weapons do exist but are not followed by states.[139] Indeed, the prohibition of nuclear weapons is not complete, which is not due to the lack of legal solutions, instead, it is the unwillingness and objections from certain states. The states must shoulder the burden of prohibiting it, rather than the Court with its judicial limitations.[140] Bedjaoui concludes in his declaration ”[t]he fate of the world will be such as the world deserves.”[141] Given the theory, the declarations frame it as a guide to action for states to take the appropriate means to prohibit it. They use the *goal framing,* as in the first category and theme previously mentioned, thus highlighting positive aspects of it, and by excluding information regarding the effects it may cause to the international community. Instead, they frame the political struggles, the NWS's reluctance to progressive developments of IHL, and the theory of deterrence to be both the cause and the problem, which shows a selective attention bias.[142] In comparison, the SO's use the same type of framing as the declaration, they frame politics to be the issue of the legal gap, hence the absence of a prohibition is due to diplomatic and political means.[143] The solution is directed to the legal instruments towards the complete prohibition.[144] However, as Fleischhauer argues, international law is still struggling with and has not yet overcome, the conflicting principles. In contrast, international politics has not yet developed a system of collective security, which can handle the dilemma with the principles. In sum, both law and politics are grappling with it.[145] The SO's also see a combination of the two fields to be optimal. For instance, the laws could provide effective reduction and control of nuclear weapons, and politics could improve the system of collective security.[146]

Furthermore, the dissents share the framing as the other statements, they problematize that the NWS and its allies have resisted implementing further progressive development of

[138] Declaration of Vereshchetin, 1996, p. 59.

[139] Declaration of Bedjaoui, 1996, p. 46.

[140] Declaration of Vereshchetin, 1996, p. 59.

[141] Declaration of Bedjaoui, 1996, p. 52.

[142] Gideon, 2010, p. 9.

[143] SO of Ranjeva, 1996, p. 73.

[144] Ibid., p. 74.

[145] SO of Fleischhauer, 1996, p. 86.

[146] Ibid., p. 88.

IHL.[147] Schwebel, in his dissent, highlights the state practice and the politics behind it to be the issue. The NWS, by both effort and expense, have maintained nuclear weapons as their legal entitlements. Even if nuclear weapons have been threatened to be used in a very few international crises, only by their existence, they pose a threat to international security. A practice of the NWS which have perpetuated for over 50 years supported by their allies under their nuclear umbrella. In sum, the practice has been recognized and in some sense accepted by the international community.[148] Shahabuddeen highlights that it is the nuclear paradox used by states; the possession of nuclear weapons is to ensure that they are never used.[149] The continuing possession by the NWS is a risk to the non-nuclear weapon states. However, the dissents do not share the cause of the problem as the other statements. Instead, they frame the Court to be the cause of the nuclear issue. It did not comprehend that the theory of deterrence is a common currency in IR and that states usually put aside legal problems to achieve a desirable goal.[150]

Moreover, according to the dissents, the main issue framed is the Charter, which assumes humanity and its civilization will continue. According to Shahabuddeen, the legal principles originate from a society where weapons, however destructive, would be limited in both impact and time. The assumption held good for a while until new and deadlier weapons were invented. This led the UNGA to consider the disarmament to maintain international security. However, the Conclusion reflects a contradiction between promise and performance.[151] Koroma presents it as an anticlimax, which might lead to more international insecurity among states.[152] This follows since the Court left the responsibility to states, hence challenging the use of force in IR. The results of this could lead to the annihilation of mankind.[153] The Court cast doubt on already established PIL, instead, it should have established international legal standards for its members.[154] In the past, courts have not had to deal with the legal consequences of actions that could destroy humanity. The solution is thus

[147] DO of Schwebel, 1996, pp. 89-90.

[148] Ibid., p. 91.

[149] DO of Shahabuddeen, 1996, p. 163.

[150] Ibid., p. 201.

