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# On the justifiability of nuclear weapons

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International politics can be viewed as a realm beyond the scope of traditional ethical analysis. Either a different morality is seen to hold sway between societies than within them, or it is erroneous and even dangerous, to talk of morality in the governance of inter-societal actions. Likewise, the way we act towards our fellow citizens, co-religious, those of a shared ethnicity or other form of common identity has often differed widely from the way we treat barbarians, infidels or Untermenschen. Either the “other” is not entitled in normative terms to equal consideration, or it is impractical to extend such considerations beyond the boundaries of our own communities. Yet the supposed value-neutral conditions pertaining to international interaction no longer hold up to scrutiny if they have ever actually done so. Morality has increasingly been placed at the center of interstate actions, nowhere more so than in the justifications for the use of force. As the most destructive and symbolic use of force, the use of nuclear weapons has crystalized debate. Rather than being viewed as beyond the realm of ethical analysis, the use of nuclear weapons is now hotly debated from competing epistemological perspectives. This article will consider the normative arguments for and against the development, possession, and use of nuclear weapons from realist and communitarian considerations of national interest, from legalistic and systemic perspectives of international peace and security, and from liberal and cosmopolitan human rights and just war perspectives. It will attempt to establish an overlapping consensus between competing epistemological perspectives on universal human wrongs and going beyond the responsibility to protect (R2P).

### KEYWORDS

**communitarianism, cosmopolitanism, just war, justifiability, liberal internationalism, nuclear weapons, rationality, realism**

## 1 Introduction

Governance is the *process* of governing by those actors (*agents*) who are empowered with the *authority* (legitimized power) to do so. Hence, this article addresses the extent to which governing agents enact policies which can be justified in accordance with different normative structures (including but not limited to legal frameworks). Since the dropping of the first atomic bomb on Hiroshima, August 6, 1945, as developed in this article, the justifiability of the development, possession, and use of such weapons has been hotly debated at both a normative and pragmatic level.

In particular, the prohibition of the actual use of nuclear weapons has been presented as a “nuclear taboo” (Tannenwald, 1999). Yet, in recent years, with the development of battlefield, low-yield, tactical nuclear weapons, and a shift back towards a more state-centric, national interest-based world order, this taboo is being rolled back through processes of rationalist justification, normative contestation, and normative erosion (Goddard and Larkin, 2025).

North Korea has repeatedly threatened to use its nuclear weapons, Russia has refused to rule out their use, and since the second Nuclear Posture Review in 2002, the United States has actively considered offensive nuclear weapons systems and capabilities (Rumsfeld, 2002).

According to the final Report of the Commission on Global Governance (CGG), “governance is the sum of the many ways individuals and institutions, public and private, manage their common affairs” (CGG, 1995, p. 2). The management of common affairs is aimed at reconciling conflicting interests (including peaceful resolution of conflicts) and generating collective good. Thus, governance implies a concern by those who govern with both the security and development of those who are governed. A further element of governance recognizes the rights and security of those who are governed, and the obligations towards them imposed upon those who govern, as regulated by the rule of law (Howe, 2012).

Domestically, governance is carried out by instruments of the state. Internationally, governance refers not only to global attempts to govern in the absence of world government, dealing with conflicts of interests between states, the rights and security of states, and those issues that transcend national boundaries; but also, prescriptions for how the governments of those states should themselves govern. The transitional process from anarchic conditions which generate conflict, towards the aspiration of global governance, may be termed international organization. International organizations (IOs) are representative aspects of the phase of that process which has been reached at a given time (Claude, 1963, p. 4).

In policy terms, the quest for security is the attempt to secure freedom from existential threat (threats to their continued existence) for a referent object, whether state, international system, individual human being, or the whole of humanity (Buzan et al., 1998; Sears, 2020). Each of these referent objects faces an expanding multitude of threats, no longer limited to that of violent conflict. National security governance has focused on the survival of the state in a hostile operating environment, and protection of the citizens of that state from all threats, domestic or foreign (Paleri, 2007/8). International security governance has traditionally focused on interactions between the community of states, and on security provision for sovereign states, keeping them safe from the threats they pose to each other, conceptualized in terms of a war-peace dichotomy (Sheehan, 2005).

International politics can be viewed as a realm beyond the scope of traditional ethical analysis. Inter-societal actions can be seen as being governed by a different set of moral guidelines to those regulating intra-societal interactions and thus attempts to transplant domestic norms to the international arena are doomed to fail (Carr, 1939; Bell, 2010). Likewise, the way we act towards our fellow citizens, co-religious, those of a shared ethnicity or other form of common identity differs widely from those seen as being outside our peer group (Salter, 2002). Hence, extending equal consideration to the “other” is potentially as unjust in terms of entitlement norms as it is impractical (Neumann, 1996; Moeini, 2023). Supposed value-neutral conditions pertaining to security provision and international interaction no longer, however, hold up to scrutiny if they have ever actually done so.

The claim that “anything goes” when fighting wars or providing for national security is not an amoral statement and has expressly been contradicted by the lengthy just war tradition (Walzer, 1977; Masek, 2002). Nor is the concept that states should only go to war in furtherance of their national interest (Howe, 2006; Seybolt, 2007). Rather they are perspectives in which the substantial concepts of the good linked with the interests of a state are considered normatively to trump

all other moral considerations in the rational calculations of those individuals (agents) responsible for constructing policy. The development and use of weapons of mass destruction (WMDs), including nuclear weapons, are the most extreme manifestation of this state-centric, national interest/security worldview. That to maximize the security of “us,” we must shift as much of the burden of suffering onto the other as possible.

In a post-Nuremberg era,<sup>1</sup> however, ethics have increasingly been placed center-stage in terms of international political analysis. The claims of national interest and the values they represent are still important when addressing the ethics of international politics in general and of warfare in particular, but they no longer comprise a sufficient set of justifying criteria, even if they still constitute a necessary evaluation (Frost, 2009). As the most destructive and symbolic use of force, the use of nuclear weapons has crystalized debate (Goddard and Larkin, 2025). The ensuing normative crisis represents both threat and opportunity for the international community of foreign policy practitioners, and a challenge for international theorists.

