

Written Statement of the Government of Costa Rica



REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

BEFORE
THE INTERNATIONAL COURT OF JUSTICE
The Hague
The Netherlands

Request by the
WORLD HEALTH ORGANIZATION
for an Advisory Opinion on the Legal Question
regarding "In view of the health and environmental effects
would the use of nuclear weapons by the state in war or
other armed conflicts be a breach of its obligations under
international law including the WHO Constitution".

WRITTEN STATEMENT
OF THE
GOVERNMENT OF COSTA RICA

JUNE, 1994



1.- INTRODUCTION

a.-By its Resolution 46.40 adopted on May 14, 1993, the WORLD HEALTH ORGANIZATION (WHO) has requested, pursuant paragraph 2, article 96 of the Charter of the United Nations, to the "International Court of Justice" -(THE COURT)- to give an advisory opinion to the question regarding: "In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution..".

b.-Upon receiving this request, the Court by its Order of 13, September, 1993 has fixed 10 June 1994 as the time limit within which written statements may be submitted to THE COURT by the WHO and by those of its member States who are entitled to appear before THE COURT, in accordance with Article 66, paragraph 2, of the Statute of THE COURT. The present statement will examine the facts and the legal issues to which this request for an advisory opinion gives rise.

2.-THE COURT JURISDICTION.THE DISCRETION FOR THE COURT TO GIVE AN ADVISORY OPINION.

As the Court stated :

"THE JURISDICTION OF THE COURT UNDER ARTICLE 96 OF THE CHARTER AND ARTICLE 65 OF THE STATUTE, TO GIVE ADVISORY OPINIONS ON LEGAL QUESTIONS, ENABLES UNITED NATIONS ENTITLED TO SEEK GUIDANCE FROM THE COURT IN ORDER TO CONDUCT THEIR ACTIVITIES IN ACCORDANCE WITH LAW..."(Applicability of article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations". Advisory Opinion, I.C.J. Reports 1989, p.13)

The present request for advisory opinion is made by the WHO pursuant to paragraph 2 of article 96 of the Charter and article 65, paragraph 1 of the Statute, that authorizes THE COURT to give an advisory opinion on "any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such request". There are no available reasons to refuse the request from the WHO. THE COURT has repeatedly stated:

"ALTHOUGH ITS POWER TO GIVE ADVISORY OPINION UNDER ARTICLE 65 OF ITS STATUTE IS DISCRETIONARY, ONLY COMPELLING REASONS WOULD JUSTIFY REFUSAL OF SUCH REQUEST"¹

¹ "Legal Consequences for States of the Continued Presence of South Africa in Namibia"(South West Africa) notwithstanding Security Council Resolution 276



In our opinion also this request for an advisory opinion, has no compelling reasons to refuse the request. Indeed, the humanitarian concerns underlying the request provide the Court with strong grounds to render the requested advisory opinion on a priority basis.

3.-THE THREAT OR USE OF NUCLEAR WEAPONS

a.- THE LAW: The Charter of the United Nations, universal and regional agreements.

a1.- It is evident that the "threat or use of nuclear weapons" is equivalent to the "threat or use of force" prohibited by the International Law.² It is no longer open to question that the "principle of non-threat or use of force" is an element of general international law. The International Court of Justice recognizing the obligations established under the U.N. Charter, ³ manifested that general norm of customary law was affirmed by the Court in its Judgement in the Nicaragua vs. United States case as follows:

(1970), Advisory Opinion, I.C.J. Reports 1971, p16, at p.27; "Certain Expenses of the United Nations" (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Reports 1962, p.151 at p.155; "Judgement of the Administrative Tribunal of the ILO upon Complaints Made Against UNESCO", Advisory Opinion, I.C.J. Reports 1956, p.77, at pp.85-86.

² In relation the Charter of the United Nations establish in its article 1 paragraph 1) that one of its fundamental principles is:

"TO MAINTAIN INTERNATIONAL PEACE AND SECURITY, AND TO THAT END: TO TAKE EFFECTIVE COLLECTIVE MEASURES FOR THE PREVENTION AND REMOVAL OF THREATS TO THE PEACE, AND FOR THE SUPPRESSION OF ACTS OF AGGRESSION OR OTHER BREACHES OF THE PEACE..."

In the light of the foregoing, the paragraph 4) of the article 2) of the U.N. Charter provided that:

"ALL MEMBERS SHALL REFRAIN IN THEIR INTERNATIONAL RELATIONS FROM THE THREAT OR USE OF FORCE AGAINST THE TERRITORIAL INTEGRITY OR POLITICAL INDEPENDENCE OF ANY STATE OR IN ANY OTHER MANNER INCONSISTENT WITH THE PURPOSES OF THE UNITED NATIONS".

³ Regarding this matter the Court established that:
"THE PRINCIPLE OF NON USE FORCE FOR EXAMPLE, MAY THUS BE REGARDED AS A PRINCIPLE OF INTERNATIONAL LAW". (I.C.J. Reports 1986, pp.99-101)