[151] Ibid., p. 158.

[152] DO of Koroma, 1996, p. 336.

[153] Ibid., pp. 338-339.

[154] Ibid., p. 351.

legal, the courts have to examine their judicial foundations and values, as Shahabuddeen formulates: ”[…] laws have their reason in the purposes they are to serve.”[155] Thus, the primary objective of laws is to preserve mankind, and accordingly, the solution to the nuclear issue is within the law.[156] However, on this point, the dissents do not frame the same solution. Oda highlights that a solution on this matter should be within politics because the issue does not concern the Court, where they can only interpret existing law.[157] It can also be concluded that the *dominant frame* the dissents used was *attribute framing* because they present the problem and its causes in negative terms by the use of association, e.g. the result of the Conclusion could lead to the extinction of humanity.[158]

The dissents problematize the incorrect interpretation of UNGA's question. The Court answered about the survival of states and not the legality of the threat or use. Thus, the Court posed limits on itself from exercising its judicial function and instead questioned current legal principles by creating a new concept: ”survival of the state.”[159] In effect, the Court acted as legislators, which is beyond its legal framework.[160] Indeed, self-defense is a fundamental right to all sovereign states, however, it exists within and not outside of PIL. According to Koroma, the Court suggested it existed above the laws, which was incorrectly judged because self-defense ”[…] is not a license to use force; it is regulated by law and was never intended to threaten the security of other [s]tates.”[161] On this point, the dissents discourage the Court's interpretation of the law, they frame the problem and the cause to be the Court's incorrect judgment. By using the phrase ”[…] threaten the security of other [s]tates”[162], they highlight the negative outcome of it — the international insecurity which follows from the Conclusion. They use the *goal framing* to describe the outcome as negative. According to Gideon, this shows a negativity bias of not achieving their interpretation of the current state of law.[163]

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[155] DO of Shahabuddeen, 1996, p. 159.

[156] Ibid., p. 159.

[157] DO of Oda, 1996, p. 151.

[158] DO of Koroma, 1996, pp. 338-339; Gideon, 2010, p. 8.

[159] DO of Koroma, 1996, p. 337.

[160] Ibid., p. 337.

[161] Ibid., p. 338.

[162] Ibid., p. 338.

[163] Gideon, 2010, p. 8.

Given the theory, the statements collectively used the *attribute framing* when analyzing the nuclear issue and its causes, in a way to highlight that international politics and the practice of the NWS have been used as blockades for the legal achievements in the area of WMD.[164] For instance, all judges, regardless of statement used, framed the politics and the NWS to be the issue and the cause of the Conclusion. On this point, they all agreed. One can conclude, given the framing, that the issue indeed was within the realm of politics, but the solution prescribed was within the law. Especially the declarations highlighted the political struggles and excluded the legal ones, which shows a selective attention bias with marginal or non-existing criticism about the latter. In other words, the political aspect was apparent in negative terms and the legal aspect in positive terms.[165]

[164] Gideon, 2010, p. 8.

[165] Declaration of Bravo, 1996, pp. 61-62.

4. Discussion and Conclusion

In this chapter, the categorization will be made, which in the content analysis is the comparison of categories and themes.[166] In addition, the theory's conclusions will be outlined and its findings compared with the previous research.

In the first category and its theme, the controversies regarding the principles and its connected theme, the issue of *non-liquet,* were highlighted. The declarations framed the Conclusion and the Opinion to be the solution to the nuclear issue by the use of *goal framing* to highlight its contribution. Thus, the responsibility was left to states to fill the *lacuna* the Court outlined.[167] Implicitly, this shows that the declarations framed international security to be the responsibility of the states and not the Court. The other statements did not agree, it did not answer UNGA's question.[168] They highlighted that the Court was affected by international politics and went against the UN's interest in protecting humanity against the threat of nuclear weapons.[169] Given the previous research, political scholars argue the principle of objectivity is affected by international politics, which also aligns with this result of the study.[170] This shows that international security and the legal reasoning of the Court, according to the dissenting and separate opinions, were affected by international politics.