Rather than being viewed as beyond the realm of ethical analysis, the use of nuclear weapons is now hotly debated from competing epistemological perspectives. This article will consider the normative arguments for and against development, possession, and use of nuclear weapons from realist and communitarian considerations of national interest, from legalistic and systemic perspectives of international peace and security, and from liberal and cosmopolitan human rights and just war perspectives. It will attempt to establish an overlapping consensus between competing epistemological perspectives on universal human wrongs and going beyond the responsibility to protect (R2P).

Two questions are key to understanding the ongoing debate: To what extent have we moved beyond state-centric norms in international relations? And to what extent have universal norms evolved to replace those laid out in Westphalia in 1648, which rejected the existence of any governance authority (the Papacy and the Holy Roman Empire) above that of the sovereign of each state? Note the intention of this article is to address the Westphalian notion of political sovereignty of a territorial entity free from external interference (normative autarky), and the extent to which external interference and overarching normative values now hold sway. It does not address the more contested notion of the supposed sovereign equality of states which is also sometimes attributed to the Westphalian system (Stirk, 2012).

The findings of this article are that pre-existing state-centric norms no longer offer sufficient justification or explanation for state action, yet neither have universal norms taken over. Hence, the justifiability of the development, deployment, and use of nuclear weapons depends on the intersection and interaction between these two sets of normative policy positions.

## 2 Power political and communitarian state-centric rational justifications

The Peace of Westphalia in 1648 helped establish what we now think of as the “sovereign rights” of states. According to this tradition, those

<sup>1</sup> In the normative operating environment following the International Military Tribunal in Nuremberg (1945–1946).

who ruled a state were subject to no higher authority, bound by no higher set of rules, and were to be allowed to govern their territories free from external interference. In fact, one definition of a sovereign is a person or political entity bound by no law, but whose word is law for all within a particular geographically bounded realm (Law, 2022). Although the sovereign can be seen as also owing some duty of care to these subjects, that is not the case for those who owe allegiance to another sovereign.

As a result of the existence of these mutually exclusive sovereign realms, the international environment is anarchic. There is no governing authority above the state, rather international relations are governed by a balance of power, and norms of interaction are replaced by supposedly value-neutral consideration of “national interest” (Carr, 1939). Thus, the fighting of wars and the consequences of their outcomes purportedly exist in a normative space beyond that of day-to-day morality.

The first set of justifications for WMD development and use therefore, involve a cost–benefit analysis of national interest framed as military security, integrity of political life, and the wellbeing of a state’s citizens. This position is essentially a pessimistic, cynical one, but is viewed as reflecting the “reality” of international relations (Walt, 1985; Mearsheimer, 2018). The “rational” policy, under such conditions, is to pursue goals without care to the costs that might be incurred by others, and to maximize one’s chances of achieving ends in the face of opposition through the pursuit of power (Mearsheimer, 2001). As the most powerful weapons of their time, nuclear weapons are rational developments of capabilities by all those who have the capacity to do so. The emphasis here is on the role played by national interest both in motivating states to develop WMD, and in assessing whether their use in times of conflict is justified.

In terms of their development, nuclear weapons increase a state’s coercive capacity, facilitating its pursuit of policy objectives in the face of resistance from other states. This can be considered an offensive realist justification (Mearsheimer, 2001). Nuclear weapons also, however, provide a degree of impunity, and immunity from the coercive machinations of the “other.” Hence, even conventionally weaker states can ensure their survival through the deterrent effect of these WMD. Something of a defensive realist justification (Waltz, 1979). This was explicitly the argument put forward in support of the “normalization” or re-militarization of Japan, up to and including the acquisition of nuclear weapons—indeed, White (2008) has claimed that “Japan may have to go nuclear.”

For others, Japan’s acquisition of nuclear weapons is only right and natural, a self-help reaction to the dangers of an anarchic environment, hence the normative and prescriptive underpinnings of the term “normalization” (Griffiths, 2008). This aligns closely with communitarian positions on international morality. Communitarians address the necessity of attending to the demands of community alongside or prior to, liberty and equality (Kymlicka, 2017, p. 463). Each society has generated a distinct understanding of the common good based on shared practices and values (Walzer, 1983).

Communitarians like Michael Walzer, reject attempts to come up with neutral, value free or universal theories of justice, emphasizing that although human rights exist, they can only be defended through the governance structures of the political community to which individuals belong (Walzer, 1983, p. 5). The individual is seen as embedded or situated within the political community to which they belong, rather than unencumbered and free to judge impartially, and the state is the largest representation of legitimate political community and collective consciousness (Walzer, 1980). “Though the community requires a government, it is not the case that the citizens are bound to the government to defend it against foreigners. Rather, the government is bound to the citizens to defend them against foreigners” (Walzer, 1980, p. 211). Hence, states may have a moral duty to develop nuclear weapons.

At the dyadic level, between pairs of nuclear armed states (or closely allied geostrategic blocs), mutually assured destruction can even be a force for peace. Mearsheimer (1990) wrote with concern about the dangers of this loss of certainty, and how we will come to miss the Cold War. This deterrent effect extends to a systemic security, whereby such are the devastating consequences of war involving the use of nuclear weapons, that WMD can contribute to the power political management of international conflict. From such a perspective, therefore, nuclear proliferation could be beneficial for systemic peace and security (Waltz, 1981).

It will be helpful here to delve a little deeper into the “rational” justifications of security policymaking. From the perspective of power politics, conflict is inevitable but can be *managed* in one’s interest through the strategic application of coercive forces. We can increase the costs of unfavorable decision-making outcomes from the other (including but not limited to the decision to launch an attack) through either defensive augmentation of our capabilities or the development of deterrent capacity. Defensive spending increases the cost to an aggressor of pushing through an attack, while deterrence works by threatening dire consequences should such an attack be launched (Waltz, 1981).

The rational aspects of liberal approaches (as opposed to normative elements addressed later in this article) work on the other end of this equation (Keohane and Nye, 1977). Rather than persuading a potential aggressor not to attempt to change a *status quo* they find objectionable, this strategy aims to make the *status quo* more appealing, and therefore its revision less compelling. This can be achieved either through the offer of direct incentives (appeasement) or through a process of making everybody better off through cooperation and the generation of collective goods (economic integration). Table 1 maps out the cost–benefit equation referred to in the assessment of both realist and liberal rationales for war and peace.

