

Cour internationale
de Justice

LA HAYE

CR 95/27

International Court
of Justice

THE HAGUE

ANNEE 1995

Audience publique

tenue le mardi 7 novembre 1995, à 10 heures, au Palais de la Paix,

sous la présidence de M. Bedjaoui, Président

*sur la Licéité de l'utilisation des armes nucléaires
par un Etat dans un conflit armé
(Demande d'avis consultatif soumise par
l'Organisation mondiale de la Santé)*

et

*sur la Licéité de la menace ou de l'emploi d'armes nucléaires
(Demande d'avis consultatif soumise par
l'Assemblée générale des Nations Unies)*

COMPTE RENDU

YEAR 1995

Public sitting

held on Tuesday 7 November 1995, at 10 a.m., at the Peace Palace,

President Bedjaoui presiding

in the case

*in Legality of the Use by a State of Nuclear Weapons in Armed Conflict
(Request for Advisory Opinion Submitted by the World Health Organization)*

and

*in Legality of the Threat or Use of Nuclear Weapons
(Request for Advisory Opinion Submitted by
the General Assembly of the United Nations)*

VERBATIM RECORD

Présents :

M. Bedjaoui, Président
M. Schwebel, Vice-Président
MM. Oda
Guillaume
Shahabuddeen
Weeramantry
Ranjeva
Herczegh
Shi
Fleischhauer
Koroma
Vereshchetin
Ferrari Bravo
Mme Higgins, juges
M. Valencia-Ospina, Greffier

Present:

President	Bedjaoui
Vice-President	Schwebel
Judges	Oda
	Guillaume
	Shahabuddeen
	Weeramantry
	Ranjeva
	Herczegh
	Shi
	Fleischhauer
	Koroma
	Vereshchetin
	Ferrari Bravo
	Higgins
Registrar	Valencia-Ospina

Licéité de l'utilisation des armes nucléaires par un Etat dans un conflit armé (Demande d'avis consultatif soumise par l'Organisation mondiale de la Santé)

L'Organisation mondiale de la Santé est représentée par :

M. Claude-Henri Vignes, conseiller juridique;

M. Thomas Topping, conseiller juridique adjoint.

Licéité de l'utilisation des armes nucléaires par un Etat dans un conflit armé (Demande d'avis consultatif soumise par l'Organisation mondiale de la Santé)

et/ou

Licéité de la menace ou de l'emploi d'armes nucléaires (Demande d'avis consultatif soumise par l'Assemblée générale des Nations Unies)

Le Gouvernement de l'Australie est représenté par :

M. Gavan Griffith, Q.C., Solicitor-General d'Australie, conseil;

L'Honorable Gareth Evans, Q.C., Sénateur, Ministre des affaires étrangères, conseil;

S. Exc. M. Michael Tate, ambassadeur d'Australie aux Pays-Bas, conseil;

M. Christopher Staker, conseiller auprès du *Solicitor-General* d'Australie, conseil;

Mme Jan Linehan, conseiller juridique adjoint du département des affaires étrangères et du commerce extérieur, conseil;

Mme Cathy Raper, troisième secrétaire à l'ambassade d'Australie, La Haye, conseiller.

Le Gouvernement de la République fédérale d'Allemagne est représenté par :

M. Hartmut Hillgenberg, directeur général des affaires juridiques du ministère des affaires étrangères;

Mme Julia Monar, direction des affaires juridiques, ministère des affaires étrangères.

Le Gouvernement de la République arabe d'Egypte est représenté par :

S. Exc. M. Ibrahim Ali Badawi El-Sheikh, ambassadeur d'Egypte aux Pays-Bas;

M. Georges Abi-Saab, professeur;

M. Ezzat Saad El-Sayed, ministre-conseiller à l'ambassade d'Egypte,
La Haye.

Le Gouvernement des Etats-Unis d'Amérique est représenté par :

M. Conrad K. Harper, agent et conseiller juridique du département
d'Etat;

M. Michael J. Matheson, conseiller juridique adjoint principal du
département d'Etat;

M. John H. McNeill, conseil général adjoint principal au département
de la défense;

M. John R. Crook, assistant du conseiller juridique pour les
questions relatives à l'Organisation des Nations Unies, département
d'Etat;

M. D. Stephen Mathias, conseiller pour les affaires juridiques à
l'ambassade des Etats-Unis d'Amérique, La Haye;

M. Sean D. Murphy, attaché pour les questions juridiques à
l'ambassade des Etats-Unis d'Amérique, La Haye;

M. Jack Chorowsky, assistant spécial du conseiller juridique,
département d'Etat.

Le Gouvernement de la République française est représenté par :

M. Marc Perrin de Brichambaut, directeur des affaires juridiques au
ministère des affaires étrangères;

M. Alain Pellet, professeur de droit international à l'Université de
Paris X et à l'Institut d'études politiques de Paris;

Mme Marie-Reine d'Haussy, direction des affaires juridiques du
ministère des affaires étrangères;

M. Jean-Michel Favre, direction des affaires juridiques du ministère
des affaires étrangères.

Le Gouvernement de la Fédération de Russie est représenté par :

M. A. G. Khodakov, directeur du département juridique du ministère
des affaires étrangères;

M. S. M. Pounjine, premier secrétaire à l'ambassade de la Fédération
de Russie, La Haye;

M. S. V. Shatounovski, expert au département juridique du ministère des affaires étrangères.

Le Gouvernement des Iles Marshall est représenté par :

L'Honorable Johnsay Riklon, sénateur, atoll de Rongelap Special, envoyé du Gouvernement des Iles Marshall;

L'Honorable Theodore C. Kronmiller, conseiller juridique, ambassade des Iles Marshall aux Etats-Unis;

Mme. Lijon Eknilang, membre du conseil, gouvernement local de l'atoll de Rongelap.

Le Gouvernement des Iles Salomon est représenté par :

L'Honorable Danny Philip, premier ministre adjoint et ministre des affaires étrangères;

S. Exc. M. Rex Horoi, ambassadeur, représentant permanent des Iles Salomon auprès de l'Organisation des Nations Unies, New York;

S. Exc. M. Levi Laka, ambassadeur, représentant permanent des Iles Salomon auprès de l'Union européenne, Bruxelles;

M. Primo Afeau, *Solicitor-General* des Iles Salomon;

M. Edward Nielsen, consul honoraire des Iles Salomon à Londres;

M. Jean Salmon, professeur de droit à l'Université libre de Bruxelles;

M. James Crawford, professeur de droit international, titulaire de la chaire Whewell à l'Université de Cambridge;

M. Eric David, professeur de droit à l'Université libre de Bruxelles;

Mme Laurence Boisson de Chazournes, professeur adjoint à l'Institut universitaire de hautes études internationales, Genève;

M. Philippe Sands, chargé de cours à la *School of Oriental and African Studies*, Université de Londres, et directeur juridique de la *Foundation for International Environmental Law and Development*;

M. Joseph Rotblat, professeur émérite de physique à l'Université de Londres;

M. Roger Clark, professeur à la faculté de droit de l'Université Rutgers, Camden, New Jersey;

M. Jacob Werksman, directeur de programme à la *Foundation for International Environmental Law and Development*;

Mme Ruth Khalastchi, *Solicitor* de la *Supreme Court of England and Wales*;

Mme L. Rands, assistante administrative à la *Foundation for International Environmental Law and Development*, Université de Londres.

Le Gouvernement de l'Indonésie est représenté par :

S. Exc. M. Johannes Berchmans Soedarmanto Kadarisman, ambassadeur d'Indonésie aux Pays-Bas;

M. Malikus Suamin, ministre et chef de mission adjoint à l'ambassade d'Indonésie, La Haye;

M. Mangasi Sihombing, ministre-conseiller à l'ambassade d'Indonésie, La Haye;

M. A. A. Gde Alit Santhika, premier secrétaire à l'ambassade d'Indonésie, La Haye;

M. Imron Cotan, premier secrétaire de la mission permanente d'Indonésie auprès de l'Organisation des Nations Unies, Genève;

M. Damos Dumoli Agusman, troisième secrétaire à l'ambassade d'Indonésie, La Haye.

Le Gouvernement de la République Islamique d'Iran est représenté par :

S. Exc. M. Mohammad J. Zarif, ministre adjoint aux affaires juridiques et internationales, ministère des affaires étrangères;

S. Exc. M. N. Kazemi Kamyab, ambassadeur de la République islamique d'Iran aux Pays-Bas;

M. Saeid Mirzaee, directeur, division des traités et du droit international public, ministère des affaires étrangères;

M. M. Jafar Ghaemieh, troisième secrétaire à l'ambassade de la République islamique d'Iran, La Haye;

M. Jamshid Momtaz, conseiller juridique, ministère des affaires étrangères.

Le Gouvernement italien est représenté par :

M. Umberto Leanza, professeur de droit international à la faculté de droit de l'Université de Rome «Tor Vergata», chef du service du contentieux diplomatique du ministère des affaires étrangères et agent du Gouvernement italien auprès des tribunaux internationaux, chef de délégation;

M. Luigi Sico, professeur de droit international à faculté de droit à l'Université de Naples «Frederico II»;

Mme Ida Caracciolo, chercheur auprès de l'Université de Rome «Tor Vergata».

Le Gouvernement japonais est représenté par :

S. Exc. M. Takekazu Kawamura, ambassadeur, directeur général au contrôle des armements et aux affaires scientifiques, ministère des affaires étrangères;

M. Koji Tsuruoka, directeur de la division des affaires juridiques, bureau des traités, ministère des affaires étrangères;

M. Ken Fujishita, premier secrétaire à l'ambassade du Japon, La Haye;
M. Masaru Aniya, division du contrôle des armements et du désarmement, ministère des affaires étrangères;

M. Takashi Hiraoka, maire d'Hiroshima;

M. Iccho Itoh, maire de Nagasaki.

Le Gouvernement de la Malaisie :

Dato' Mohtar Abdullah, *Attorney-General*, chef de délégation;

S. Exc. M. Tan Sri Razali Ismail, ambassadeur, représentant permanent de la Malaisie auprès de l'Organisation des Nations Unies, chef de délégation adjoint;

Dato' Heliliah Mohd. Yusof, *Solicitor-General*;

S. Exc. Dato' Sallehuddin Abdullah, ambassadeur de Malaisie aux Pays-Bas;

Dato' Abdul Gani Patail, juriconsulte et chef de la division du droit international, cabinet de l'*Attorney-General*;

Dato' R. S. McCoy, Expert;

M. Peter Weiss, Expert.

Le Gouvernement du Mexique est représenté par :

S. Exc. M. Sergio González Gálvez, ambassadeur, ministre adjoint des affaires étrangères;

S. Exc. M. José Carreño Carlón, ambassadeur du Mexique aux Pays-Bas;

M. Arturo Hernández Basave, ministre à l'ambassade du Mexique,
La Haye;

M. Javier Abud Osuna, premier secrétaire à l'ambassade du Mexique,
La Haye.

Le Gouvernement de la Nouvelle-Zélande est représenté par :

L'Honorable Paul East, Q.C., *Attorney-General* de la Nouvelle-Zélande;

S. Exc. Madame Hilary A. Willberg, ambassadeur de la Nouvelle-Zélande
aux Pays-Bas;

M. Allan Bracegirdle, directeur adjoint de la division juridique du
ministère des affaires étrangères et du commerce extérieur de la
Nouvelle-Zélande;

M. Murray Denyer, deuxième secrétaire à l'ambassade de la
Nouvelle-Zélande, La Haye;

Le Gouvernement des Philippines est représenté par :

M. Merlin M. Magallona, agent;

M. Raphael Perpetuo Lotilla, conseil;

M. Carlos Sorreta, conseil;

M. Rodolfo S. Sanchez, avocat;

M. Emmanuel C. Llana, avocat.

Le Gouvernement de Qatar est représenté par :

S. Exc. M. Najeeb ibn Mohammed Al-Nauimi, ministre de la justice;

M. Sami Abushaikha, expert juridique du Diwan Amiri;

M. Richard Meese, cabinet Frere Cholmeley, Paris.

Le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord
est représenté par :

Le Très Honorable sir Nicholas Lyell, Q.C., M.P., *Attorney-General*;

Sir Franklin Berman, K.C.M.G., Q.C., conseiller juridique du
ministère des affaires étrangères et du Commonwealth;

M. Christopher Greenwood, conseil;

M. Daniel Bethlehem, conseil;

M. John Grainger, conseiller;

M. Christopher Whomersley, conseiller;

M. Andrew Barlow, conseiller.

Le Gouvernement de Saint-Marin est représenté par :

Mme Federica Bigi, conseiller d'ambassade, fonctionnaire en charge de la direction politique au ministère des affaires étrangères.