However, according to the declarations, the cause of the *non-liquet* was due to the judicial function of the Court and the head-on collision between the principles.[171] The dissenting and separate opinions argued it might destabilize the existing international order, lead to international insecurity, and a repellency of PIL.[172] Thus, the Court failed its judicial function when creating a false dichotomy.[173] It can be concluded that these statements shared the framing: the problem was conclusion E and the cause of it was the Court's incorrect judgment.[174] The solution prescribed was to judge as the Court has done in the past when

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[166] Erlingsson & Brysiewicz, 2017, pp. 97-98.

[167] Declaration of Bravo, 1996, p. 60; Gideon, 2010, p. 9.

[168] SO of Ranjeva, 1996, p. 72; DO of Higgins, 1996, p. 369.

[169] DO of Schwebel, 1996, p. 101.

[170] Feldman, 1994, p. 1187.

[171] Declaration of Bedjaoui, 1996, pp. 47-48; p. 53.

[172] DO of Koroma, 1996, p. 334.

[173] DO of Higgins, 1996, p. 369.

[174] SO of Fleischhauer, 1996, pp. 85-86; DO of Shahabuddeen, 1996, p. 203.

conflicting principles have occurred; to let the humanitarian laws prevail.[175] On this point, the theory concluded that they directed the attention to specific aspects to suppress the findings, and the judges who argued the laws were insufficient to declare illegality. The *dominant framing* used in these statements was *attribute framing*, where they described the Conclusion in negative terms and used associations triggered by the negative frame.[176] In view of the previous research, Christie explains the principle of objectivity is to understand the judicial limitation.[177] In this Case, it can be concluded that the judges are unsure about the judicial function, thus used in a way to frame their interpretation. On the one hand, it could not conclude illegality since the laws were inconclusive — *lex lata*.[178] On the other hand, the Court is a creature of the UN and is its principal judicial organ, which the dissents argued went against its creator's interests — *lex ferenda*.[179]

Moreover, the declarations did not share the framing of IHL. They argued nuclear weapons posed a challenge to it and had a destabilizing effect.[180] In comparison, the other statements highlighted that IHL does not contain legal gaps, it aims to fill them.[181] On this point, the declarations framed the other judges who criticized the Court as in denial of PIL's incompleteness.[182] In this sense, the theory concluded that the declarations did not criticize the Conclusion, rather they criticized the other judges. They excluded the criticism of how international security was affected by it. The *dominant frame* used by the declarations was *goal framing* when describing the Opinion, but also *risky choice framing* when comparing it to the other statements. They had different reference points when referring to its implications.[183] When comparing to the previous research, the concept of completeness in PIL is widely debated in both fields, which also was apparent in this Case.[184] In comparison with Morita's research, politics is the cause of why courts declare a *non-liquet*. She argued, if an

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[175] DO of Koroma, 1996, p. 354.

[176] Gideon, 2010, p. 8; p. 354;

[177] Christie, 1969, pp. 1349-1350.

[178] Declaration of Bedjaoui, 1996, p. 53.

[179] DO of Schwebel, 1996, p. 101.

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

[181] DO of Weeramantry, 1996, p. 292.

[182] Declaration of Vereshchetin, 1996, pp. 57-59.

[183] Gideon, pp. 8-9.

[184] Keith et al., 2018, p. 2.

issue is political rather than legal, then PIL is not optimal.[185] Also, Bodansky explained it enables courts to avoid political issues.[186] It may reasonably be interpreted that the declarations share this view, hence, the Case and the findings of this study align with it. Implicitly, the declarations were of the view that justice must be realized regardless of consequences, which also shows their framing of international security.

