

The Question of Legality of the Threat or Use of Nuclear Weapons in the Context of the War in Ukraine

Abstract

This thesis aims to examine the legality of the threat or use of nuclear weapons by applying sources of the international public law. This is achieved by means of using analytical and comparative methods. The key sources analysed in this thesis are general principles related to the law of international security, permissible use of force (*ius ad bellum*), and the principle of the law of armed conflicts (*ius in bello*). The main document opining on the legality of nuclear weapons is the “*Advisory Opinion of the ICJ on the Legality of the Use of Nuclear Weapons*”. The legality of the threat or use of nuclear weapons is inextricably linked to the general prohibition of the use or threat of force against the territorial integrity and/or political independence of states, established in the UN Charter. Taking the UN Charter into consideration, the use and even the threat of use of nuclear weapons may potentially be considered as a violation of the public international law. From the in *ius ad bellum* perspective, there is no common rule that prohibits the use of nuclear weapons. The possibility of any such rule being established is directly eliminated by the principle of nuclear deterrence. From the *ius in bello* perspective, the legality of use or threat of force also remains unclear. The advisory opinion of ICJ did not opine on the legality of the use of nuclear weapons as a consequence of the right to self-defence of each sovereign state and the international legal theory of “*State of Necessity*”. As outlined above, this issue is examined in this thesis via the theory of the public international law and also from a practical point of view in the form of an analysis of the international armed conflict in Ukraine. During the armed conflict in Ukraine, the Russian Federation repeatedly applied nuclear deterrence citing its security interests. Based on the nature of the armed conflict, it can be assumed that the territorial dispute between Ukraine and the Russian Federation is not nearing its conclusion. On the contrary, the armed conflict is reaching a deadlock that could significantly increase the risk of the use of nuclear weapons. As highlighted above the use of nuclear weapons would be a violation of the principle of non-threat and use of force, but due to the theoretical indeterminacy, the questions of legality would remain at the very least contentious. Despite the presence of repeated violations of the principle of the prohibition of the use or threat of force by one of the permanent members of the UN Security Council (the Russian Federation) from the point of view of the international community, the *uses of longevous* and *opinion necessitates general* remain fulfilled and the principle does not lose its validity.

Key words: nuclear weapons, international armed conflict, prohibition of the threat or use of force, international humanitarian law, legality