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" A FURTHER CONFIRMATION OF THE VALIDITY AS CUSTOMARY INTERNATIONAL LAW OF THE PRINCIPLE OF THE PROHIBITION OF THE USE OF FORCE EXPRESSED IN ARTICLE 2, PARAGRAPH 4, OF THE CHARTER OF THE UNITED NATIONS MAY BE FOUND IN THE FACT THAT IT IS FREQUENTLY REFERRED TO IN STATEMENTS BY STATE REPRESENTATIVES AS BEING NOT ONLY A PRINCIPLE OF CUSTOMARY INTERNATIONAL LAW, BUT ALSO A FUNDAMENTAL OR CARDINAL PRINCIPLE OF SUCH LAW. THE INTERNATIONAL LAW COMMISSION, IN THE COURSE OF ITS WORK ON THE CODIFICATION OF THE LAW OF TREATIES, EXPRESSED THE VIEW,-- THAT THE LAW OF THE CHARTER CONCERNING THE PROHIBITION OF THE USE OF FORCE IN ITSELF CONSTITUTES A CONSPICUOUS EXAMPLE OF A RULE IN INTERNATIONAL LAW HAVING THE CHARACTER OF IUS COGENS..."⁴

a2.- Under the auspicious of the U.N., general agreements covering humanity against the threat of use of force were established. This was the main concern established in the "Convention of Genocidio" of 1948, the "Geneva Conventions of 1949", the "International Agreement of Civil and Political Rights" of 1966, and "First Protocol to the Geneva Conventions of 1949". In this context and in regards to the Crime of Genocidio THE COURT noted that:

"THE CRIME OF GENOCIDIO CHOPS THE CONSCIOUS OF MANKIND, RESULTS IN GREAT LOSSES TO HUMANITY AND IS CONTRARY TO MORAL LAW AND TO THE SPIRIT AND AIMS OF THE UNITED NATIONS."*

a3.- In the same stream of consciousness THE COURT considered that the obligations contained in the Geneva Conventions : "DOES NOT DERIVE ONLY FROM THE CONVENTIONS THEMSELVES, BUT FROM THE GENERAL PRINCIPLES OF HUMANITARIAN LAW TO WHICH THE CONVENTIONS MERELY GIVE SPECIFIC EXPRESSIONS."*

a4.- Basis in the fundamental rules of humanitarian law, established in the above mentioned treaties and recognized by THE COURT, the U.N. General Assembly has condemned the use of nuclear weapons as an international crime. In this context in 1961, the U.N. General Assembly adopted a "Resolution on Prohibition of the Use of Nuclear Weapons for war purposes". The resolution declared that the use of nuclear and thermo-nuclear weapons to be a violation of the U.N. Charter and contrary to the rules of international law and the laws of humanity. The "Declaration of the African Desnuclearization" adopted on December 3, 1965 by Resolution 2033 (XX) of the U.N.

⁴ Id.

* "Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide. Provisional Measures". I.C.J. Reports 1993.p.348

* "Case Concerning Military and Paramilitary Activities in and Against Nicaragua, Judgement". I.C.J. Reports 1986 ,p.114.



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General Assembly requested to all the countries to restrain the threat or use nuclear weapons in the African continent. Furthermore, in 1992 by the Resolution 47/53 C the U.N. General Assembly reaffirmed the idea of the necessity to put in force an international convention to prohibit the threat or use of nuclear weapons in any circumstances. Even so those resolutions are not positive law (hard law) they prevail as evidence that a consensus exists in the international community. Also, that the threat or use of nuclear weapons constitutes a violation of international law.

a5.-At the international level there also exists various treaties in regards to the threat or use of nuclear weapons, that indicate the growth of international consensus of this matter. For instance: "The Nuclear Test Ban Treaty", "Treaty on the Non-Proliferation of Nuclear Weapons", "Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof", and the "Treaty of Prohibition of Nuclear Weapons in Latin America". The obligations established in these treaties articulate the importance to prohibit, prevent, and not carry out any nuclear test explosions. The regulations of these treaties restrain each country of any threat or use of nuclear weapons and promote the recognition that the design, test, fabrication, possession, and display of nuclear weapons constitute one of the major threats of the right to live that humanity has learned to cope with.

a6.) This nuclear threat intensifies mankind's danger of life because many countries either have or are in the process of developing nuclear power facilities. In many of them small scale accidents have occurred, sometimes more than once. The chemical explosion and fire at the Chernobyl Nuclear Power Plant in the former Soviet Union which started in April 26, 1986, was the first truly catastrophic event of this type. The disaster caused the release into the atmosphere of far more radioactive elements than had ever been emitted in any previous nuclear accident. ⁷ Dozens died immediately, 135,000 people, some living as far as 100 miles from the plant, had to be evacuated from the area. ⁸ As many as 33,000 people who participated in cleaning up the disaster are now reported to be ill from the effects of radiation poisoning. ⁹ The full health and environmental consequences of the Chernobyl disaster have yet to be ascertained. Mortality and sickness rates are still climbing, especially among children. The reports indicate that about 1.5 million people remain under

⁷ "After Chernobyl: Liability for Nuclear Accidents Under International Law", 25 Columbia Journal of Transnational Law 647 (1986)

⁸ Id.

⁹ LD1012230190 Moscow Television Service -(translated from Russian)-1800 GMT, 10 December 1990



the direct influence of radiation, 460,000 of whom are children. ¹⁰ Thus, the Chernobyl disaster raises the question of how it will be possible by the international law regulations to support the prevention of those disasters and to promote effective sanctions at international level.

4.-CONCLUSION.

This statement has in the first instance endeavor established that exists various international regulations (beginning with Article 2 of the U.N. Charter), at the level of conventional or customary international law, that condemn the threat or use of force and of nuclear weapons. Furthermore, there exists a series of U.N. General Assembly declarations and resolutions that confirm the existence of international consensus regarding the idea that the threat or use of nuclear weapons is contrary to international law.

The government of the Republic of Costa Rica believes that the atomic energy shall contribute to the peace, health and prosperity of the whole world, and not to use this atomic energy in order to support military activities, as it was established in Article 2, of the Statute of the International Atomic Energy Agency. In our opinion the threat or use of nuclear weapons constitutes a violation of the U.N. Charter and the international law regulations, including the WHO Constitution.

Respectfully submitted,


FERNANDO NARANJO

MINISTER FOR FOREIGN
AFFAIRES

REPUBLIC OF COSTA RICA

June 9, 1994