In comparison, in the second category and its theme, the political and legal nature of nuclear weapons and its connected theme regarding the implications of the Opinion as a guide to action or insecurity were highlighted. The declarations framed the theory of deterrence as the cause of why it could not declare illegality.[187] In sum, it was the political practice by the NWS which hindered the legal achievements. The Court could not involve itself with international politics due to its judicial function.[188] The solution prescribed was legal instruments toward the prohibition, but also the Opinion as a guide to action for states. Another cause framed was the unwillingness of states; the UNGA had been in a nuclear deadlock for a reason.[189] The theory concluded that the declarations, as in the first category and its theme, used the *goal framing* when describing it, thus highlighting positive aspects of it. They framed the political struggles to be both the cause and the problem, which shows a selective attention bias.[190] In comparison with the previous research, Schneebaum concluded that political struggles do not always have legal solutions.[191] Hood highlighted that the political character of nuclear weapons, especially the theory of deterrence, should not be valued by courts. Generally, researchers are cautious about using PIL as a tool to prohibit, and implicitly this seems to apply to the declarations as well.[192] This aligns with the study's findings, especially in the second category, where the political aspects of nuclear weapons prevailed.

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[185] Morita, 2017, p. 33.

[186] Bodansky, 2006, p. 5.

[187] Declaration of Bravo, 1996, pp. 61-62.

[188] Declaration of Shi, 1996, p. 55.

[189] Declaration of Vereshchetin, 1996, p. 59.

[190] Gideon, 2010, p. 9.

[191] Schneebaum, 2019, p. 152.

[192] Hood, 2020, p. 12.

Accordingly, the SO's shared the framing as the declarations. They framed international politics to be the issue of the *lacuna*.[193] However, the solution was framed differently. They saw a combination of law and politics to be optimal because separately they have stumbled.[194] The dissents also shared the framing as the other statements: international politics and state practice were the issues.[195] They acknowledged that the existence of nuclear weapons is a threat to international security, which shows their framing of it.[196] However, the cause of the nuclear issue was not shared. The dissents framed it as a legal issue within the Charter because it assumes humanity will continue regardless of weapon, which is not the case regarding nuclear weapons.[197] They criticized the Court for the contradiction between promise and performance, in other words, UNGA's expectation of its principal judicial organ and the anticlimax the Opinion represented.[198] As stated in section 1.2.1 the Court was established to contribute to the legal development and the UNGA expected it to declare illegality.[199] The dissents argued it might lead to more international insecurity in the international community since the responsibility was given to the states, which challenges the use of force in IR.[200] This shows that the judges framed international security differently.

The solution prescribed by the dissent was within the legal realm, hence the Court should examine its judicial foundations and values within the UN. They highlighted that the laws should preserve mankind, not declare conclusions which might lead to the annihilation of mankind.[201] The dissents used the *attribute framing* since the problem and its causes were presented in negative terms.[202] However, on this point, the dissents did not share the framing of the solution. Oda argued the solution was within politics since the Court can only interpret existing laws.[203] When comparing to the previous research, nuclear weapons channeled

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[193] SO of Ranjeva, 1996, p. 73.

[194] SO of Fleischhauer, 1996, p. 88.

[195] DO of Schwebel, 1996, pp. 89-90.

[196] Ibid., p. 91.

[197] DO of Shahabuddeen, 1996, p. 158.

[198] DO of Shahabuddeen, 1996, p. 158; DO of Koroma, 1996, p. 336.

[199] David, 1997, p. 22.

[200] DO of Koroma, 1996, pp. 338-339.

[201] DO of Shahabuddeen, 1996, p. 159.

[202] Gideon, 2010, p. 9.

[203] DO of Oda, 1996, p. 151.

political disputes into the legal forum, which Hood problematized.[204] This aligns with the study since international politics met law in the intersection of nuclear weapons. Hence, there is a general disagreement among both researchers and judges whether legal or political instruments should be used to restrain it.