If  $[a]-[b] > [c]-[d]$  or  $[c]-[d] < [e]-[f]$  then it is rational for a revisionist state to resort to the use of force to change the *status quo*. Those states who do not wish to see the *status quo* changed, or force resorted to, can use the strategies in the third row to alter the cost benefit

TABLE 1 Revisionist states, rationality, and the decision to go to war.

Status quo operating environment	Macro-decision (war implementation stage)	Post-bellum operating environment
[a] Systemic costs of operating environment for revisionist actor.	[c] Cost of waging war.	[e] Benefit of post-bellum.
[b] Systemic benefits of operating environment for revisionist actor.	[d] Benefit of waging war	[f] Cost of post-bellum.
Inducements/appeasement	Defense	Deterrence

analysis of the revisionist state in any of the columns, so that either  $[a]-[b] < [c]-[d]$  or  $[c]-[d] > [e]-[f]$ . Note, the benefit of waging war [d] in Table 1 refers not to the positive material outcomes of launching an attack which are encapsulated in the third column [e], but rather the supposed societal strengthening or reinvigoration historically championed by social Darwinists independently of the net benefits of outcomes (Bernhardi, 1911[2015]).

These equations could imply that if the war costs very little but makes the initiator much worse off, it would still be rational to launch that war if the costs of the status quo are unbearable. Basically, this means just removing the war column and going straight to an  $a-b > f-e$  or  $b-a < e-f$ . Under modern conditions, however, the costs of fighting a war are likely to be far from negligible, and this is particularly the case when we are talking about a conflict involving the use of nuclear weapons.

Due to their incredible destructive power and second-strike capability, nuclear weapons have the greatest deterrent effect. If they are in the hands of the revisionist power rather than the *status quo* power, they can, of course, tip the balance in favor of offensive action. These rational inducements for peace also apply at the systemic level of conflict management and resolution. Leggold and Weiss (1998, p. 6) contrast decentralized (realist) and collective (liberal modernist) types of international security systems as follows (see Table 2).

A decentralized conflict management (DCM) order is essentially one based on self-help in pursuit of national interest—what Kivimäki (2014) has referred to as agent-centric security thinking. Collective conflict management (CCM) or relational peace thinking references group action, usually but not necessarily sanctioned by a global or regional body, aimed at preventing or reversing breaches of systemic peace (Lepgold and Weiss, 1998, p. 5; Kivimäki, 2014). CCM will be addressed in greater detail in the following section. Power political and communitarian perspectives operate under the assumption of the international operating environment being characterized by DCM conditions.

From a realist perspective, therefore, the anarchic international operating environment is best characterized as a nascent “war of all against all” with the outbreak of violent conflict between any two or more members of the international system an ever-present liability (Hobbes, 1651[1947], pp. 81–82). While in the definition of a Westphalian order laid out above, states are considered immune from meddling in their internal affairs from above, the counterpoint to this is that they must rely on “self-help” rather than look to having their security provided by others (Carr, 1939; Morgenthau, 1949). Under such conditions, the dominant strategy (one that outperforms all other strategies regardless of the policies or actions of other actors) is to maximize one’s military capabilities, including development and deployment of WMD.

The downside of such thinking is that the development of such weaponry threatens the security of others, contributing to an even

greater impetus to develop and deploy nuclear weapons among their decision-makers, thereby ultimately undermining one’s security—the security dilemma (Herz, 1950). It also stimulates arms racing which is itself a source of uncertainty in international relations, and thus a further source of insecurity. To not develop WMD when others are doing so, however, guarantees at least a subaltern position in the global power hierarchy, and, potentially, complete destruction. All these rational calculations relate to the development, acquisition, and deployment of nuclear weapons. The decision to use nuclear weapons should be based on a separate cost–benefit analytical process. As is now clear, even if it was not at the time of Hiroshima and Nagasaki, any use of nuclear weapons can have not only a devastating impact on the target country but can also have significant consequences around the world and upon future generations.

This decision-making environment also, however, contributes to a tendency towards brinkmanship—getting as close to pulling the trigger (or pressing the button) as possible to coerce your opponent with the horrors of what might come to pass (Schelling, 1966). While under conditions of mutually assured destruction (MAD), it might be difficult to convince your opponent of a rational intent to do so (and therefore threaten them effectively), the likelihood of being able to do so is increased if a leader is in place widely perceived as fanatical or irrational. Alternatively, it can be rational to attempt coercion through the creation of unstable and unpredictable conditions under which the worst could inadvertently come to pass, thereby coercing an enemy to pull back from the brink. Nevertheless, the creation of deliberate or collateral uncertainty could increase the chance of accidental use of nuclear weapons. Furthermore, during a conflict, the rational imperatives to break the nuclear taboo and make first use of nuclear weapons (or other WMD) increases the closer the state in possession of these and other WMD comes to conventional defeat.

A rational decision-maker should also consider whether using nuclear weapons will negatively impact upon the security of their own population, either now or in the future. This is a particularly grave concern for antagonists situated in close geographical proximity to one another. Decision-makers must further be cognizant of the potential negative impact of breaking the “taboo” on using nuclear weapons in terms of the precedent it sets—this constitutes a rule-utilitarian rather than a simple cost–benefit utility calculation (Brandt, 1959). It is not enough, therefore, for decision-makers simply to focus on the perceived benefits in terms of a reduction in costs brought about by shortening a war using nuclear weapons (even were it to be proven that this would be the result of their use).

During the Cold War, realist and other power political perspectives, such as geopolitics (Brzezinski, 1997; Rusi, 1998), power transition theory (Organski, 1968; Tellis et al., 2000), and hegemonic cycle theory (Gilpin, 1981), dominated security decision-making. It was

TABLE 2 Conflict management systems.

Variables	Decentralized conflict management	Collective conflict management
State behavior is	Unconstrained by general norms	Coordinated with others, based on general norms
Decision criteria are	Individualistic self-help: what particular states think is best	Pursuit of broad, group-based self-interest
Goal of action is	Pursuit of narrowly defined self-interest	What is best for group or system
Military forces are	Independent: without shared resources or command structures.	Part of a collective force: joint command and pooling of resources
Action occurs when	State’s individual interests are threatened	Peace and stability of the system is at stake

seen as rational and even normatively required, to maximize one's military power in the face of an extremely hostile operating environment, and the paralysis of what elements of multilateral global governance were in place. This meant the acquisition of nuclear weapons, or sheltering under the umbrella of close and powerful allies which had already done so. It is not surprising that, under current geopolitical conditions, which have been likened to a second cold war, these impetuses are resurgent (Novotná et al., 2023).