Le Gouvernement de Samoa est représenté par:

S. Exc. M. Tuiloma Neroni Slade, ambassadeur et représentant permanent du Samoa auprès de l'Organisation des Nations Unies, New York;

M. Roger S. Clark, professeur.

*Legality of the Use by a State of Nuclear Weapons in Armed Conflict
(Request for Advisory Opinion Submitted by the World Health
Organization)*

The World Health Organization is represented by:

Mr. Claude-Henri Vignes, Legal Counsel;

Mr. Thomas Topping, Deputy Legal Counsel.

*Legality of the Use by a State of Nuclear Weapons in Armed Conflict
(Request for Advisory Opinion Submitted by the World Health
Organization)*

and/or

*Legality of the Threat or Use of Nuclear Weapons (Request for Advisory
Opinion Submitted by the General Assembly of the United Nations)*

The Government of Australia is represented by:

Mr. Gavan Griffith, Q.C., Solicitor-General of Australia, Counsel;

The Honorable Gareth Evans, Q.C., Senator, Minister for Foreign
Affairs, Counsel;

H.E. Michael Tate, Ambassador of Australia to the Netherlands,
Counsel;

Mr. Christopher Staker, Counsel assisting the Solicitor-General of
Australia, Counsel;

Ms Jan Linehan, Deputy Legal Adviser, Department of Foreign Affairs
and Trade, Counsel;

Ms Cathy Raper, Third Secretary, Australian Embassy in the
Netherlands, The Hague, Adviser.

The Government of the Arab Republic of Egypt is represented by:

H.E. Mr. Ibrahim Ali Badawi El-Sheikh, Ambassador of Egypt to the
Netherlands;

Mr. George Abi Saab, Professor;

Mr. Ezzat Saad El-Sayed, Minister-Counsellor, Embassy of Egypt,
The Hague.

The Government of the Republic of France is represented by:

Mr. Marc Perrin de Brichambaut, Director of Legal Affairs, Ministry of Foreign Affairs;

Mr. Alain Pellet, Professor of International Law, University of Paris X and Institute of Political Studies, Paris;

Mrs. Marie-Reine Haussy, Directorate of Legal Affairs, Ministry of Foreign Affairs;

Mr. Jean-Michel Favre, Directorate of Legal Affairs, Ministry of Foreign Affairs.

The Government of the Federal Republic of Germany is represented by :

Mr. Hartmut Hillgenberg, Director-General of Legal Affairs, Ministry of Foreign Affairs;

Ms Julia Monar, Directorate of Legal Affairs, Ministry of Foreign Affairs

The Government of Indonesia is represented by:

H.E. Mr. Johannes Berchmans Soedarmanto Kadarisman, Ambassador of Indonesia to the Netherlands;

Mr. Malikus Suamin, Minister, Deputy Chief of Mission, Embassy of the Republic of Indonesia, The Hague;

Mr. Mangasi Sihombing, Minister Counsellor, Embassy of the Republic of Indonesia, The Hague;

Mr. A. A. Gde Alit Santhika, First Secretary, Embassy of the Republic of Indonesia, The Hague;

Mr. Imron Cotan, First Secretary, Indonesian Permanent Mission of Indonesia to the United Nations, Geneva;

Mr. Damos Dumoli Agusman, Third Secretary, Embassy of the Republic of Indonesia, The Hague.

The Government of the Islamic Republic of Iran is represented by:

H.E. Mr. Mohammad J. Zarif, Deputy Minister, Legal and International Affairs, Ministry of Foreign Affairs;

H.E. Mr. N. Kazemi Kamyab, Ambassador of the Islamic Republic of Iran to the Netherlands;

Mr. Saeid Mirzaee, Director, Treaties and Public International Law Division, Ministry of Foreign Affairs;

Mr. M. Jafar Ghaemieh, Third Secretary, Embassy of the Islamic Republic of Iran, The Hague;

Mr. Jamshid Momtaz, Legal Advisor, Ministry of Foreign Affairs, Tehran, Iran.

The Government of Italy is represented by:

Mr. Umberto Leanza, Professor of International Law at the Faculty of Law of the University of Rome "Tor Vergata", Head of the Diplomatic Legal Service at the Ministry of Foreign Affairs and Agent of the Italian Government before the International Courts, Head of delegation;

Mr. Luigi Sico, Professor of International Law at the Faculty of Law of the University of Naples "Federico II";

Mrs. Ida Caracciolo, Researcher at the University of Rome "Tor Vergata".

The Japanese Government is represented by:

Mr. Takekazu Kawamura, Ambassador, Director General for Arms Control and Scientific Affairs, Ministry of Foreign Affairs;

Mr. Koji Tsuruoka, Director of Legal Affairs Division, Treaties Bureau, Ministry of Foreign Affairs;

Mr. Ken Fujishita, First Secretary, Embassy of Japan in the Netherlands

Mr. Masaru Aniya, Arms Control and Disarmament Division, Ministry of Foreign Affairs;

Mr. Takashi Hiraoka, Mayor of Hiroshima;

Mr. Iccho Itoh, Mayor of Nagasaki.

The Government of Malaysia is represented by:

Dato' Mohtar Abdullah, Attorney-General - Leader;

Ambassador Tan Sri Razali Ismail, Permanent Representative of Malaysia to the United Nations in New York - Deputy Leader;

Dato' Heliliah Mohd. Yusof, Solicitor-General;

Dato' Sallehuddin Abdullah, Ambassador of Malaysia to the Netherlands;

Dato' Abdul Gani Patail, Head of Advisory and International Law
Division, Attorney-General's Chambers;

Dato' Dr. R. S. McCoy, Expert;

Mr. Peter Weiss, Expert.

The Government of Marshall Islands is represented by:

The Honorable Johnsay Riklon, Senator, Rongelap Atoll, Special Envoy
of the Government of the Marshall Islands;

The Honorable Theodore C. Kronmiller, Legal Counsel, Embassy of the
Marshall Islands to the United States;

Mrs Lijon Eknilang, Council Member, Rongelap Atoll, Local Government.

The Government of Mexico is represented by:

H.E. Ambassador Sergio González Gálvez, Undersecretary of Foreign
Relations;

H.E. Mr. José Carreño Carlón, Ambassador of Mexico to the
Netherlands;

Mr. Arturo Hernández Basave, Minister, Embassy of Mexico, The Hague;

Mr. Javier Abud Osuna, First Secretary, Embassy of Mexico, The Hague.

The Government of New Zealand is represented by:

The Honorable Paul East, Q.C., Attorney-General of New Zealand;

H.E. Ms. Hilary A. Willberg, Ambassador of New Zealand to the
Netherlands;

Mr. Allan Bracegirdle, Deputy Director of Legal Division of the
New Zealand Ministry of Foreign Affairs and Trade;

Mr. Murray Denyer, Second Secretary New Zealand Embassy, The Hague;

The Government of Philippines is represented by:

Mr. Merlin M. Magallona, Agent;

Mr. Raphael Perpetuo Lotilla, Counsel;

Mr. Carlos Sorreta, Counsel;

Mr. Rodolfo S. Sanchez, Advocate;

M. Emmanuel C. Llana, Advocate.

The Government of Qatar is represented by:

H.E. Mr. Najeeb ibn Mohammed Al-Nauimi, Minister of Justice;

Mr. Sami Abushaikha, Legal Expert of the Diwan Amiri;

Mr. Richard Meese, Frere Cholmeley, Paris.

The Government of the Russian Federation is represented by:

Mr. A. G. Khodakov, Director, Legal Department, Ministry of Foreign Affairs;

Mr. S. M. Pounjine, First Secretary, Embassy of the Russian Federation in the Netherlands;

Mr. S. V. Shatounovski, Expert, Legal Department, Ministry of Foreign Affairs.

The Government of Samoa is represented by:

H.E. Mr. Tuiloma Neroni Slade, Ambassador and Permanent Representative of Samoa to the United Nations, New York;

Mr. Roger S. Clark, Professor.

The Government of San Marino is represented by:

Mrs. Federica Bigi, Official in charge of Political Directorate, Department of Foreign Affairs.

The Government of Solomon Islands is represented by:

The Honorable Danny Philip, Deputy Prime Minister and Minister for Foreign Affairs;

H.E. Ambassador Rex Horoi, Permanent Representative of Solomon Islands to the United Nations, New York;

H.E. Ambassador Levi Laka, Permanent Representative of Solomon Islands to the European Union, Brussels;

Mr. Primo Afeau, Solicitor-General for Solomon Islands;

Mr. Edward Nielsen, Honorary Consul, Solomon Islands, London;

Mr. Jean Salmon, Professor of Law, *Université libre de Bruxelles*;

Mr. James Crawford, Whewell Professor of International Law,
University of Cambridge;

Mr. Eric David, Professor of Law, *Université libre de Bruxelles*;

Mrs. Laurence Boisson de Chazournes, Assistant Professor, Graduate
Institute of International Studies, Geneva;

Mr. Philippe Sands, Lecturer in Law, School of Oriental and African
Studies, London University, and Legal Director, Foundation for
International Environmental Law and Development;

Mr. Joseph Rotblat, Emeritus Professor of Physics, University of London

Mr. Roger Clark, Distinguished Professor of Law, Rutgers University
School of Law, Camden, New Jersey.

Mr. Jacob Werksman, Programme Director, Foundation for International
Environmental Law and Development;

Ms Ruth Khalastchi, Solicitor of the Supreme Court of England and
Wales;

Ms L. Rands, Administrative Assistant, Foundation for
International Environmental Law and Development, London University.

The Government of the United Kingdom of Great Britain and Northern
Ireland is represented by:

The Right Honorable Sir Nicholas Lyell, Q.C., M.P., Her Majesty's
Attorney General;

Sir Franklin Berman, K.C.M.G., Q.C., Legal Adviser to the Foreign and
Commonwealth Office;

Mr. Christopher Greenwood, Counsel;

Mr. Daniel Bethlehem, Counsel;

Mr. John Grainger, Adviser;

Mr. Christopher Whomersley, Adviser;

Mr. Andrew Barlow, Adviser.

The Government of the United States of America is represented by:

Mr. Conrad K. Harper, Agent and Legal Adviser, U.S. Department of
State;

Mr. Michael J. Matheson, Principal Deputy Legal Adviser,
U.S. Department of State;

Mr. John H. McNeill, Senior Deputy General Counsel, U.S. Department of Defense;

Mr. John R. Crook, Assistant Legal Adviser for United Nations Affairs, U.S. Department of State;

Mr. D. Stephen Mathias, Legal Counsellor, Embassy of the United States, The Hague;

Mr. Sean D. Murphy, Legal Attaché, Embassy of the United States, The Hague;

Mr. Jack Chorowsky, Special Assistant to the Legal Adviser, U.S. Department of State.