Nonetheless, the dissents criticized the Court for inventing a judicial category, namely ”the survival of the state”. In effect it acted as a legislator, which shows that it went beyond its legal framework.[205] Given the previous research, Lee argued self-defense was used as a blockade in disarming processes.[206] This also seems to be the case in the Opinion, where the Court posed limits on itself which it had not done before, in the belief that the principles were conflicting and that the principle of self-defense prevailed.[207] The theory concluded that the statements collectively used *attribute framing* when interpreting the nuclear issue and its causes to highlight that international politics and the practice of the NWS have hindered the legal development.[208] Thus, all the judges, regardless of voting, framed the issue to be international politics and the solution to be a legal one. As seen, the declarations highlighted the political disputes and in a sense excluded the legal ones. In sum, the political aspect was apparent in negative terms and the legal in positive.[209] When put into the context of the previous research, Datan and Scheffran explain that nuclear developments can be defined by realpolitik, security, and law.[210] Generally, the judges framed the politics to be the issue and laws to be the solution. Implicitly, this seems to be the problem. As Caughley described, the value of nuclear weapons is assigned due to its political effect or as Wood concluded, it might be the most politically versatile instrument.[211] Accordingly, the judges dismissed the political aspects and framed them in negative terms.

It can also be concluded that the judicial terms: *non-liquet*, *lacuna,* and *lex lata* created a new way of framing. The interpretation of laws within them was used to frame both issues and causes, hence the statements used it differently. The study thus developed the framing

[204] Hood, 2020, p. 12.

[205] DO of Koroma, 1996, p. 337.

[206] Lee, 2014, p. 159.

[207] DO of Koroma, 1996, p. 337.

[208] Gideon, 2010, p. 8.

[209] Declaration of Bravo, 1996, pp. 61-62.

[210] Datan & Scheffran, 2019, p. 115.

[211] Caughley, pp. 69-70; Wood, 2017, p. 115.

theory since the statements used the judicial terms differently in a way to frame the issue, hence departed from its strictly legal reasoning to examine the political aspects of nuclear weapons. For instance, the *non-liquet* showed the interconnectedness in the analysis. On the one hand, the declarations framed *non-liquet* as contributing to international security by stating the legal reality.[212] On the other hand, the other statements framed it as contributing to international insecurity by leaving the responsibility to states.[213]

In conclusion, the different statements were within the *equivalent frame* since the information was based on the same facts but the frame in which it was presented differed. Hence the judges framed international nuclear security in a way to make their voting or solution to the issue most appropriate for their course of action. It can be concluded that the Opinion is generally reflective of the state of the law and that the statements accurately reflect the range of opinion among the political and legal scholars. By combining literature from both fields and the use of framing theory, have contributed to new insights on international nuclear security, and thereby, the objective of the thesis is fulfilled. In sum, the judges framed it differently. On the one hand, the declarations framed the judicial restrain to be the cause of the issue and left the responsibility to states, which they meant were international security, rather than stating laws that did not exist — international insecurity.[214] On the other hand, the other statements framed the Court's incorrect judgment and its Conclusion as leading to international insecurity. In this sense, international security was framed to judge correctly and not to challenge the use of force in IR, which might lead to international insecurity.[215] Therefore, nuclear weapons are in the intersection between international politics and law. Thus challenges both the ICJ and the principle of objectivity. Generally, both legal and political scholars agree that IHL applies to nuclear weapons, but the Conclusion reflects another view.[216] As Feldman concluded in her research, the aim is to achieve a balance between IR and PIL, but the unintentional mutuality of the fields challenge the principle.[217] This view aligns with the results of the study because nuclear weapons challenge the legal

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[212] Declaration of Herczegh, 1996, p. 58.

[213] DO of Koroma, 1996, p. 334.

[214] Declaration of Bravo, 1996, pp. 61-62.

[215] DO of Koroma, 1996, p. 337; SO of Fleischhauer, 1996, p. 88.

