

Letter dated 20 June 1995 from the General Director for
Multilateral Organizations at the Ministry of Foreign Affairs of Ecuador



EMBAJADA DEL ECUADOR
EN LOS PAÍSES BAJOS

NON OFFICIAL TRANSLATION

Excellency:

With reference to the consultive opinion required to the International Court of Justice by the General Assembly of the United Nations, through resolution 49/75 K, with the purpose of getting the Court's opinion weather the international law will authorize, under any circumstances, the threat or use of nuclear weapons, the Government of Ecuador would like to transmit to his Excellency the following considerations:

- A) The International Court of Justice is perfectly competent to pronounce her self weather the threat or use of nuclear weapons is legal or illegal;
- B) The subject presented by the General Assembly of the United Nations offers different phases of juridical analysis, being necessary the opinion of the International Court of Justice in all of them.
- C) The use or threat of use of nuclear weapons is out of question in zones that are geographically clean of nuclear weapons, as is the case of Latin America. Within this region, to which Ecuador is a part of, the Treaty of the Proscription of Nuclear Weapons (Treaty of Tlatelolco) of 1967 and its additional protocols, prohibit any practice, use or possession of any nuclear weapons;
- D) Also should be analyzed weather the threat or use of nuclear weapons is legal or illegal, in relation with the principles of the International Humanitarian Law, particularly those consecrated in the Conventions of Geneva of 1945, and in the additional Protocol I of 1977;

His Excellency
Mohamed Bedjaoui,
President of the International Court of Justice
The Hague



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It is clear that the use of nuclear weapons creates cruel and inhuman sufferings upon its victims, whether they are in combat or not, and that it leaves lethal effects on humans for many years. Having said this, the use of nuclear weapons contradicts the humanitarian dispositions against the use of warlike artifacts that provoke cruel and unnecessary sufferings to its victims.

Besides, the use of nuclear weapons does not discriminate by general norm the military objectives from civil objectives. This factor equally attends against a fundamental principle of the International Humanitarian Law: which takes care of the protection of innocent people during war times.

On the other hand, the effects of the use of nuclear weapons, in all cases, will cause devastating effects on the environment. In consequence, it opposes to the humanitarian conditions that prohibit the destruction of the environment, which is the only guarantee of the survival of the human species, and of the whole chain of life of the planet.

E) The analysis whether the threat or use of nuclear weapons is legal or illegal, should also be reflected on the legal perspectives from the principles of Nuremberg from 1945.

On one hand, the disproportions of a nuclear response, and the uncontrollable effects that a nuclear device has, can easily go against the law and the uses of the war (such as the attack to unarmed or wounded people, to minors, to people protected by non violent humanitarian or religious organizations, peace missionaries and journalists, or the destruction of cultural and civil property, etc.)

On the other hand, the use of nuclear weapons has the consequences that fit perfectly with the legal figure of war crimes against humankind: the assassination and extermination of entire populations and other inhuman acts committed against the civil population;

F) The effects of the use of nuclear weapons can also contradict other international norms, apart from the already mentioned, that refers to the use of inhuman warlike artifacts, such as those of The Hague Conventions of 1899 and 1907, and the Protocol of Geneva of 1925;

G) The threat or use of nuclear weapons has consequences that contradicts the legal international ordering that protects and guarantees the operation of Human Rights of the people.

The Republic of Ecuador considers that the pronouncement of the International Court of Justice about the illegality of nuclear weapons will help fortalice the arguments of the people and the



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nations that with deeds instead of words, will support a genuine process of no proliferation and nuclear disarmament progressive and verifiable.

Considerations related with the effectiveness and applicability of international law should not prevent the pronouncement of the International Court of Justice over the question submitted by the General Assembly of the United Nations. It is true that the instruments of military power and political influences of certain states can not be counteract in an automatic way, arguing a simple legal principle. This is nothing new as it is of general knowledge that international law unfortunately does not have at this moment the power to impose their decisions on different matters, among them the ones related to nuclear disarmament. Nevertheless, seen from another point of view, a juridical pronouncement over the illegality of nuclear weapons would be a transcendental fact and highly estimable: it has been historically demonstrated that juridical stipulation, apparently utopian, in their own way and not with little trouble, have contributed in forging the human conscience of the nations and promote a universal spirit of solidarity, pacifist and cooperative.

Taking this opportunity to renew to Your Excellency the assurances of my highest consideration.

Rodrigo Yépez Enríquez
General Director of Multilateral Organizations
Ministry of Foreign Affairs