Le PRESIDENT: Veuillez vous asseoir, je vous prie. La Cour reprend ce matin ses audiences publiques en l'affaire des deux avis consultatifs demandés par l'Assemblée générale des Nations Unies et l'Organisation mondiale de la Santé. Je voudrais appeler à la barre le distingué représentant de la délégation du Japon, S. Exc. M. Kawamura pour son exposé oral.

Mr. KAWAMURA: Thank you, Mr. President, for giving me the floor. Mr. President and Honourable Members of the Court, the Government of Japan has expressed its views on the use of nuclear weapons by submitting the written statements concerning the requests for advisory opinions on the following two subjects. First: "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?" Second, "Is the threat or use of nuclear weapons in any circumstance permitted under international law?" The former question was referred to the Court by the Forty-Sixth World Health Assembly's resolution WHA 46.40, the latter by the Forty-Ninth United Nations General Assembly's resolution A 49/75 K.

With regard to both requests for advisory opinions mentioned above, the Government of Japan believes that, because of their immense power to cause destruction, the death of and injury to human beings, the use of nuclear weapons is clearly contrary to the spirit of humanity that gives international law its philosophical foundation.

Mr. President, with their devastating power, nuclear weapons can in an instant take a tremendous toll in human life and deprive people of their local community structures; they can also cause the victims who survive an attack itself indescribable and lasting suffering due to atomic radiation and other lingering effects. Based on documents collected by the prefectures and cities of Hiroshima and Nagasaki, an overview of damage caused by atomic bombs dropped on both cities is as follows.

The yields of the atomic bombs detonated in Hiroshima on 6 August 1945 and in Nagasaki on 9 August 1945 were the equivalent of 15 kilotons and 22 kilotons of TNT respectively. The bomb blast produced a big fireball, followed by extremely high temperatures of some several million degrees centigrade, and extremely high pressure of several hundred thousand atmospheres. It also

emitted a great deal of radiation. This fireball, which lasted for about 10 seconds, raised the ground temperature at the hypocentre to somewhere between 3,000°C and 4,000°C, and the heat caused the scorching of wood buildings over a radius of approximately 3 kilometres from the hypocentre. The number of houses damaged by the atomic bombs was 70,147 in Hiroshima and 18,409 in Nagasaki.

With some whirlwinds locally formed, a firestorm created approximately 30 minutes after the explosion caused secondary disasters. The blast also cut off traffic along roads, prevented people who survived the initial damage from heat and the explosion from escaping, and deprived them of their lives.

People who were within 1,000 metres of the hypocentre were exposed to the initial radiation of more than 3.93 Grays. It is estimated that 50% of people who are exposed to more than 3 Grays die of marrow disorder within two months. Induced radiation was emitted from the ground and buildings charged with radioactivity. Also, soot and dust contaminated by the induced radiation dispersed into the air and was whirled up into the stratosphere by the force of the explosion, and this caused radioactive fall-out back to the ground over several months.

The exact number of fatalities is now known, since documents are scarce. It is estimated, however, that the number of people who had died by the end of 1945 amounted to approximately 140,000 in Hiroshima and 74,000 in Nagasaki. The population of the cities at that time was estimated at 350,000 in Hiroshima and 240,000 in Nagasaki. The number of people who died of thermal radiation immediately after the bomb blast, on the same day or within a few days, is not clear. However, 90 to 100% of the people who were exposed to thermal radiation without any shield within 1 km of the hypocentre died within a week. The early mortality rates for the people who were within 1.5 km to 2 km of the hypocentre were 14% for people with a shield and 83% for people without a shield. In addition to direct injury from the bomb blast, death was caused by several interrelated factors such as being crushed or buried under buildings, injuries caused by splinters of glasses, radiation damage, food shortages or a shortage of doctors and medicine.

Over 320,000 people who survived but were affected by radiation suffer from various malignant tumours caused by radiation, including leukaemia, thyroid cancer, breast cancer, lung

cancer, gastric cancer, cataracts and a variety of other after-effects, more than half a century after the disaster. They are still undergoing medical examinations and treatments.

Mr. President, Japan, based on the tragic suffering of Hiroshima and Nagasaki, considers that nuclear weapons must never be used. Japan considers that the international community as a whole should cooperate to make sure that a similar tragedy never occurs again anywhere in the world. This position of the Government of Japan can be elaborated in more concrete terms as follows.

Firstly, the Government of Japan firmly maintains the "three non-nuclear principles" of not possessing nuclear weapons, not producing them and not introducing them into its territory, and will always strive to promote nuclear disarmament and nuclear non-proliferation, with a view to achieving the ultimate elimination of nuclear weapons.

Secondly, Japan considers that nuclear disarmament, non-proliferation of nuclear weapons and the ultimate elimination of nuclear weapons are crucial for preventing nuclear war and the use of nuclear weapons. To this end, it is imperative that concrete and realistic measures be taken one by one.

Thirdly, one of the first things we must do is to strengthen the nuclear non-proliferation régime, the central pillar of which the Treaty on the Non-Proliferation of Nuclear Weapons, namely NPT. At the NPT Review and Extension Conference in May this year, it was decided to extend the NPT indefinitely. This has stabilized the foundation for nuclear non-proliferation. At the Conference, decisions were made on "strengthening the review process for the Treaty" and on "principles and objectives for nuclear non-proliferation and disarmament", together with the decision to indefinitely extend the NPT. These decisions indicate a future path regarding nuclear disarmament and nuclear non-proliferation. It is extremely important that the international community strives along this path. In order to make this possible, it is crucial that, firstly, all States become parties to the Treaty and, secondly, that further nuclear disarmament be achieved by nuclear-weapon States. Japan, while welcoming the recent significant progress in nuclear disarmament made by the United States and the former Soviet Union, such as the signing of START I and START II and the entry into force of START I since the end of the Cold War, urges all

nuclear-weapon States, which have a special responsibility for nuclear disarmament, to make yet greater efforts for nuclear disarmament, with the goal of achieving the ultimate elimination of nuclear weapons, in accordance with Article 6 of the Treaty. Last year in the United Nations General Assembly, Japan sponsored the resolution entitled "Nuclear disarmament with a view to the ultimate elimination of nuclear weapons", which was adopted by an overwhelming majority. Japan believes that the adoption reflects the wide appreciation by the international community of Japan's such fundamental view.

Fourthly, the international community should strive to bring into force measures for substantial international disarmament. As the aforementioned "principles and objectives for nuclear non-proliferation and disarmament" describes, its first priority is the conclusion of a Comprehensive Nuclear Test Ban Treaty (CTBT). States that participated in the Conference on Disarmament should make every effort to surmount all obstacles standing in the way of concluding these negotiations by 1996. Japan welcomes the developments in the negotiations on CTBT at the Conference on Disarmament and will do everything possible to contribute to an early conclusion of those negotiations.

Under these circumstances, Japan strongly urges that all nuclear tests be immediately suspended.

Fifthly, the international community should also begin turning its attention to the realization of the next step towards nuclear disarmament after the conclusion of CTBT. We refer to an early start of negotiations on a convention banning the production of fissile material for nuclear weapons or other nuclear explosive devices. Solid progress in these negotiations is extremely important. Japan will also contribute to the early commencement and development of negotiations on the convention. In addition, countries that have decided to dismantle nuclear weapons are to be supported. Japan will, moreover, work actively to contribute to the actual reduction of nuclear weapons through assistance for dismantling the nuclear weapons of the former Soviet Union.

Mr. President, I conclude here my oral statement as the representative of the Government of Japan.

As the only nation which has suffered the nuclear attack, Japan considers it appropriate to present scientific and objective facts of the nuclear suffering. At this point, with your permission, Mr. President, I would like to invite the Mayor of Hiroshima City, Mr. Takashi Hiraoka, and the Mayor of Nagasaki City, Mr. Iccho Itoh, to speak on the magnitude of the damages and sufferings of citizens of their respective cities caused by the atomic bomb as well as the relief measures in the past 50 years for the people affected by the bomb.

I would like to add that statements of the Mayors of Hiroshima and Nagasaki City are statements made as witnesses and independently of the position of the Japanese Government. In particular, those parts related to elements other than facts do not necessarily represent the views of the Government.

I thank you, Mr. President, and Honourable Members of the Court, for your kind attention.

The PRESIDENT: I thank you very much, Ambassador Takekazu Kawamura, for your statement. I now give the floor to Mr. Takashi Hiraoka, Mayor of Hiroshima.

Mr. Takashi HIRAOKA: Mr. President and Honourable Members of the Court, I am Takashi Hiraoka, Mayor of Hiroshima City. I want to begin by thanking the Court for this opportunity to make a statement regarding the reality of the damage caused by the bombing of Hiroshima.

Now, I would like to continue in Japanese.

I am here today representing Hiroshima citizens, who desire the abolition of nuclear weapons. More particularly, I represent the hundreds of thousands of victims whose lives were cut short, and survivors who are still suffering the effects of radiation, 50 years later. On their behalf, I am here to testify to the cruel, inhuman nature of nuclear weapons.

The atomic bombs dropped on Hiroshima and Nagasaki shattered all war precedent. The mind-numbing damage these nuclear weapons wrought shook the foundations of human existence.

The development of the atomic bomb was the product of cooperation among politicians, military and scientists. The nuclear age began the moment the bombs were dropped on human beings.

Their enormous destructive power reduced utterly innocent civilian populations to ashes. Women, the elderly, and the newborn were bathed in deadly radiation and slaughtered.

The dropping of the nuclear weapons is a problem that must be addressed globally. History is written by the victors. Thus, the heinous massacre that was Hiroshima has been handed down to us as a perfectly justified act of war.

As a result, for 50 years we have never directly confronted the full implications of this horrifying act for the future of the human race. Hence, we are still forced to live under the enormous threat of nuclear weapons.

Inscribed on the Cenotaph for the A-bomb Victims, located in Hiroshima's Peace Memorial Park, are the following words: "Let All the Souls Here Rest in Peace: For We Shall Not Repeat the Evil." Evil indicates the act of human beings waging war and developing and using atomic weapons to achieve victory.

I am not here in this Court, however, to debate the responsibility for the dropping of the atomic bombs. Japan also committed shameful acts during World War II. Reflecting upon these acts, I would like to convey to the people of the world what kind of damage befell Hiroshima and appeal for the abolition of nuclear weapons so that this tragedy is never repeated.

Beneath the atomic bomb's monstrous mushroom cloud, human skin was burned raw. Crying for water, human beings died in desperate agony. With thoughts of these victims as the starting-point, it is incumbent upon us to think about the nuclear age and the relationship between human beings and nuclear weapons.

I. Instantaneous, Indiscriminate Slaughter of the Atomic Bombing

At 8.15 a.m. on 6 August 1945, the atomic bomb dropped on Hiroshima exploded 580 metres above the heart of the city.

The bomb used a single kilogramme of uranium 235 to produce energy equivalent to 15 kilotons of TNT. B29, the world's largest bomber in 1945, carried a maximum payload of five tons of TNT in conventional weapons. Thus, the atomic bomb was the equivalent of subjecting Hiroshima to an instantaneous attack by more than 3,000 B29s. An intense flash of light and blast flooded the

city centre. With the roar that followed, enormous pillars of flame burst toward the skies; a majority of buildings crumbled and many people died or were injured.

The unique characteristic of the atomic bombing was that the enormous destruction was instantaneous and universal. Old, young, male, female, soldier, civilian - the killing was utterly indiscriminate. The entire city was exposed to the compound and devastating effects of thermal rays, shock wave blast, and radiation.