Nevertheless, rational consideration of rule-utilitarian constraints leads us to consider what other rule-based regimes can serve to constrain or enable rational actors. There is an alternative tradition of international organization and the regulation of global governance according to the rule of law, which has come prominently to the fore after each period of shocking interstate violence, or escalation to the point of existential threat. With the increasing costs of warfare (including the potential impact of the use of nuclear weapons), the need to impose some minimal rules of cooperation is in the national interests of all. This tradition acknowledges the desirability of regulating the behavior of states in the international sphere in order that international anarchy may be replaced with something more akin to the domestic rule of law (the domestic analogy) (Bull, 1977, p. 13). The end of the Cold War was seen as a second chance for achieving this liberal internationalist dream (Kegley, 1995, p. 10).

The next section examines in more detail the international legal and organizational position on the use of force and the development of nuclear weapons. This combines the state-centric rational imperatives of pursuing the best avenues to promote national security in a hostile operating environment with the normative recognition of an international community that transcends the mere aggregation of member states—the whole is greater than the sum of the parts.

### 3 International organization and international law

The provision of state security and the problem of interstate war have been the prime motivations and foci for the process of international organization (Claude, 1963, p. 219). The Congress of Vienna 1815, which marked the end of the devastating Napoleonic Wars, also marked the start of the unprecedented international organizational cooperation of the 19th century conference system. Napoleon had been defeated by a concert of powers, not by a replacement hegemon, and the vanquished was invited to join the exclusive club for great powers alongside the victors. The Concert of Europe met around 30 times to deal with pressing issues, establishing multilateral diplomacy by conference as an international norm, and founding a path upon which future governance incarnations would become dependent. This was linked to a growing awareness of European interdependence. The Concert had two main limitations, however. First, it was a club exclusively for great powers, and second, it only met at times of crisis in Europe. Hence, the next evolutionary step was represented by The Hague Peace Conferences.

The Hague Conferences were scheduled to be held at regular intervals, rather than in reaction to an international crisis. The first took place in 1899 and the second in 1907. Scheduling of the third was derailed by the outbreak of World War I. The focus was on constructing the first general international conferences concerned with building a world system based on law and order. The First Hague Peace Conference was attended by 26 (mostly European) nations (Baker,

2009). The Second Hague Peace Conference was attended by 44 states including most of Latin America (which by that point had already substantially decolonized) as well as the small number of independent Asian and African states, amounting to near universality of “constituted states” (Olson et al., 1991).

The Conferences greatly shaped the social evolution of global governance and international conflict in the areas of pacific settlement of international disputes, arms limitation, and the laws of war, impacting not only on the processes of reaching agreement, but also through how participants dealt with matters on which the delegations could not agree (Baker, 2009). They introduced the principles of universality, sovereign equality (breaking the monopoly of great power system) and, in The Hague headquarters, introduced international machinery to facilitate the pacific settlement of international disputes.

In reaction to the horrors of the Great War (or the war to end all wars), protagonists of an international community initiated the League of Nations. The League borrowed extensively from procedures for peaceful settlement of conflicts codified by Hague System, and it reflected The Hague system's response to growing demands for universality and sovereign equality. It was the embodiment of liberal internationalist perspectives summed up in US President Woodrow Wilson's “Fourteen Points” aimed at producing a just peace and a new world of security and democracy through a “general association of nations” “for the purpose of affording mutual guarantees of political independence and territorial integrity to great and small powers alike” (Library of Congress, 1918).

The League failed sufficiently to act in the face of the Japanese invasion and annexation of Manchuria (1931–1932), or the Italian invasion and conquest of Abyssinia (1935–1937). Ultimately, the failure of the liberal international organizational projects to provide either collective security or universal peace led to their labeling as “idealist,” and the liberal internationalist dominated interwar years as the “Twenty Years Crisis” (Carr, 1939). Yet the horrors of World War II, including the first use of nuclear weapons in Hiroshima and Nagasaki, made construction of a successor regime imperative.

The UN is largely a child of the League. It incorporates the important institutional developments of the League, such as an international secretariat and the growth in importance of economic and social activities, as well as continuing the heritage of universalism, and the peaceful resolution of conflicts mechanisms initiated by The Hague conferences. The UN Charter also, however, reflects efforts to learn from League failures. Collective security under the League had predominantly failed due to an inability to secure the commitment of great powers to its principles, operationalization, and enforcement. Under the UN, great powers were to be rewarded for their commitment with Permanent Membership of the Security Council (UNSC) and a veto on enforcement actions.

The institutionalization of CCM through first the League of Nations, and then the UN system, has contributed significantly to the resolution of interstate conflicts (Howe, 2021, p. 502). Chapter VI of the UN Charter reflects the lengthy tradition of peaceful resolution of disputes—giving alternatives to resorting to war. Chapter VII covers enforcement actions (political, economic, military sanctions) which can be initiated against aggressors should peaceful resolution fail. In addition, peacekeeping operations (UNPKOs), viewed traditionally as forces placed between parties to a conflict with the aim of preventing future breakdowns of peace and security, are the flagship operations of the UN, and its major and most visible contribution to global governance (Kondoch and Howe, 2014, p. 123).

UNPKOs have increasingly shifted their focus to intrastate conflicts, and are seen as a “strong and effective tool that is protecting people, saving lives and helping countries to emerge from conflict” (Ban, 2014). The UN has a mixed record with the number of active conflicts in the world rising steeply in the new millennium (Núñez Villaverde, 2023). Furthermore, contemporary conflicts are deeply rooted, with multiple waves of reignition. “In fact, some two-thirds of peacekeeping personnel today are deployed amid ongoing conflict, where peace agreements are shaky or absent” (UN, 2026). Nevertheless, more UN peacekeepers means fewer battlefield deaths (Hultman et al., 2014), while UN police mitigate postwar violence generally (Bara, 2020). The security realm has also, however, represented the most controversial manifestation of the dualistic nature of IOs, by which is meant that on the one hand they serve to make the sovereign interstate system function better, but that on the other they undermine state sovereignty.