[216] Turner, 1998, p. 309; Bodansky, 2006, p. 4; The Opinion, 1996, para. 105 (2)E.

[217] Feldman, 1994, p. 1120.

reasoning, e.g. the *non-liquet* and *lex lata*. The Court had to depart from its strictly legal reasoning to address a political issue. As Fihn's research concluded, as long as nuclear weapons are considered essential for security the issue is within IR and not law.[218] This was also one of the study's findings, namely, regardless of the statement, the issue presented was political, not legal. Thus, the judges (i.e. the legal aspect) framed the political aspect in negative terms.

[218] Fihn, 2017, pp. 45-46.

Bibliography

Literature

Anand, R. (2009). *Self-Defense in International Relations.* UK: Palgrave Macmillan.

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

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

Berry, K., Lewis, P., Pélopidas, B., Sokov, N., & Wilson, W. (2010). *Delegitimizing Nuclear Weapons: Examining the Validity of Nuclear Deterrence.* Monetary Institute of International Studies.

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, pp. 7-21.

Bodansky, D. (2006). ”Non Liquet”. *Oxford University Press*, 5(1), pp. 1-6.

Caughley, T. (2013). ”Tracing Notions about Humanitarian Consequences”, in Borrie, J., & Caughley, T. (eds), *Viewing Nuclear Weapons through a Humanitarian Lens* (pp. 14-29). Geneva: UNIDIR.

Cerar, M. (2009). ”The Relationship Between Law and Politics”. *Annual Survey of International & Comparative Law*, 15(1), pp. 19-41.

Chong, D., & Druckman, J. (2007). ”A Theory of Framing and Opinion Formation in Competitive Elite Environments”. *Journal of Communication*, 57(1), pp. 99-118.

Christie, G. (1969). ”Objectivity in the Law”. *The Yale Law Journal*, 78(1), pp. 1311-1351.

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), pp. 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), pp. 71-100.

Dekker, F., & Werner, W. (1999). ”The Completeness of International Law and Hamlet’s Dilemma - Non Liquet, The Nuclear Weapons Case and Legal Theory”. *Nordic Journal of International Law*, 68(3), pp. 225-247.

Entman, R. M. (1993). ”Framing: Toward Clarification of a Fractured Paradigm”. *Journal of Communication,* 43(4), pp. 51-58.

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

Esaiasson, P. (2017). *Metodpraktikan: konsten att studera samhälle, individ och marknad*. Stockholm: Wolters Kluwer.

Feldman, H. (1994). ”Objectivity in Legal Judgement”. *Michigan Law Review*, 92(11), pp. 1187-1255.

Fihn, B. (2017). “The Logic of Banning Nuclear Weapons”. *Survival: Global Politics and Strategy*, 59(1), pp. 43-50.

Gideon, K. (2010). *Perspectives on Framing*. New York: Psychology Press.

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

Granoff, D., & Granoff., J. (2011). ”International Humanitarian Law and Nuclear Weapons: Irreconcilable Differences”. *Bulletin of the Atomic Scientists*, 67(6), pp. 53-62.

Halperin, S., & Heath, O. (2017). *Political research - Methods and practical skills*. Glasgow: Oxford University Press.

Hood, A. (2020). ”Questioning International Nuclear Weapons Law as a Field of Resistance”, in Black, J., & Fleck, D. (eds), *Nuclear Non-Proliferation in International Law: Legal Challenges to Nuclear Weapons and Nuclear Deterrence* (pp. 237-269). The Hague: T.M.C. Asser Press.

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), pp. 63-77.

Keith, E., Whittington, R., Keleman, D., & Caldeira, G. (2018). ”Overview of Law and Politics the Study of Law and Politics”, in *The Oxford Handbook of Political Science*, Oxford: Oxford University Press. pp. 1-13.

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

Morita, K. (2017). ”The Issue of Lacunae in International Law and Non Liquet Revisited”. *Journal of Law and Politics*, 45(1), pp. 33-51.