I'll describe the first damage caused by the thermal rays. At the epicentre, the Hiroshima bomb generated heat that reached several million degrees Centigrade. The fireball was about 280 metres in diameter; the thermal rays emanating from it are thought to have instantly charred any human being outdoors near the hypocentre. In some documented cases, clothing burst into flames at a distance of 2 km from the hypocentre. Many fires ignited simultaneously throughout the city. The entire city was reduced to char and ashes.

The shock-wave and blast also caused great damage. At the epicentre, the fireball generated a state of super-pressure reaching several hundred thousand atmospheres and an enormously powerful shock wave. This shock-wave struck directly, but inflicted even greater damage when it ricocheted off the ground and buildings.

Following the initial shock-wave was an extremely powerful blast-wind estimated at 440 metres per second (nearly 1,000 mph) at the hypocentre. People were lifted and carried through the air by this blast. All wooden buildings within a radius of about 2 km collapsed; many well beyond that distance were damaged badly.

The blast and thermal rays combined to totally burn or collapse approximately 70 percent of the 76,327 dwellings in Hiroshima at the time. The rest were partially destroyed, half-burnt or damaged. To say that the entire city was instantly devastated is no exaggeration.

There was also radiation damage. Immediately after the explosion the area was bathed in high levels of initial radiation, that is, gamma and neutron rays. Within a radius of about 1 km of the hypocentre, nearly everyone who suffered full body exposure to 4 Grays of radiation or more died. Those who managed to survive initially soon succumbed to the late effects of radiation (also called

after-effects). Even today, thousands of people struggle daily with the curse of illness caused by that radiation. Many not directly exposed to the bomb approached the hypocentre to offer help, and many of those sickened or died due to residual radiation.

On that day, there were approximately 350,000 people in Hiroshima. The city government presently estimates that some 140,000 had died by the end of December 1945. However, in many cases entire families were wiped out. The local community was in disarray. Records were lost to fire. Nor was any thorough survey done at the time. Thus, even today we have no truly accurate casualty figures.

Among the dead were many Koreans, Chinese, students from throughout Asia, and even a few American prisoners of war.

II. Human Misery Wrought by the Atomic Bomb

Above all, we must focus on the fact that the human misery caused by the atomic bomb is different from that caused by conventional weapons.

As stated earlier, human bodies were burned by the thermal rays and high-temperature fires, broken and lacerated by the blast, and insidiously attacked by radiation. These forms of damage compounded and amplified each other, and the name given to the combination was "A-bomb disease".

A-bomb disease has been broadly categorized into "acute effects" and "late effects". The chief characteristic of radiation damage is that it has continued to this day. Even 50 years later, the effects of radiation on human bodies are not thoroughly understood. Medically, we do know that radiation destroys cells in the human body, which can lead to many forms of pathology.

The exposure in Hiroshima to high levels of radiation was the first in human history. There was not previous data about the effect on human bodies. Thus, medical treatment immediately after the bombing was a matter of groping in the dark. Hospitals were in ruins, medical staff were dead or injured, and there were no medicines or equipment, so an incredible number of victims died unable to receive sufficient treatment.

Despite minor burns and injuries, survivors worked frantically to help others, but in a few

days or a few weeks, developing fever, diarrhoea, haemorrhaging, and extreme fatigue, many died abruptly. This was the pattern of the acute symptoms of A-bomb disease.

Acute effects referred to those that manifested as disease within four months. In addition to burns and external injuries, initial radiation caused certain characteristic symptoms. Those exposed near the hypocentre suffered widespread destruction of cells, loss of blood-producing tissue, and organ damage. Their immune systems were weakened and such symptoms as hair loss were conspicuous.

These acute effects subsided after about four months, but five to six years after the bombing, a dramatic increase was recorded in leukaemia and other later effects. Characteristic late effects were keloids (excessive growth of scar tissue over healed burns), cataracts, leukaemia, thyroid cancer, breast cancer, lung cancer and other cancers. Those exposed in their mothers' womb were often born with microcephalia, a syndrome involving mental retardation and incomplete growth.

I will now introduce a number of examples of late effects.

Sadako Sasaki was exposed to the bomb at the age of two. She appeared to grow up strong and healthy, but 10 years later, in 1955, she was suddenly diagnosed with leukaemia and hospitalized. In Japan, cranes are a symbol of longevity. Sadako believed she would be healed if she folded 1,000 paper cranes, so every day, lying in bed and using the paper her medicine came in, she continued to fold the cranes. Despite her wishes, after eight months of fighting her illness, she passed away.

This speaks of the intense fear generated by radiation's power to reach across years or decades to continue its killing.

The story of Sadako's death and the paper cranes touched the hearts of children. They collected money from all over the world and built a monument in Hiroshima's Peace Memorial Park. The statue, set high on a pedestal, depicts a young girl holding a giant paper crane over her head. Now people from Japan and throughout the world continually send their offerings of paper cranes to be placed at the foot of that monument. Through the death of a young girl from the late effects of radiation, paper cranes have become a nearly universal symbol of world peace and the abolition of

nuclear weapons.

Microcephalia has become a syndrome symbolic of the mental and physical retardation suffered by children exposed to radiation from that atomic bomb as foetuses. For these children, no hope remains of becoming normal individuals. Nothing can be done for them medically. The atomic bomb stamped its indelible mark on the lives of these utterly innocent unborn babies.

The parents of these children are now elderly or have already passed away. One of those parents recently commented: "Usually, by the time children are 50 years old they are taking their aged parents to hot spring resorts. My child is almost 50, but however old I get, I will always have to lead my child by the hand." Her words vividly express the mother-child tragedy produced by the bomb, but the personal misery the atomic bomb's radiation quietly set in motion even in the protective depths of a mother's womb is a dark foreshadowing of what nuclear weapons have in store for the human race.

Directly bombed in Hiroshima and Nagasaki or indirectly exposed to radiation during relief activities, approximately 330,000 people throughout Japan are still suffering 50 years later from late effects.

Research thus far has demonstrated that, when survivors reach the ages at which certain cancers appear, they are clearly more susceptible to cancer than is the general population. At present, in addition to leukaemia, measurable effects attributable to the atomic bomb have been accepted for breast, thyroid, stomach, and lung cancers. However, we still lack a complete understanding of what radiation, once taken into the body, can do with the passage of time.

The atomic bomb did more than destroy people and property. The economic and social infrastructure of citizens was devastated. Those able to survive had lost their entire community, leaving their lives impoverished and empty.

The severing of family relationships produced thousands of "A-bomb orphans" and "A-bomb elderly", people unable to live independently. And continually, those who did escape with their lives were haunted by anxiety, never knowing when or where A-bomb disease might erupt in their lives. They suffered and continue to suffer psychologically, physically, and socially from the atomic

bomb's after-effects.

III. The Appeal of the Survivors

I was away when Hiroshima was bombed, so I was spared the atomic bombing itself. But my most beloved relatives and many acquaintances were killed. A cousin, a first-year student at a girls' school at the time, was 800 metres from the hypocentre. She died that night. It was hard to bear my weeping aunt lamenting: "If only there wasn't a war... If only the atomic bomb hadn't been dropped."

My wife, who was also a first-year student at a girls' school, happened to be sick that day and didn't go to school, so she was saved. Nearly all her classmates were killed. Even today the fact that her life was spared remains a heavy burden of grief deep in her heart.

Those who survived will never escape the psychological and physical effects of the bombing.

Many records such as diaries, pictures, photos, and movies depict the damage done to Hiroshima. But those who were there universally emphasize that no depiction comes close to the actual experience and that their experience was not like anything in this world.

"It wasn't at all like the situation that is commonly conveyed today," they say. "It was far, far worse and can never be expressed."

This phenomenon tells us that the bomb reduced Hiroshima to an inhuman state utterly beyond human ability to express or imagine.

I feel frustrated at not being able to express this completely in my testimony about the tragedy of the atomic bombing.

For that reason, I would like to ask you, the judges, to visit Hiroshima and Nagasaki to verify for yourselves the actual result of the bombing to deepen your understanding of it.

Listening to the tragic experience as told by those who survived, and observing first-hand the artifacts from that time would certainly be indispensable.

I worked for a time for a newspaper in Hiroshima, and I will never forget the badly scarred face and hands of one of the women who worked there with me. She had lost her husband to the bomb and, though she was quite embarrassed about her appearance, she was forced to go out and work to feed her children. She died 16 years ago.

She was 33 years old at the time of the bombing and was 1,700 metres from the hypocentre. Five years later, in 1950, she described her experience in detail.

"Somewhere a voice shouted, 'Hey, there's a parachute. A parachute is coming down!' Without thinking I looked in the direction indicated by the voice. At that instant, flash. the sky in the direction I was looking was pure light. I don't know how to describe that light like a fire burning in my eyes. It was like the eerie bluish-purple sparks that electric street cars make at night, only trillions of times brighter. But that isn't exactly right either. So fast that later I wondered which came first, the light was followed by a roar that reverberated to the bottom of my belly, and I was instantly slammed hard against the ground, with something falling in little pieces on my head and shoulders. When I opened my eyes, I saw nothing but darkness.

Suddenly I clearly saw the faces of my three children, who had been evacuated to the country. Thinking of them made me begin impulsively, involuntarily thrashing my body around violently. I pushed and pushed with my hands to sweep away the pieces of wood and tile, but more kept sliding in on me, and I couldn't seem to get my body free. 'I can't die. What will the children do? My husband might be dead. I have to get out of here.' In utter desperation, I crawled out.

Once out, I noticed a terrible stench in the air. 'It must have been a white phosphorous fire bomb.' Without thinking, I took the towel that was tucked into my belt and firmly wiped my nose and mouth. That was when I realized for the first time that there was something wrong with my face. The skin that I wiped just peeled slipped right off. I was shocked.

'What? My arm!' The skin on my right hand slipped off from the second joint of my fingers and just dangled sickeningly from the tips of my fingers. The fingers on my left hand, from the wrist down, were peeled raw and slimy."

According to her account, she fled in a dream-like state and made it to a relief station in the suburbs. Summer turned to autumn, and still the flesh of her wounds continued to melt away. The wounds were the colour of a crushed, ripe tomato, but no new skin would form.

The following spring, her bandages finally came off. She described her physical condition then as follows:

"My left earlobe had shrunk to half its size. On my left cheek, down past my mouth and onto my neck was a keloid the size of a person's palm. On my right hand, a 5 cm-wide keloid ran from the second joint to my little finger. The five fingers of my left hand had pulled together abnormally where they joined the hand."

Unfortunately, our time is too limited to allow me to present her entire testimony. I hereby request that you adopt the report of scientific research "Outline of the Atomic Bombing Damage of Hiroshima and Nagasaki", as well as other materials, as evidence of the atomic bombing damage.

IV. Inhumanity of Nuclear Weapons

The horror of nuclear weapons as described above derives, of course, from the tremendous destructive power, but equally from radiation, the effects of which reach across generations.

Today, 50 years after peace was regained, people continue to suffer the later effects of radiation. What could be more cruel? Nuclear weapons are more cruel and inhumane than any weapon banned thus far by international law.

Attacks on civilians are banned by international law and the use of weapons of mass destruction, causing unnecessary human suffering, is prohibited by international declarations and binding agreements. These principles serve as the foundation for the concept of humane treatment. This concept is the spirit behind the international law that arose in modern Europe.

The 1868 Declaration of St. Petersburg; the Declaration respecting Dum-Dum bullets; Article 23 of the 1907 Regulations respecting the Laws and Customs of War on Land; the 1925 Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare; the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction; and similar laws all rest on the desire to prevent the most irrational deeds of humankind. International law has always sought to play a humanitarian role.