International organization can further be seen as a continuous transitional process of evolution through trial and error from the international anarchic conditions which generate conflict, towards the aspiration of global governance (Howe, 2023, p. 2). After the failure of one manifestation of the process, the international community does not give up on trying to address the collective action problems faced, but rather looks to build on what worked, and address the reasons for the failure of the previous incarnation in future endeavors. Meanwhile, international law has tended to endorse violence only as a way of preventing greater violence.

The 1928 Kellogg-Briand Pact essentially outlawed war as an instrument of national policy except (implicitly) when fought in self-defense or (as it only referred to national policy and did not supersede the Covenant of the League of Nations) when authorized by the Council of the League of Nations. Article 2(4) of the UN Charter reinforces this position, requiring states to refrain from the threat or use of force against the territorial integrity or political independence of a state, or in any other manner inconsistent with the purposes of the UN.

States may only legally resort to force in the interest of individual or collective self-defense (Article 51) in anticipation of an action sanctioned by the UNSC. There are only two conditions under which nuclear weapons could conceivably be justified. The first is to counter a prior act of aggression (presumably one that poses an existential threat to a member of the international system or involves the use of WMD). The second is if authorized by the UNSC (something that is never likely to happen).

Under Chapter VII Article 39, the UNSC is responsible for determining threats to international peace, breaches of the peace or acts of aggression, and under Article 42 the UNSC—not individual Member States—is empowered to authorize a response. Article 41 of the UN Charter allows the isolation of an aggressor state in economic, diplomatic and political terms and (Article 42) if such measures prove inadequate, military action to give effect to Security Council decisions.

Thus, each state has a duty of non-use of nuclear weapons. The only remaining legal loophole can be found in Article 51 which notes that “Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.” Yet it would be a tough argument to make that a state needs to engage in first use of nuclear weapons while waiting for UNSC action.

Wide prohibition on the use of WMD can be found in the instruments of codified international law including international treaties, UNSC and General Assembly (UNGA) resolutions, and international judicial findings. UNGA Resolution A/RES/32/84-B (1977) defined

WMD as “atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons, and any weapons developed in the future which might have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above.” The 1972 “Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction,” as the name suggests, prohibits the acquisition or use of biological WMD. The 1992 “Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction” outlines similar prohibitions for chemical WMD. The situation is, however, more complicated regarding the acquisition of nuclear weapons (although as discussed above, their actual use is mostly prohibited).

The 1968 Nuclear Non-Proliferation Treaty (NPT), which entered into force in 1970, and which has since gained near universal adherence represents a ‘grand bargain’ in which “non-nuclear weapon states (NNWS) forsake the nuclear option in exchange for a legal obligation on the part of the nuclear weapon states (NWS) to refrain from transferring the weapons to any other states, and to disarm and eventually eliminate their arsenals” (Geneva Academy, 2014, p. 10). As such, it does not comprehensively outlaw the development and possession of nuclear weapons for those states which, by the time the treaty came into force, had already reached the status of NWS. The legal prohibition is also unclear regarding those states which did not sign up to the treaty (especially under the consensual interpretation of international law proclaimed by liberal internationalists) and have developed nuclear weapons capability such as India, Israel, and Pakistan, or regarding the Democratic People’s Republic of Korea (DPRK) which withdrew from the treaty and developed nuclear weapons.

In 2017, by resolution 71/258, the UNGA convened a conference aimed at the total elimination of nuclear weapons, which led to the Treaty on the Prohibition of Nuclear Weapons (TPNW) being adopted on 7 July 2017, and opened for signature on 20 September 2017. It entered into force on 22 January 2021 following the 50th instrument of ratification or accession. It includes undertakings “not to develop, test, produce, acquire, possess, stockpile, use or threaten to use nuclear weapons,” and prohibits “the deployment of nuclear weapons on national territory and the provision of assistance to any State in the conduct of prohibited activities” (UNODA, 2021).

Despite near universality at the conference, the TPNW does not have anything like universal support among the almost 200 members of the UN and has not been endorsed by any of the nuclear weapon armed states (recognized or suspected). Furthermore, UNGA Resolutions occupy a curious position under international law, whereby, unlike UNSC Resolutions, they are not generally recognized as part of codified law by legal positivists. Nevertheless, broader conceptualizations of international law can also impact on consideration of the legality of nuclear weapons.

Although overlooked by some jurists, customary international law holds equal force to that of codified international law, and UNGA resolutions can certainly be considered indicative of customary law. The *Paquete Habana* Case established that “where there is no treaty and no controlling executive or legislative act or judicial decision, resort must be had to the customs and usages of civilized nations, and, as evidence of these, to the works of jurists and commentators” (The *Paquete Habana*, 1900). This ruling is supported by Article 38 of the Statute of the International Court of Justice (ICJ), which refers to “international custom, as evidence of a general practice accepted as law,” and “the

teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law” (ICJ, 1945).

The Nuremberg trials established a limit to state sovereignty with reference to the treatment of a state’s citizens, and the UN Charter Preamble reaffirms faith in fundamental human rights without discrimination. This is also reflected in Articles 1(3), 55 and 56 of the Charter 1948 saw the landmark Universal Declaration of Human Rights passed by the General Assembly, and this was followed in 1966 by the Covenants on Civil and Political Rights and Economic and Social Rights. The Convention on the Prevention and Punishment of the Crime of Genocide has been ratified by 120 countries and requires all country actors to “punish and prevent genocide.”

Meanwhile, the instruments and institutions of global governance have also seen a shift away from the rights and proclivities of states towards more human-centered conceptualizations. Hence “global public governance,” represents a shift towards an international system which is multilayered, polycentric, and complex, comprises formal and informal multilateral institutions, networks, and regimes, and incorporates the large number of state and non-state actors required to take collective action to provide global public goods (Peou, 2022, pp. 12–13). The UN has in fact acted as a norm entrepreneur, as it expands its own legal competence, while also setting the international agenda on codification of norms into international law (Howe, 2025).

International human-centered governance mechanisms have proliferated including paradigms related to the protection of civilians (PoC), the responsibility to protect (R2P), and the treatment of refugees. These institutions and instruments have received almost universal endorsement. Ultimately, the UN policy-platform has evolved into one emphasizing the primacy of individual human beings and their rights, at the expense of the previously jealously guarded rights of the state to political sovereignty, territorial integrity, and non-interference (Howe, 2024).