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), pp. 617-644.

Rein, M., & Schön, D. (1996). “Frame-Critical Policy Analysis and Frame-Reflective Policy Practice”, in *Knowledge and Policy: The International Journal of Knowledge Transfer and Utilization,* 9(1), pp. 85–104.

Ruzicka, J. (2019). ”The Next Great Hope: The Humanitarian Approach to Nuclear Weapons”, *Journal of International Political Theory*, 15(3), pp. 386-400.

Schneebaum, S. (2019). ”What does international law have to say about nuclear weapons? And what does this have to say about international law?”. *SAIS Review of International Affairs*, 39(2), pp. 149-158.

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

Turner, R. (1998). ”Nuclear Weapons and the World Court: The ICJ’s Advisory Opinion and Its Significance for U.S. Strategic Doctrine”. *International Law Studies*, 72(1), pp. 309-364.

Upeniece, V.(2018). ”Conditions for the lawful exercise of the right of self-defence in international law”. *EDP Sciences*, 1(8), pp. 1-8.

White, N. (2020). ”Understanding Nuclear Deterrence Within the International Constitutional Architecture”, in Black, J., & Fleck, D. (eds), *Nuclear Non-Proliferation in International Law: Legal Challenges to Nuclear Weapons and Nuclear Deterrence* (pp. 237-269). The Hague: T.M.C. Asser Press.

Wood, J. (2017). ”Nuclear Weapons and Political Behavior”. *Strategic Studies Quarterly*, 11(3), pp. 115-128.

Official Documents

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. Declaration of Judge Herczegh.

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

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 Higgins.

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 Oda.

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. Dissenting Opinion of Vice-President Schwebel.

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

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

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

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

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 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.

Appendix

Appendix 1 Data

Document Title	Type	General opinion
Declaration of Judge Bedjaoui	Declaration, made in favor of the ICJ's Advisory Opinion: the Legality of the Threat or Use of Nuclear Weapons from 1996.	Nuclear weapons have destabilizing effects on IHL, thus challenges it.
-‖- Bravo	-‖-	The theory of deterrence is not an international custom, has no legal value.
-‖- Herczegh	-‖-	The Opinion should have evaluated a more accurate summary of the existing PIL.
-‖- Shi	-‖-	Nuclear deterrence is a policy for NWS and not suitable for an international court, thus it is international politics and not law.
-‖- Vereshchetin	-‖-	The Opinion reflects the current state of law, and should be regarded as a ”guide to action.”
Separate Opinion of Judge Guillaume	Separate Opinion, made in favor of the ICJ's Advisory Opinion: the Legality of the Threat or Use of Nuclear Weapons from 1996, but have made reservations on specific parts of the *dispositif*.	States do not have unlimited freedom of choice in the weapons they use in accordance with art. 51 in the Charter.
-‖- Fleischhauer	-‖-	Para. 2 E is legally confirming to the NWS, hence justifying a recourse to nuclear weapons.
-‖- Ranjeva	-‖-	Para. 2 E gave the NWS and their allies reasons for their policies, which he believes is alarming.
Dissenting Opinion of Judge Higgins	Dissenting Opinion, made against the ICJ's Advisory Opinion: the Legality of the Threat or Use of Nuclear Weapons from 1996.	The Court did not apply IHL, taking into account that para. 2 E was accepted.
-‖- Koroma	-‖-	Para. 2 E is not sustained on the basis of current PIL, should have been sufficient to conclude unlawful.

Document Title	Type	General opinion
-||- Oda	-||-	The UNGA's question to the Court had highly political motives concerning the prohibition of nuclear weapons.
-||- Schwebel	-||-	The Case is about two conflicting principles: IHL and self-defense.
-||- Shahabuddeen	-||-	The Court should have answered the UNGA's question in one way or another.
-||- Weeramantry	-||-	Nuclear weapons are unlawful regardless of circumstances.