Further, at the United Nations General Assembly in 1961, resolution 1653(XVI) regarding the declaration on the prohibition of the use of nuclear and thermonuclear weapons was adopted. The resolution states that

"The use of nuclear and thermonuclear weapons would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind and civilization and, as such, is contrary to the rules of international law and to the laws of humanity."

It is clear that the use of nuclear weapons, which cause indiscriminate mass murder that leaves survivors to suffer for decades, is a violation of international law. In addition, the development, possession and testing of nuclear weapons, which gives a great threat to non-nuclear-weapon countries, is also a violation of international law.

The stockpiles of nuclear weapons on earth today are enough to annihilate the entire human race several times over. These weapons are possessed on the assumption that they can be used, but the existence of nuclear weapons cannot maintain peace. In this age in which national security must be considered from a global standpoint, no country can guarantee its own security with nuclear weapons.

As long as nuclear weapons exist, the human race faces a real and present danger of self-extinction. The idea based on nuclear deterrence that nuclear war can be controlled and won exhibits a failure of human intelligence to comprehend the human tragedy and global environmental destruction brought about by nuclear war.

Therefore, based on the experiences of Hiroshima and Nagasaki, and the more we learn of the suffering of indigenous peoples exposed to radiation by nuclear tests conducted by the nuclear powers, we have come to believe that only through a treaty that clearly stipulates the abolition of nuclear weapons can the world step toward the future with new hope and a genuine sense of confidence.

The issue of nuclear weapons should not be a matter of political relationships among nations. We must approach this problem in terms of what nuclear weapons mean for the future of the human race.

In February 1981, when Pope John Paul II visited Hiroshima he said: "To remember the past is to commit oneself to the future. To remember Hiroshima is to abhor nuclear war."

The fate of the human race is in your hands. I close with the hope that God's wisdom, discernment, and love of humankind will be in you as you formulate a correct decision with respect

to the problem of nuclear weapons.

The PRESIDENT: Thank you very much, Mr. Takashi Hiraoka, for your moving declaration. Now I give the floor to Mr. Iccho Itoh, Mayor of Nagasaki.

Mr. ITOH: I am Iccho Itoh, Mayor of the Japanese city of Nagasaki.

Fifty years ago, three days after Hiroshima, Nagasaki was subjected to the unimaginable devastation of an atomic bombing. I would like to express my gratitude for this opportunity to make a statement and to inform the people of the world about Nagasaki's atomic bomb experience.

It is my ardent hope to gain your understanding concerning the powerful aspiration for nuclear disarmament and lasting world peace embraced by the citizens of Nagasaki since the atomic bombing, and to request your rigorous inquiry into this matter so that the people of Nagasaki will be the last on earth to suffer the devastation brought about by the use of nuclear weapons in war.

Since you have already been briefed by the Japanese Government about the atomic bombings, I will focus my remarks on the atomic bomb experience from the point of view of the victims and describe Nagasaki's aspiration for the abolition of nuclear weapons.

First of all, please look at these photographs. This is how the hypocentre area of Nagasaki looked from the air on August 9, 1945, three days before the atomic bombing. This photograph shows the same part of the city three days after the bombing. As you can see, the bomb pulverized and burned everything standing and everything living.

The mayor of Nagasaki made the first official report on the damages caused by the plutonium atomic bomb dropped on Nagasaki. He described the devastation in the hypocentre area as follows:

"Except for a few people who remained in the air-raid shelters at the time of the atomic bomb explosion, all people and animals within a 400-metre radius of the hypocentre were killed instantly. All buildings within the same radius, including those of sturdy construction, were totally demolished."

This and many other testimonies, as well as the results of subsequent investigations, paint the following picture of Nagasaki immediately after the atomic bombing:

"The explosion of the atomic bomb generated an enormous fireball, 200 metres in radius, almost as though a small sun had appeared in the sky. The next instant, a ferocious blast and wave of heat assailed the ground with a thunderous roar. The

surface temperature of the fireball was about 7,000°C, and the heat rays that reached the ground were over 3,000°C. The explosion instantly killed or injured people within a two-kilometre radius of the hypocentre, leaving innumerable corpses charred like clumps of charcoal and scattered in the ruins near the hypocentre. In some cases not even a trace of the person's remains could be found. The blast wind of over 300 meters per second slapped down trees and demolished most buildings. Even iron reinforced concrete structures were so badly damaged that they seemed to have been smashed by a giant hammer. The fierce flash of heat meanwhile melted glass and left metal objects contorted like strands of taffy, and the subsequent fires burned the ruins of the city to ashes. Nagasaki became a city of death where not even the sounds of insects could be heard. After a while, countless men, women and children began to gather for a drink of water at the banks of nearby Urakami River, their hair and clothing scorched and their burnt skin hanging off in sheets like rags. Begging for help they died one after another in the water or in heaps on the banks. Then radiation began to take its toll, killing people like a scourge or death expanding in concentric circles from the hypocentre. Four months after the atomic bombing, 74,000 people were dead and 75,000 had suffered injuries, that is, two-thirds of the city population had fallen victim to this calamity that came upon Nagasaki like a preview of the Apocalypse."

This is the effect of the explosion of a single atomic bomb. In February 1945, the German city of Dresden was subjected to indiscriminate bombing. It is said that large-size bombs were dropped on the city by 773 British aircraft, followed by a shower of some 650,000 incendiary bombs dropped by 450 American aircraft. Some records state that as many as 135,000 people died.

In Japan, the city of Tokyo suffered the greatest damage from conventional air raids. In March 1945, 325 American aircraft spent two and a half hours dropping a total of about 1,665 tons of incendiary bombs on the city and killing about 100,000 people. In Hiroshima and Nagasaki, however, a single aircraft dropped a single bomb and snuffed out the lives of 140,000 and 74,000 people, respectively. And that is not all. Even the people who were lucky enough to survive continue to this day to suffer from the late effects unique to nuclear weapons.

In this way, nuclear weapons bring enormous, indiscriminate devastation to civilian populations.

On August 9, 1945, the American bomber carrying the atomic bomb abandoned the primary target of Kokura (present-day Kitakyushu City) because of poor visibility and flew to the secondary target Nagasaki. Nagasaki was also covered by clouds, but the airplane was running short on fuel. When the bombardier caught a glimpse of the Urakami area through a crack in the clouds, he hastily released the atomic bomb over the city.

The Urakami district was home to a large Christian population that had kept the light of faith

alive during the long period of persecution from the 17th to the 19th centuries. The atomic bomb laid the neighbourhood to waste and instantly killed 8,500 of the 12,000 Christians living there.

It was discovered later that the original target for the atomic bombing had not been the Urakami district, which lies in the northern part of Nagasaki, but rather the very centre of the city. If the atomic bomb had in fact exploded over the densely populated city centre, it is likely that Nagasaki would have been erased from the face of the earth.

We see in retrospect that an unspeakable tragedy was visited upon, not only the victims of the atomic bomb, but even the people who managed to survive.

The exhibits in the Nagasaki Atomic Bomb Museum include a poem written by a 10-year old girl. Please refer to page 61 of the book "Records of the Bombing in Nagasaki".

The poem tells how the girl's younger sister was trapped under the ruins of their house, how fires were breaking out among the debris and how the mother of the two children - who had suffered severe burns in the bombing - squeezed out the last ounces of her strength to save the child.

According to the poem, the mother died before the end of the day. The author's two-year old sister died 13 days later and her five-year old brother died after about two months. Not even a trace remained of her grandmother or the seven-member family of her aunt. Her father died of cancer 13 years ago, and now the author herself is also sick in bed.

Now please look at this photograph, which you will find on page 27 in "Outline of Atomic Bombing Damage of Hiroshima and Nagasaki". The photograph was taken on the day after the Nagasaki atomic bombing.

The boy seems to be enjoying an afternoon nap on the sunlit veranda of his house. The boy, however, is dead. He had died instantly in the ferocious blast, probably not even noticing that a bomb had exploded or that he was falling into an eternal sleep.

Please look at this photograph, which you will find on page 28 of the book "Records of the Atomic Bombing in Nagasaki". This photograph shows the carbonized corpse of a boy perhaps four years old who was exposed to the bombing near the hypocentre. What crime did these children commit? Did they take up guns and point them at the enemy?

When she saw this photograph in the Nagasaki Atomic Bomb Museum, Mother Theresa, recipient of the Nobel Peace Prize, said, "All the leaders of the nuclear States should come to Nagasaki to see this photograph." Please allow me to make the same statement. All the leaders of the nuclear States should see this photograph. They should take a direct look at the reality of nuclear weapons and realize the nature of what happened in front of the eyes of these children that day. Let the leaders hear the silent screams of these children.

A friend of Yosuke Yamahata, the photographer who took these pictures, described Yamahata's appearance at the time as follows:

"Only three days had passed since their departure, but Yamahata and his two companions were so strangely emaciated that they might have been mistaken for other people. It was an air almost of madness, as though their mental state had been damaged by some tremendous psychological shock. Although openhearted by nature, the three seemed terribly alarmed and upset, as though fleeing from something or possessed by some kind of demon. They seemed, quite literally, to have arrived back from a visit to hell."

Mr. Yamahata died of cancer of the pancreas 21 years after this severe psychological shock. He was only 48 years old.

A 14-year old boy exposed to the atomic bombing two kilometres from the hypocentre described his experience as follows:

"The air-raid shelter in Sakamoto-machi was filled with the dead and injured. The area near the shelter was strewn with corpses, some scorched black and others half-naked with puffed-up faces and skin hanging off like rags. It filled me with sorrow to see, among these, the corpses a mother clinging to her newborn baby and her three other children lying dead nearby. I could do nothing for the people screaming for help from under the ruins of houses or the people crawling along the ground dragging their burnt skin and begging for water. These screams of agony in the throes of death echoed in the ruins all night. When my father found a pot in the ruins and used it to draw water from a stream, the injured drank it greedily but then lay down and died on the ground. The following morning the screams had subsided, leaving only a world of death like a hell on Earth."

This boy's four-year old sister died on August 10, and his mother, who had suffered severe burns, died on August 17. Then, 12 years later, his father died of stomach cancer.

Needless to say, there will never be enough time to introduce all of the tragedies of Nagasaki.

It was not a life or repose that awaited the people fortunate enough to survive after experiencing these scenes of hell. It was only the beginning of a life of mental and physical suffering

and anxiety over the threat of disease and death.

As you know, the most fundamental difference between nuclear and conventional weapons is that the former release radioactive rays at the time of explosion. All people exposed to large doses of radiation generated during the one-minute period after the Nagasaki atomic bomb explosion died within two weeks. Induced radiation due to the absorption of neutrons by substances on the ground, as well as plutonium particles, products of nuclear fission and other radioactive fallout scattered by the wind, caused widespread, long-term radio-contamination. Therefore, not only directly exposed people, but also those who came into the hypocenter area after the bombing and those exposed to fallout carried by the wind suffered radiation-induced injuries.

A high incidence of disease was observed among the survivors exposed to large doses of radiation. Particularly noteworthy is the high frequency of diseases such as leukaemia and malignant tumours appearing after long periods of latency.

It has been reported that leukaemia appears two or three years after an atomic bombing and that the incidence declines after reaching a peak six or seven years after the bombing. Cancer meanwhile is said to appear after a latency of more than 10 years and then to increase in frequency over time. Support for these conjectures was voiced at the meeting of the Japan Cancer Society in October this year, when it was reported on the basis of follow-up studies on the atomic bomb survivors of Hiroshima and Nagasaki that excess mortality due to leukaemia and cancer is observed as a result of exposure to radiation.