These developments allow for a shift in interpretation of justification for possession, and, especially, the use of nuclear weapons from codified international law (legality), towards wider principles of justice (legitimacy). Under this set of criteria individual and universal human rights, rather than the interests of states form both the justification and motivation for policymaking and military action. The ethical dilemma now facing us is that if we are to allow other normative lexicons to enter the realm of international politics, which ones are we to use, and how will alternative moral weightings impact upon foreign policy decision-making in general and the tough case of nuclear weapons in particular? The next section will consider answers supplied to this question by different bodies of normative thought.

Importantly, while there are both rational and normative arguments concerning nuclear weapons, it is possible for normative arguments to become rational, cost-base analysis arguments through processes of socialization and internalization. In addition, within discussions of rationality, costs and benefits for whom or what (referent object) must be addressed.

## 4 Political ethics and normative warfighting

Contemporary global governance under the UN system, especially since the end of the Cold War, has come to reflect the principles of “solidarism” and “cosmopolitanism.” Solidarism, according to Hedley Bull (1966, p. 52), concerns “the solidarity, or potential

solidarity, of the states comprising international society, with respect to the enforcement of the law.” Contrasted to this “Grotian doctrine” is the pluralistic position that states do not exhibit solidarity of this kind but can pragmatically agree rules of coexistence within an international system (Bull, 1966, p. 52). Meanwhile, according to Pogge (1992, pp. 48–49), cosmopolitanism reflects a concern for human beings (*Individualism*); that this concern applies to all (*Universality*); and that these perspectives have global force (*generality*) rather than just applying to members of one’s own in-group.

Thus, the central cosmopolitan global governance idea is to treat humanity as a single moral community with priority over national and subnational communities, and “which requires justice to be applied on a global scope” (Dahl-Eriksen, 2016, p. 125). As such it poses a severe epistemological challenge to statecentric rationalist positions and communitarian positions. It also poses a serious challenge to the utilitarian normative defenses available for the possession and use of nuclear weapons.

As pointed out by Rawls (1971) and Kymlicka (1990, p. 7), utilitarianism operates as a tacit default normative position in which the morally right course of action is that which produces the greatest happiness (or least misery) for the greatest number of people. It appeals to a supposed universal, value-neutral rationality rather than normative metaphysics (Kymlicka, 1990, p. 7).

Utilitarianism is a form of consequentialism (Bentham, 1781, pp. 14–15) wherein something is bad to the extent that someone suffers as a result (pain), or good to the extent that someone gets more happiness as a result (pleasure). Therefore, the morality or “fairness” of sets of rules, policies or actions is based on an aggregation of costs and benefits (Bentham, 1781, pp. 32–33). Deployment or use of nuclear weapons is justified if more people would suffer if they had not been deployed or used. The utilitarian justification for the deployment of nuclear weapons is that as they deter others from launching an attack, thereby saving lives (a nuclear peace through MAD). Utilitarian arguments for the use of nuclear weapons are that they shorten wars or are ultimately responsible for fewer deaths than if wars must be fought to a bitter conventional conclusion—this was the discredited argument or myth used for their use to bring an end to World War II against a Japan that was already on the verge of surrender (Parke, 2025).

There are, however, several problems with taking a utilitarian approach to normative warfighting and nuclear weapons.

1. Utility of whom? Are all human beings to be considered in the calculations, or just those belonging to the body politic developing and deploying them?
2. It is almost never possible to know in advance what the costs of a military action in terms of human suffering will be. Likewise, we can usually never know for certain what will be the costs associated with non-use of nuclear weapons.
3. How do we measure utility and how do we aggregate it? How many future cancer cases caused by the use of nuclear weapons can be offset by a reduction in the number of battle deaths caused by bringing a swifter end to the conflict for instance?
4. Utilitarian calculations are always likely to sacrifice individuals, treating them as means to an end, whereas human-centered governance places emphasis on human beings as ends in of themselves, who cannot be sacrificed for the “greater good.”

Normative warfighting is therefore better considered in terms of universal governing principles. These can be found most prominently

in the liberal tenets of governance, and in the age-old traditions of “just war” theory.

Liberals view human beings as individual bearers of inviolate human rights, and thus there is a limit to the degree to which they may be utilized for the collective good of society (Kymlicka, 1990). Morality replaces utility for considerations of the legitimacy of a certain action or rule, and use of force dilemmas become explicitly normative. While the international relations paradigm of liberal internationalism was both state-centric and tied to international law (Ikenberry, 2018), what the political philosophy of liberalism really promotes is legitimacy and justice, which may or may not coincide with international law (Locke, 1690). It is not enough slavishly to follow the rules laid down from above (i.e., by and for the dominant powers); rather, it is necessary to construct rules that reflect the interests of all members of international society whatever their relative power base (Rawls, 1971).

Liberals are in fact suspicious of state or government prerogatives, preferring a social contract concept of state duties and privileges granted in trust. Individuals cede power to the state but only if the state uses these powers in trust to protect individuals from the uncertainties and scarcities of social life (Locke, 1690). This has also come to be reflected at the UN and espoused by successive Secretaries General. In the aftermath of the 1991 Gulf War, Boutros Boutros-Ghali, outlined the central tenets of the post-Cold War New World Order noting that “the immense ideological barrier that for decades gave rise to distrust and hostility -and the terrible tools of destruction that were their inseparable companions-has collapsed” (Boutros-Ghali, 1992, p. 5). Hence, the time of absolute and exclusive sovereignty, has passed; “its theory was never matched by reality” (Boutros-Ghali, 1992, p. 9). Likewise, at the turn of the Millenium, Annan (2000) claimed that the UN has set standards and benchmarks as to the rights of people and as to how leaders should behave, noting that “states exist to protect citizens and not vice versa, and they can no longer use sovereignty as a shield to hide behind.”

Here, then, we reach the crux of matters pertaining to the justifiability of the use of nuclear weapons. For centuries scholars and practitioners have tried to draw up rules for “just wars,” and the logic and principles developed as part of this discourse have been readily transferred to discussion of the use of nuclear weapons. Just war theory concerns the legitimacy of the decision to go to war (the *jus ad bellum*), the legitimacy of the war as it is waged (the *jus in bello*), and the justifiability of the post-war operating environment (the *jus post bellum*).