It is said that the descendants of the atomic bomb survivors will have to be monitored for several generations to clarify the genetic impact, which means that the descendants will be forced to live in anxiety for generations to come. I have shown from the above that, with their colossal power and capacity for slaughter and destruction, nuclear weapons make no distinction between combatants and non-combatants or between military installations and civilian communities, and moreover that the radiation released by these weapons cannot be confined to specific military targets. It can only be said, therefore, that nuclear weapons are inhuman tools for mass slaughter and destruction.

The people of Nagasaki and Hiroshima are not the only victims of nuclear explosions. It is

said that many people have fallen victim to radiation exposure in the course of the development of nuclear weapons.

I met the mayor of Bikini this past May. Bikini Island was the site of more than 20 nuclear tests in the atmosphere and suffered contamination from radioactive substances. I was deeply moved to hear from the mayor how the residents were forced to leave the island because it had been made uninhabitable for nearly half a century, how they have been striving relentlessly to restore the natural environment and a safe life and how they hope finally to be able to return to Bikini next year.

It is my understanding that the free and unlimited selection of weapons is unacceptable in terms of international law concerning warfare, and that 1) attacks on civilian communities, 2) the infliction of unnecessary suffering and 3) the destruction of the natural environment are prohibited, even with regard to weapons that are not expressly banned. The use of nuclear weapons obviously falls under the scope of this prohibition and therefore is a manifest infraction of international law.

At the Nagasaki Peace Ceremony held every year on August 9 to commemorate the atomic bombing, the mayor of Nagasaki delivers the "Nagasaki Peace Declaration" to convey Nagasaki's aspiration for the abolition of nuclear weapons and for world peace.

Expressing Nagasaki's position in this year's declaration, I called upon the Japanese Government to clearly assert that the use of nuclear weapons violates international law, to enact as law the "three-fold non-nuclear principle," that is, Japan's commitment not to build, possess or introduce nuclear weapons, and at the same time to strive for the establishment of a nuclear-free zone in the Asia-Pacific region.

"Nuclear deterrence", that is, the possession of nuclear weapons as a way to deter opponent countries from using their nuclear weapons, is simply the maintenance of a balance of fear.

The 1995 Nobel Peace Prize went to Joseph Rotblat and the Pugwash Conferences on Science and World Affairs. Dr. Rotblat made the following statement at a symposium in Nagasaki this past August:

"I would like to conclude my talk by reminding you of the long-range implications of the bombs on Hiroshima and Nagasaki. Nuclear weapons have put into peril the very existence of the human species. This peril will always exist; the Sword of Damocles will always hang over our heads. This puts on all of us, scientists and ordinary citizens, the duty to be eternally vigilant. We must abolish all war, because

any war once begun may escalate into a nuclear holocaust."

I believe that the end of the Cold War between East and West has given us a rare opportunity to achieve the goal of a peaceful world free of nuclear weapons. However, the establishment of genuine peace based on international trust is impossible when countries rely on nuclear deterrence with its accompanying psychology of suspicion and intimidation.

It is my ardent hope that, in its review, this Court will decide impartially about the inhumanity of nuclear weapons and their illegality in view of international law and in that way bring strength and hope, not only to the citizens of Nagasaki and Hiroshima, but to all the peace-loving people of the world. This indeed will contribute more than anything else to the repose of the souls of the 214,000 people who perished in the atomic wastelands of Nagasaki and Hiroshima 50 years ago.

Although 50 years have elapsed since the atomic bombing, 62,000 Nagasaki survivors continue to live in fear of late effects, watching as about 1,300 of their fellow survivors die every year.

Honourable Judges, please let me end my statement with a repeated request for your understanding concerning Nagasaki's 50-year long appeal for the abolition of nuclear weapons and its aspiration for world peace. The unspeakable atrocity and agony suffered by the citizens of Nagasaki must never be repeated in this world. I can say with confidence that the use of nuclear weapons again will wreak havoc on the global ecosystem and threaten the very survival of the human race.

To ensure that a curtain of darkness is not drawn on the development of humanity from time immemorial, I extend my heartfelt request for your decision based on the viewpoint of human love.

Thank you for your attention.

The PRESIDENT: I thank Mr. Iccho Itoh very much for his very moving declaration. I now call on Ambassador Takekazu Kawamura for a last statement.

Mr. KAWAMURA: Mr. President and Honourable Members of the Court, you have now heard the views of my Government, as well as those of Mayors of Hiroshima and Nagasaki. The issue currently presented to the Court is of the utmost importance to Japan.

It was indeed a great honour for Mr. Hiraoka, Mr. Itoh and myself to make oral presentations to the Court today. In closing, I wish to express once again and on behalf of the three of us our sincere gratitude, Mr. President and Honourable Members of the Court for your kind attention.

The PRESIDENT: I thank the distinguished delegation of Japan for the oral statements and declarations delivered by its different members. The Court takes note that Japan has finished its oral exposé. The Court suspends these public hearings for a break of 15 minutes.

The Court adjourned from 11.25 to 11.40 a.m.

The PRESIDENT: Please be seated. I give the floor to His Excellency Ambassador Ismail Razali.

Mr. RAZALI:

1. Mr. President, Honourable Members of the Court, in the time allocated, the Malaysian delegation will submit before the Court various reasons as to why this Court should give an advisory opinion that the threat or use of nuclear weapons under any circumstance is not permitted under international law. The Attorney-General of Malaysia will, after me, address extensively the specific aspects and principles of international law pertaining to this question. I, not being a lawyer, hope to be forgiven for addressing the Court, not in strict legal terms, but posing the issue in a multidimensional context and as a collective pursuit and aspiration of many peoples and countries for peace and justice in a world free of nuclear domination.

2. The decision to seek the advisory opinion of the Court, taken at the UN General Assembly last year, came from the initiative of the Non-Aligned Movement, which has been involved with the issue of nuclear weapons and nuclear disarmament since the Movement's inception. As early as 1961, during the Non-Aligned Summit in Belgrade, the Heads of State, Heads of Government of the countries of NAM pronounced clearly on the efforts needed to find a global agreement prohibiting all nuclear and thermonuclear tests, and they underlined the horrendous dangers of a nuclear conflagration and the imperative need to achieve total nuclear disarmament.

3. Even then, and despite the imposition by fiat by the superpowers of the so-called nuclear umbrella, dividing the world into two camps, those on the side of the then Soviet Union and those of the so-called free world, many of us were gravely concerned about the fate of our people and, indeed, of all humanity in the event of a recourse to nuclear weapons. This was an understandable reaction given that the theatres and cockpits of superpower rivalry were in our own countries, with us being forced to choose between one superpower protector or the other. We were always conscious of the tragedies and horrors of Hiroshima and Nagasaki, fearing that they could be repeated in any of our own countries. Subsequent revelations have shown that the world has been brought to the brink of nuclear war any number of times since then. The representative of Mexico referred to two such studies in his excellent presentation last Friday. Another such study, based on Pentagon documents, lists 25 instances involving nuclear threats, plans or manoeuvres by the United States alone, from 1946 to 1980^{*}, any one of which could have resulted in a full-scale nuclear exchange. I might be permitted to refer the Court also to the book *In Retrospect* by Robert McNamara, the former US Secretary of Defense, and that book's appendix, "Nuclear Risks of the 1960s and their lessons for the 21st Century", where Mr. McNamara, one of the chief architects of nuclear deterrence, has in conscience and self-examination changed his former position and now has appealed for a nuclear-free world.

4. At this year's Non-Aligned Summit held in Colombia, the Non-Aligned members once again reaffirmed their historical position of total opposition to nuclear armaments. With the permission of the Court, may I read paragraph 82 of the Declaration:

"arms limitation and control and international security have acquired a totally new dimension with the disappearance of East-West confrontation. Nuclear deterrent scenarios of the past are no longer relevant. In the post-cold war era there is no justification whatsoever, if ever there was any, to maintain nuclear arsenals and much less to draw new ones as a continuation of the arms race. The time has come for the entire stockpiles of these deadly weapons of mass destruction to be destroyed once and for all. The non-proliferation regime will not be successful without a clear perspective on nuclear disarmament. They call for a renunciation of strategic doctrines based upon the use of nuclear weapons and call for the adoption of an action plan for the elimination of nuclear weapons, within a time bound framework."

5. Mr. President and Members of the Court, if I have made extensive references to the Non-

^{*}Michio Kaku and Daniel Axelrod, *To Win a Nuclear War*, Southend Press, 1987, p. 5.

Aligned Movement, it is to underscore that the Movement, which is made up of 113 countries from Latin America, Asia, Africa and Europe, has persistently pursued the issue of nuclear weapons and their impact on international peace and security as well as on the welfare of humanity and that of our planet. The Movement is representative of the peoples of the world to whom this issue before the Court is of the most urgent and critical interest. We are home to a huge majority of humanity with a multiplicity of problems. Our countries are custodians of natural resources and biodiversity crucial to the continued survival of people and the planet, threatened now by the destructiveness of nuclear weapons.

6. At this moment in The Hague itself, the Court should be aware of a large number of members of civil society that have gathered here from many parts of the globe in the expectation that the Court will declare that the threat and use of nuclear weapons is illegal. Even in countries outside the Non-Aligned Movement, amongst governments that did not support the UN General Assembly resolution, there is increasing public support for this position. The Court may wish to note that the Italian Senate on 13 July this year passed a resolution to recommend to the Italian Government to assume a position favouring a judgment by the International Court of Justice to condemn the use of nuclear arms, in accord with the principles of the Italian Constitution. The fear of nuclear weapons and the conviction that the threat and use of nuclear weapons are illegal have become nearly universal. The *Wall Street Journal* of 16 October this year called attention to opinion surveys that indicate that most thinking people still regard nuclear weapons as the most serious threat that the world faces. The Court should take into account also the large number of United Nations resolutions, at least 18, to this effect, as well as the overwhelming majorities by which these proposals have been passed. With your permission, Mr. President, I propose to attach to my statement a schedule of the various resolutions that were taken at the General Assembly declaring the use of nuclear weapons either as a crime against humanity and/or as a violation of the UN Charter. In the light of the above, the Court, as an integral part of the United Nations system, has that unique and historic opportunity as well as responsibility to pronounce itself on this critical issue.

7. I am mindful that the General Assembly resolution did not enjoy complete support at the United Nations General Assembly, but how can it be otherwise in the real world when five nuclear-

weapon States, who are themselves the five permanent members of the Security Council, have the ability and leverage to apply enormous influence on the hapless States? The negative votes and abstentions are an indication of the extremely heavy lobbying of the nuclear-weapon States. The pressure continues even at this moment, and the pressure cannot be underestimated. The representative of Iran yesterday underlined the function of the Court in relation to the Security Council, one being legal and the other political, both integral parts of the United Nations. I would add here that the political role of the Security Council is clearly dominated by a powerful group of countries, the nuclear powers, and in that context there is little hope of placing the issue of nuclear weapons before such a Council for an objective and fair consideration. Our recourse to the Court now, with the full support of civil society, is tantamount to a last appeal for justice.

8. Mr. President and Members of the Court, during the last several days of the Court hearings, some of the nuclear-weapon States and their allies have tried their best to persuade the Court to refrain from pronouncing on the illegality of nuclear weapons. The primary approach has been to challenge the right and authority of the Court to make such a pronouncement, using a whole myriad of legal arguments. Those of us who, in support of the General Assembly and the WHO resolutions, have provided the Court with a comprehensive set of counter-arguments. I refer particularly to the two strong cases made by the representatives of Egypt and Iran and to others, and the Attorney-General of Malaysia will in turn be making a similar case.