The *jus ad bellum* criteria include:

1. The Just Cause of Necessity, which in the contemporary normative discourse amounts to resistance to aggression, or the prevention of ongoing horrific practices (not mere punishment for past transgressions). Hence, while preservation of a state in the face of its imminent demise might be considered a just cause or necessity for the use of nuclear weapons, mere retaliation against the other would not be.

2. Right Intention, in which the reason for taking the action must be linked to the just cause and necessity for taking it. Hence, the use of nuclear weapons must be linked with the justified cause, and it must be proven that their use is necessary.

3. Competent Authority—in the modern international political arena this should mean the support of the international community, most clearly achieved through UNSC endorsement. As previously mentioned, it is unthinkable that the international community would endorse the use of nuclear weapons. If the UNSC is unable or unwilling to reach a consensus on the use of force it has been suggested by other

commentators that the less legal (but due to near universality of membership, more legitimate) UNGA can authorize such actions (Thakur, 2019, Personal communication with author at International Studies Association (ISA) Annual Conference, Toronto, 29 March). Again, however, it is even more unthinkable that it would do so in the case of nuclear strikes. Finally, competent authority has also been deemed to refer to the legal competence or legitimacy of the national government regime. In the case of nuclear weapon use, this would merely refer us back to the power political and communitarian justifications.

4. Reasonable Chance of Success—The suffering likely to be caused by any use of military force can only be justified if the legitimate goals of the intervention are achieved. Given the tremendous suffering caused by the use of nuclear weapons, their use may only be justified if it is certain that it will prevent the complete destruction of the state.

5. The Proportionality of Ends means that only those ends that justified the intervention may be fought for. In assessing the proportionality of ends leaders must consider not just the likely effects of the use of nuclear weapons, but also those of non-use. This criterion is, however, a very high bar to clear for nuclear weapon use, given their tremendous destructive power as well as the consequential uncertainties listed above.

6. Last Resort—Although perhaps the most over-used term in the justification for military action, it is also among the most underdeveloped. In terms of last resort use of nuclear weapons, it is almost impossible to reach that stage, or to know you have reached that stage (Walzer, 1977). There is always another round of diplomacy or conventional military means that could be attempted, until the very end. Instead, a better formulation might be that all reasonable efforts at a non-nuclear solution have been tried and have failed, and considering the imminent and total destruction of the state intending their use, only then can we say last resort has been reached.

Given the UN-system’s preference for force to be used only to prevent further conflict, an additional contemporary criterion is that the situation *post-bellum* should be inherently more peaceful than that existing prior to any use of nuclear weapons. Thus, although not one of the classical justifications, a seventh criterion may be added:

7. The Goal of Peace. It could be argued that any use of nuclear weapons, or even a convincing threat that they might be used, could create a more peaceful world by reinforcing both a reluctance to initiate an interstate conflict, and ironically, the nuclear taboo against future use.

This criterion, however, also segues into the wider *jus post-bellum*. That agents should act to ensure that the conditions of the global governance and the human security operating environment *post-bellum* (or post-nuclear weapons use) would be superior to those that would pertain if they refrained from the use of nuclear weapons. Like the proportionality of ends, however, it is hard to imagine that this would be the case, and even harder to prove it.

The binding principles of the *jus in bello* include:

1. The proportionality of means doctrine, that no more military force or expansive stratagems may be used than are necessary to achieve morally legitimate political and military objectives. It is almost impossible for the use of nuclear weapons to satisfy this criterion.

2. The principle of Discrimination means not only that civilians should not be targeted, but also that every effort should be made to

preserve civilian life, even in the face of increased costs to one's own combatants. This criterion represents perhaps the biggest challenge to arguments justifying the use of nuclear weapons. Nuclear weapons are, by their nature, blunt and indiscriminate instruments, and their use is likely to cause great civilian suffering. There are few situations in which this might not be the case. A strike against the military forces of an opponent when isolated in the deep ocean (against submarine targets for instance) or in a large desert have been offered as possibilities (Geneva Academy, 2014, p. 5). Alternatively, certain low-yield tactical or battlefield nuclear weapons could be seen as fulfilling this criterion. Given the uncertainties surrounding long-term impact and broader contamination, however, it is unlikely that the defense of the use of nuclear weapons can survive this criterion.

3. Finally, the concept of limited war restricts the legitimate targets of belligerent states to those within specific geographic boundaries that will directly contribute to the reversal of the wrong that legitimized the intervention in the first place. Again, it is very difficult to satisfy this criterion while using nuclear weapons.

The universalist normative position, therefore, is that nuclear weapons should not be used except under conditions so restrictive that they can in all probability never be met. The universalist position on development, possession, and deployment of nuclear weapons is more ambiguous, but generally emphasizes non-proliferation, and that every effort must be made to reduce their numbers and yield. At this point it is important to note that universal, cosmopolitan, solidarist, or Grotian perspectives are also subject to critique.

Cox (1981) has emphasized that, unlike the neutral or eternal claims of realism and liberalism, theory is always socially and politically biased in favor of one set of interests or another. Despite their objective claims the neo-neo variants of these theories have hidden normative assumptions and purposes. Furthermore, these “problem-solving” approaches make the existing distribution of power seem natural and legitimate. Critical perspectives reflect instead upon barriers to participation and emancipation, whether social, political, economic, or cultural, which must be identified and overcome (Habermas and Rehg, 2001).

From the perspective of global governance, these barriers are readily identifiable, despite the universal aspirations of the UN system. While there is a strong levelling impulse in the General Assembly, in institutions like the United Nations Conference on Trade and Development (UNCTAD), and in the Millennium Development Goals (MDGs) and Sustainable Development Goals (SDGs), overall, the system is hierarchical. Nowhere is this more apparent than in the Security Council with its five Permanent Members and their veto power, which just also happen to be the five recognized NWS under the NPT.

On the other hand, Linklater (1999), points to the expansion of the moral boundaries of a political community, equating emancipation with a process in which the borders of “sovereign” states lose their ethical and moral significance, resulting in a normative situation wherein citizens share same duties and obligations towards the “other” as they do towards their fellow citizens. This reveals much in common with latter-day cosmopolitan positions at the UN.

## 5 Conclusions and discussion

Despite these apparently diametrically opposed normative and pragmatic positions, it is possible to identify a degree of overlapping

consensus between different epistemological traditions regarding the development, possession, and use of nuclear weapons (Rawls, 1971).

On development, realist and other power political perspectives recognize not only the right, but potentially the duty of all states to maximize their power through the development of military capabilities, including those related to nuclear weapons. Liberal perspectives emphasize progress through scientific endeavor, which would include peaceful use and dual use nuclear technologies. Liberal internationalists are also among the most ardent statist of international relations theory and practice. They champion the sovereign rights of states to conduct policy as their governments see fit, except for the right to wage war. International law is seen as voluntary and consensual rather than imposed from above. Hence, not only NWS, but also those who have not signed up to the NPT (and potentially those who have withdrawn), have a legal right to develop nuclear weapons. Liberal approaches also emphasize sovereign equality, so if one state enjoys a particular right, it is difficult to deny the enjoyment of that same right to others.

Communitarians further emphasize the rights of political communities *qua* states to decide upon their own governance priorities free from external interference, as long as they do not involve committing the crime of aggression. Likewise, a critical perspective would examine in whose interest functions the NPT regime. Critical theorists question whether the hegemonic rules of the system imposed from the status quo powers should be adhered to by those in a subaltern position, or instead, the necessary resources should be mobilized to challenge the unjust distribution of power and knowledge leading to a radical enfranchisement of all.

Thus, in terms of the justifiability of developing nuclear weapons, the balance of normative arguments would seem to reflect the affirmative. All states have a right to engage in the pursuit of technology that could lead to the construction of nuclear weapons. In terms of possession of nuclear weapons, these arguments can be further extended.

From a power political perspective, possession of nuclear weapons conveys a right to sit at the high table of international relations. Nuclear aspirant countries can see what happened when the People's Republic of China (PRC) went nuclear in 1964. Not only was the PRC taken as a serious player from that moment onwards, but in 1971 it replaced the nationalist Kuomintang government of Taiwan (Republic of China—ROC) as a Permanent Member of the UNSC. Other aspirant countries want what China got. Possession of nuclear weapons contributes to international prestige. For Gilpin (1981, p. 31), “prestige, rather than power, is the everyday currency of international relations, much as authority is the central ordering feature of domestic society.” This self-imagining and reputational justification also fits well with constructivist perspectives of international relations.

In a similar vein to critical perspectives, constructivism begins from the premise that international reality is socially constituted, rather than predetermined by material forces, and it operates as both an epistemology and an ontology because “theories quite literally construct the world” (Wendt, 1999, p. 49). Yet Hopf (1998, p. 181) notes, “although constructivism shares many of the foundational elements of critical theory, it also resolves some issues by adopting defensible rules of thumb, or conventions, rather than following critical theory all the way up the post-modern critical path.” Social constructivists argue that global order is continually produced through shared norms, ideas, and social interaction. Hence, shared understandings or social realities are generated within and potentially between societies. Neither states nor

individuals are solely unitary rational actors, rather they are influenced by questions of identity, the norms of society and the effect of socialization.

Possession of nuclear weapons can be as much about identity as it is power. It is also important to consider the two-level games played as much between governments and their constituencies as between statesmen on the international stage (Putnam, 1988). Authoritarian regimes like the DPRK may wish to possess nuclear weapons to deter external attack, to increase international diplomatic leverage, or to rally their people around the flag in the face domestic governance failure. Democratic administrations such as the Republic of Korea (ROK) may end up pursuing their acquisition through concerns about the reliability of their allies, to bolster their international standing so that they are not sidelined in international negotiations concerning security on the Korean Peninsula, or, given the popularity of nuclear weapons acquisition among the electorate, to win the next election!

On the other hand, there is near universal opposition to the proliferation of nuclear weapons, either to other states, or to non-state actors. Furthermore, even the NWS have signed up to the idea of eventually reducing or even eliminating nuclear weapons altogether. This has been reflected in strategic arms limitation talks and treaties, and the declaration of nuclear free zones. Thus, there something of an overlapping consensus on the justifiability of possessing nuclear weapons, but also on the undesirability of others possessing them. Hence, an overlapping consensus over aspirations for their eventual elimination.

Finally, the nuclear taboo represents the extent to which there is an overlapping consensus on the lack of justification for at least first use of nuclear weapons. In part this is due to the human-centering of global governance, and the increased centrality and social construction of norms related to the use of force. The human security paradigm, the PoC and R2P paradigms, prohibitions against the use of biological and chemical weapons, as well as other categories of weapons and tactics that are seen to endanger civilians such as the Ottawa Convention banning anti-personnel landmines, or the Dublin convention outlawing cluster munitions, have received overwhelming international support, despite some holdouts and withdrawals in recent years. Hence, the reawakening and reinvigoration of the just war discourse.

Even Walzer (1997, p. 21) concedes that “sovereignty also has its limits... Acts or practices that ‘shock the conscience of humankind’ are, in principle, not tolerated.” This, then, represents the final manifestation of an overlapping consensus. Despite the universal human rights aspirations of solidarist global governance, there is not universal agreement on human rights, their implementation, or how to proceed when different sources and levels of rights come into conflict. Nevertheless, there is overwhelming agreement that certain acts of commission or omission are so heinous that they shock the conscience of humankind and should be put an end to. This can be termed a universal human wrongs approach.

The four categories of crimes listed in the R2P resolutions and reports, genocide, ethnic cleansing, war crimes, and crimes against humanity make a good starting point. Although there are differences of opinion between Western and non-Western interpretations of the R2P regarding the extent it justifies humanitarian intervention in violation of state sovereignty, and about its relationship with human security, nevertheless, there is a global overlapping consensus surrounding the wrongs that need be prevented (Howe, 2019). The awful humanitarian consequences of the use of nuclear weapons could be added to

this list (along with perhaps slavery) or incorporated under considerations of war crimes or crimes against humanity.

The development of nuclear weapons is, therefore, theoretically justifiable. Likewise, the possession of nuclear weapons is not universally proscribed, and therefore could be justified, although there is also an overlapping consensus on the desirability of their elimination. Yet the actual use of nuclear weapons is not justifiable.

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