9. I interpret my purpose here as having to point out to the Court the asymmetries of a very unequal world as evidenced at the United Nations, and that the ICJ itself is an integral part of the United Nations system. The Court has the duty to make its own unique contribution to what is one of the greatest threats to life on this planet by affirming the illegality of the threat or use of nuclear weapons. The allegation that the Court is being used for political purposes, straying from its legal function, is not valid. All legal questions coming before this Court have had political dimensions; the more weighty the legal question, as in this instance, the more likely it is to be vested with political significance.

10. The Court is being asked to determine whether the threat or use of nuclear weapons by a State would be in breach of international law in any circumstance. In this context it is difficult to

follow how a question framed specifically in terms of the violation *vel non* of specific rules of international law can be called as non-legal or, as has been suggested, "purely political". We are essentially asking the Court to undertake the judicial task of pronouncing the legal principles and rules applicable to the question submitted to it.

11. Mr. President, Members of the Court, as so ably argued by the Indonesian representative last week, no distinction can be made between the use and threat of use of nuclear weapons as they are both a single indivisible concept. Neither can credence be given to dehumanizing euphemisms such as clean bombs and surgical weapons. I may add here that it is unconscionable that there can be brought into being and acquiesced to, a situation of those that have weapons of mass destruction, the "haves" and the "have nots", who must live under the spectre of these weapons. In the context of the cumulative recognition of the value of all human persons, their right to optimize their full potential wherever they live, this imposition of a kind of nuclear colonialism, is not acceptable. Nuclear-weapon States must fulfil their solemn obligation under Article VI of the Nuclear Non-Proliferation Treaty to pursue negotiations in good faith on effective measures relating to nuclear disarmament. As long as they fail to commit to a time frame for the elimination of nuclear weapons, and for as long as four of the five nuclear-weapon States refuse even to give up the first use option, there is every possibility of further proliferation and of an enhanced risk of a nuclear conflagration that can threaten the planet and all of humanity.

12. This threat is reinforced by the declared intention of nuclear-weapon States to base their security and national interest on nuclear deterrence and to reserve to themselves the right to use nuclear weapons in response to a perceived or actual threat of attack. The very concept of deterrence is meaningless without a credible willingness to use weapons - hence, "deterrence" equals "threat" and, as Indonesia has pointed out, "threat" equals "use". As recently as last Monday,

30 October, the *Financial Times* reported that Britain and France:

"have agreed on a broad definition of sub-strategic deterrence: in other words, the use of a low-yield 'warning shot' against an advancing aggressor, along with a threat warning of a massive nuclear strike unless the attack halts. This warning shot would be apparently fired as soon as the country's 'vital interests' were threatened."

In other words, if this report is accurate, British-French nuclear deterrence is no longer limited - if it

ever was - to situations of armed attack within the meaning of Article 2, (4) of the Charter, but has now been extended to include the completely flexible concept of "vital interests".

13. Mr. President, we have heard it said quite arrogantly, as it seems to me, at an earlier submission, that the concept of the sovereignty of States reposes on each State is virtually unlimited powers, and allows each State to invest itself with the weapons of its choice, including nuclear weapons. All this is done in the name of the defence of the State. It was further elaborated that such a defence doctrine founded on nuclear deterrence is legitimate, and that there can be no limitations imposed on the right to such a defence.

14. The question I would like to ask is why is nuclear deterrence only limited to five countries? The ready answer from the nuclear-weapon States is that their nuclear deterrence contributes to world peace and security. Mr. President, Members of the Court, we have here a very clear case, as is also attendant in the Security Council, where a handful of countries arrogate to themselves, the right to assess and the right to determine what is world peace and security, exclusively in the context of their own national imperatives. What is at best an Atlantic concept of the Cold War, a mindset of the strategy of nuclear powers for over four decades, is being imposed on the whole world. In the context of significant and qualitative developments on the world scene, including the end of the Cold War, this premise is highly questionable, especially as it was further developed by a submission of a nuclear-weapon State that each nuclear-weapon State can determine for itself when the use of nuclear weapons is appropriate. It was further implied that under Chapter 7 of the Charter of the United Nations, the Security Council can authorize the use of nuclear weapons, and that nuclear weapons can be used on non-nuclear weapon States. I contend that the Court, like the rest of us, must be seriously alarmed over such a claim.

15. Mr. President and Members of the Court, according to a submission made, there are no distinctions between nuclear weapons and conventional weapons in terms of the legality of their use. In fact the submission I refer to stated bluntly, "all weapons maim" as if a rifle maims in the same way and in the same numbers as a megaton nuclear bomb. I would like to point, as others have done before me, to the uniquely terrifying and devastating power of nuclear weapons. To my mind the most serious weakness of the submissions of States that oppose the request for an advisory opinion

is their failure to acknowledge this. To say that the legality of the use of nuclear weapons depends upon the particular circumstances of use, is to suggest that nuclear weapons are no different and no more dangerous than conventional weapons. Arguments of proportionality and necessity lose all meaning in the context of nuclear weapons and the uncontrollable nature of these weapons.

Mr. McNamara, in the book I referred to earlier, had underlined the unstable and dangerous nature of nuclear deterrence. The Foreign Minister of Australia pointed out extensively the prospect of global annihilation and the survival of humanity being threatened by the existence of nuclear weapons. He also pointed out to the enduring aspirations of the entire post-war generation to be rid of nuclear weapons, they being evil as much as nuclear war itself. Mr. President, we heard just now from the Representative of Japan, from the Mayor of Nagasaki and Hiroshima the horrible effects of nuclear bombings on those two places. Even fifty years away from that event, having heard it over and over many times, one cannot but be terribly sad, ashamed and angry that human beings with all the creative energy and brilliance of science, could resort to use such weapons in order to inflict such pain and devastation on other human beings. I must mention too the irreversible damage and poisoning that nuclear weapons can wreak on the environment. Small island States in the Pacific and elsewhere, being very vulnerable, would be the first to be affected. There are serious concerns about the radioactive leakages from underground test sites in the Pacific. The United Nations Human Rights Committee has determined that nuclear weapons threaten the non-derogable right to life and that the designing, dumping, manufacture, possession and deployment of nuclear weapons are among the greatest threats to life today. The threat is compounded by the danger that actual use of nuclear weapons may be brought about, not only in the event of a war, but even through human or mechanical error or failure. May I also point out to over a hundred nuclear submarines that are becoming obsolete and there are no indications how their nuclear reactors are to be disposed.

16. Mr. President and Members of the Court, what we have before us, in terms of the arguments by the nuclear States and their allies, is a desperate rearguard action on their part to prevent what has to happen, that is the total elimination of nuclear weapons taking into account the aspirations of humanity, and humanity's abhorrence of these weapons. The world has changed in many important ways. Five countries cannot arrogate to themselves forever the exclusive privilege

of having their finger on the nuclear trigger. There are three nuclear powers in Europe alone. The United Kingdom is separated from France by a narrow channel, yet both countries are armed with nuclear arsenals. Who are their adversaries? Surely their weapons are not to deter or annihilate each other.

17. In the final analysis this absurdity of possession, use and threat of use is about power and about hanging on tenaciously to power, to the exclusion of others. The Court is being asked by the nuclear-weapon States, in essence, to perpetuate the right of these five countries to that power apparatus, even when the rest of humanity rejects the diabolical potential interest in nuclear weapons. If the laws of humanity and the dictates of the public conscience demand the prohibition of such weapons, the five nuclear-weapon States, however powerful, cannot stand against them. It is a perversion of the right of self-defence to invoke it in this case. The right to self-defence is not unlimited. It is subject to the fundamental principles of humanity. International law cannot be utilized to support State practices which deviate from fundamental principles and mainstream aspirations. Otherwise we would be legitimizing the principle that might is right and we would have to come to the frightening conclusion that international law is on the side of the powerful, as interpreted by the powerful.

18. The conclusion, earlier this year, of the Nuclear Non-Proliferation Treaty Extension and Review Conference has lent added importance and urgency to the issue before the Court now. The conference, while reaffirming the commitment of all parties to the ultimate elimination of all nuclear weapons, has set no time-limits for the achievement of this goal. Even before the ink was dry on the NPT extension, China and France resumed nuclear testing despite promises of "utmost" restraint. This, in a sense, frames the questions before the Court: on one side, the world community's universal abhorrence of weapons of mass destruction in general and nuclear weapons in particular; on the other, the fact that the persistence of large numbers of these weapons in the arsenals of the five powers continues to threaten life on earth. It is surely not an understatement to say that this places a heavy responsibility on this Court to render advisory opinions requested, for the benefit and guidance of all States and in defence of universal values, both legal and moral.

Mr. President, may I have the Court's permission to invite the Attorney-General of Malaysia

Dato' Mohtar to continue with the submission of Malaysia. I thank you Mr. President and Members of the Court.

United Nations General Assembly resolutions which conclude that the use of nuclear weapons is a crime against humanity and a violation of the United Nations Charter.

Resolution 1653 (XVI), Declaration on the Prohibition of the Use of Nuclear and Thermonuclear Weapons, United Nations General Assembly OR 16th Session, Supp. No. 17 at 14, United Nations Doc. A/5100 (1961).

Resolution on the Non-use of Force in International Relations and Permanent Prohibition of the Use of Nuclear Weapons, General Assembly res. 2936, United Nations General Assembly OR, 20th Session, Supp. 31 at 5, United Nations Doc. A/8730 (1972)(72 in favour, 4 opposed, 41 abstentions);

Resolution on Non-use of Nuclear Weapons and Prevention of Nuclear Weapons, General Assembly res. 33/71 B, 33 United Nations General Assembly OR, Supp. No. 45 at 48, United Nations Doc. A/33/45 (1978)(103 in favour, 18 opposed, 18 abstentions);

Resolution on Non-use of Nuclear Weapons and Prevention of Nuclear War, General Assembly res. 34/83 G, 34 United Nations General Assembly OR, Supp. No. 46, at 46, United Nations Doc. A/34/46 (1979) (112 in favour, 16 opposed, 14 abstentions);

Resolution on Non-use of Nuclear Weapons and Prevention of Nuclear War, General Assembly res. 35/152 D, 35 United Nations General Assembly OR, Supp. No. 51, at 64, United Nations Doc. A/36/51 (1981) (121 in favour, 19 opposed, 6 abstentions);

Resolution 37/100 C, Convention on the Prohibition of the Use of Nuclear Weapons, United Nations General Assembly OR, Supp. No. 51 at 83 (1982);

Resolution 38/75, Condemnation of Nuclear War, United Nations General Assembly OR, Supp. No. 47 at 69 (1983);

Resolution 39/63 H, Convention on the Prohibition of the Use of Weapons, United Nations General Assembly OR, Supp. No. 57 at 70 (1984);

Resolution 40/151 F, Convention on the Prohibition of the use of Nuclear Weapons, United Nations General Assembly OR, 40th Session, Supp. No. 53 at 90 (1985);

Resolution 41/60 F, Convention on the Prohibition of the use of Nuclear Weapons, United Nations General Assembly OR, 41st Session, Supp. No. 53 at 85 (1986);

Resolution 42/39 C, Convention on the Prohibition of the use of nuclear weapons, United Nations General Assembly OR, 42nd Session, Supp. No. 49 at 81 (1987);

Resolution 43/76 E, Convention on the Prohibition of the Use of Nuclear Weapons, United Nations General OR, 43rd Session, Supp. No. 49 at 90 (1988);

Resolution 44/117 C, Convention on the Prohibition of the Use of Nuclear Weapons, United Nations General Assembly OR, 44th Session, Supp. No. 49 at 80 (1989);

Resolution 45/59 B, Convention on the Prohibition of the Use of Nuclear Weapons, United Nations General Assembly OR, 45th Session, Supp. No. 49 at 71 (1990);

Resolution 46/37 D, Convention on the Prohibition of the Use of Nuclear Weapons (1991),
United Nations Doc. GA/8307 at 127;

Resolution 47/53 C, Convention on the Prohibition of the Use of Nuclear Weapons (1992),
United Nations Doc. GA/8470 at 112 (1993);

Resolution 48/76 B, Convention on the Prohibition of the Use of Nuclear Weapons (1993),
United Nations Doc. GA/8637 at 124 (1994);

The PRESIDENT: I thank you very much Ambassador Ismail Razali for your statement and I give the floor to His Excellency Abdullah Mohtar, Attorney-General of Malaysia and the Head of the Malaysian Delegation.

Dato' MOHTAR: 1. Mr. President, and Members of the Court, on behalf of the Malaysian delegation, I wish to thank you for the opportunity given to Malaysia to address this august bench. For me as a law officer this is indeed a great honour as well as an enriching and humbling experience. As a former judge of the High Court in my country, I understand only too well the heavy burden of responsibility that rests on your shoulders to do justice in these present proceedings. Mr. President, Members of the Court to do justice in our municipal court among individual persons is a difficult task. But it is surely more formidable, more difficult to do justice in the International Court among nations of the world. But however difficult the task may be, justice must be done. As the Latin maxim says "Let justice be done though the heavens fall." Malaysia is confident that this Court, in giving the required advisory opinion, will indeed do justice to the nations of the world. Justice will be done, the heaven will not fall. Far from it, Mr President, the world will, in fact, be saved if the nations of the world, especially the nuclear power States heed the advice that we pray you will give.

Mr. President and Members of the Court, my colleague, Ambassador Tan Sri Razali in his capacity as an international diplomat and as Malaysia's Permanent Representative to the United Nations has reminded us of the compelling reasons why this Court should give the advisory opinion sought by the majority of nations of the United Nations and also of the Non-Aligned Movement. Perhaps, because of the strong stand taken by Malaysia in advancing this anti-nuclear weapons cause, some critics may once again raise the oft repeated objections that the questions in issue are political, not legal; that they are dressed in juridical clothes and that the Court is being used for political purposes. Ambassador Tan Sri Razali has succinctly replied that many questions have political dimensions; the more weighty the legal question, as in this case, the more likely it is to be vested with political significance.

2. Permit me, Mr. President and Members of the Court, to elaborate. Sir Gerald Fitzmaurice,

in his book *The Law and Procedure of the International Court of Justice*, observed that:

"If the question put to the Court is in itself a legal question, the fact that it has a political element is irrelevant."

This view is also reflected in the opinion of the dissenting Judges in the 1974 *Nuclear Tests* case as follows:

"This conclusion cannot, in our view, be affected by any suggestion or supposition that, in bringing the case to the Court, the Applicant may have been activated by political motives or considerations. Few indeed would be the cases justiciable before the Court if a legal dispute were to be regarded as deprived of its legal character by reason of one or both parties being also influenced by political considerations. Neither in contentious cases nor in requests for advisory opinions has the Permanent Court or this Court ever at any time admitted the idea that an intrinsically legal issue could lose its legal character by reason of political considerations surrounding it." (Per. Onyeama, Dillard, Jiménez de Aréchaga and Sir Humphrey Waldock in *Nuclear Tests (New Zealand v. France)*, *I.C.J. Reports 1974*, p. 518.)

3. Mr. President and Members of the Court, in a speech delivered before the General Assembly of the United Nations on 25 October 1985, the then President, Judge Nagendra Singh, referring to one of the means of development of the rules of international law has this to say:

"The second means which I wish to mention is derived from the process of the application and interpretation of law, commonly known as jurisprudence or case law. While the International Court of Justice is not the only body to hand down decisions embodying the principles of international law, it is certainly the most representative of the world community in all its diversity. It is indeed the duty of those who elect its Members to ensure that this is so. Its decisions belong to the Organization no less than those of the other principal organs, and as the judicial arm of the United Nations it is also the most authoritative propounder of the law. The Court does not, however, make, still less anticipate, the law. Its Members are not, like poets, the unacknowledged legislators of mankind. At most they may declare which litigant speaks the more authentic legal prose."

Judge Nagendra Singh also observed:

"And so the law of international relations grows in strength and scope by a symbiosis of diplomacy and adjudication which nobody can properly appreciate if he or she remains mesmerized by the simplistic notion of politics and law as antipoles. On the contrary, the law made by treaties is a law made by political decisions, the law codified in conventions is a law confirming the *opinio juris* of political entities, while the law of custom registers the regularity of State conduct. But in all three the keynotes are balance and reconciliation, tolerance and mutual regard; in a nutshell, the evidence that politics can, and must transcend the partisan, the provisional and the parochial.

To achieve peace and progress, in other words, States have to rise above their immediate ambitions, and, it may be, sacrifice not their sovereignty - not that at all but some transient self-interest in order to promote the common interests of all. Where they fail in this, they must also fail to create the law on which harmony must rest." (*The*

4. The International Court of Justice is the principal judicial organ of the United Nations with the Statute of the Court constituting an integral part of the Charter. It is well-known that the Court has two major functions, one of which is to render advisory opinions. Mr. President, in your treatise entitled *The New World Order and the Security Council: Testing the Legality of its Acts* you opined as follows:

"It is a drawback of this approach to concentrate solely on the Court's contentious function and to overlook the possible development of the resources of its advisory function, ... Suffice it to say for the present that the Court's advisory activity must not be neglected: it is of capital importance from the viewpoints both of development of the law and the proper functioning of international organizations and even, more indirectly, from that of the peaceful solution of international disputes. But on the one hand it is by definition virtually impossible to predict with any certainty the frequency and importance of the requests for advisory opinions which the United Nations and specialized agencies will submit to the Court; on the other hand it is, conversely, possible to foresee a certain overall stability for that function, answering needs that can reasonably be described as constant."

Again may I refer to your comments, Mr. President, at page 22 of the said Treatise:

"Despite the challenges made by various States to the competence of the International Court of Justice to interpret the Charter and review legality, the Court has nevertheless been able to concern itself with those questions, either because majorities have sometimes been found to request of it an advisory opinion or because it has had occasion in the context of certain cases to pronounce *en passant* on the meaning of this or that Article of the Charter or on the validity of such and such a resolution. But in all instances it has performed its office with a discretion that some may consider excessive. On the other hand, this noted restraint on the part of the Court contrasts, more markedly in this domain than in others, with the boldness and vigour displayed in the same circumstances by the minority Judges penning dissenting opinions."

Referring to the question of the Court's alertness to the need for the actions of the United Nations to succeed, Mr. President, you continued as follows:

"Discretion, measure, modesty, restraint, caution, sometimes even humility, such appears to be the general keynote of the Court's conclusions when it has had occasion to deal with the interpretation of the Charter or to review the legality of the acts of organs. But this attitude has not prevented the Court from achieving results. In fact the Court has made some spectacular breakthroughs and enabled the law of the United Nations to take substantial steps forward, by for example asserting the legal capacity and international personality of the Organization and providing support for the theory of the 'implied' or 'implicit' powers of the political organs. Generally speaking, the Court views its advisory function as a means of 'assisting' the political organ that has turned to it for advice, by taking into account its preoccupations or difficulties of the moment and by selecting, from all possible interpretations of the Charter, the one which best serves the actions and objectives of the political organ concerned. In this regard the Court can truly be said to follow a very responsible 'policy'".

5. Mr. President and Members of the Court, you have already heard the succinct and able submissions by the representative of Egypt that in rendering an advisory opinion in relation to the question before the Court, the Court is acting in consonance with the function vested in it under Article 65 of the Statute of the Court. In order to avoid repetition I would like to humbly associate myself with these cogent reasons particularly in relation to the submission that there exists "compelling" reasons for the Court to exercise its advisory function in pursuance of the objective of the Charter.

6. One of the major and most obvious differences between the United Nations Charter and the Covenant of the League of Nations lies in the significance attached to the question of disarmament. In the oft quoted case of *Certain Expenses of the United Nations*, the Court, in the light of arguments before it, had the occasion to examine the respective functions of the General Assembly and the Security Council under the Charter, particularly with respect to the maintenance of international peace and security. The Court *inter alia* opined that under Article 24 of the Charter the Security Council has primary but not exclusive responsibility for the maintenance of international peace. Under Article 11, paragraph 1, the General Assembly may discuss any questions relating to the maintenance of international peace and security brought before it by any Member of the United Nations and, except in the solution prescribed in Article 12, the General Assembly may make recommendations with regard to any such solutions. This ascription of function to the General Assembly substantiates the validity of the question that is now placed before the Court in that the question relates to the existing practice of nuclear-weapon States of threatening to use nuclear weapons and the existing policies of these States to use such nuclear weapons. It has been tenuously argued in the submissions made before this Court by the representative of France on 1 November 1995 that the question is so absurd that it may well have to be reconstructed. With due respect, Mr. President and Members of the Court, there is no necessity to engage in an exercise of semantics for I am very certain that the self-same arguments would be raised by France if the questions were to be rephrased in any other way. After all the objections by France, although made with legal reasons, are also highly political in nature especially in the light of the present nuclear testing conducted by that State.

7. The question that the Court is requested to address is whether a State can use nuclear weapons when it has to resort to force in self-defence. I would invite the Court's attention to the first, third and fourth preambular paragraphs of the United Nations Charter. Though resolutions of the General Assembly may not be binding it becomes prescriptive especially when it dwells on subjects dealt with by the United Nations Charter. The obvious example is the Universal Declaration of Human Rights.

8. Nuclear weapons being weapons of mass destruction *par excellence* render their use illegal not based on the circumstances in which they are used but on the fact that the very nature of the weapons is such that any use would violate international law. The risk of the use of nuclear weapons is not confined to intentional use. The United Nations Human Rights Committee has warned of "the danger that the actual use of such weapons may be brought about, not only in the event of war, but even through human or mechanical error or failure". It has also noted that nuclear weapons "absorb resources that could otherwise be used for vital economic and social purposes, particularly for the benefit of developing countries" (United Nations doc. A/39/644; CCPR/c/21/Add.4).

9. Mr. President, Members of the Court, although my colleague, Ambassador Tan Sri Razali, has dealt with the threat to the non-derogable right to life, please permit me to re-emphasize this very important issue. The United Nations Human Rights Committee, which supervises the implementation of the International Covenant on Civil and Political Rights, has determined that nuclear weapons threaten the non-derogable right to life. The designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today. The threat is compounded by the danger that the actual use of nuclear weapons may be brought about, not only in the event of a war, but even through human or mechanical error or failure. Furthermore, the very existence and gravity of this threat generate a climate of fear and suspicion between States, which undermines the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the International Covenant of Human Rights. In other words, Mr. President and Members of the Court, nuclear weapons both threaten the right to life and contribute to the spirit of

mistrust among nations, compounding the likelihood of threats being carried out. Moreover, the threat to use nuclear weapons conflicts with the commitment to provide children and families with the protection of society and the State.

10. The right to life is enshrined as well in the European Convention for the Protection of Human Rights and Fundamental Freedoms and also in the American Convention on Human Rights. Under these Conventions, a derogation clause may be invoked in exceptional situations that threaten the life of the nation. However, the right to life is one of the four non-derogable rights which constitute the "irreducible core" of human rights. A non-derogable right is one that cannot be suspended by the State, even in times of public emergency. Moreover, according to you, Mr. Vice-President, matters affecting international human rights obligations cannot be regarded as exclusively within the domestic jurisdiction of a particular State:

"Once a State has undertaken obligations towards another State, or towards the international community, in a specified sphere of human rights, it is no longer entitled to maintain, vis-à-vis the other State or the international community, that matters in that sphere are exclusively or essentially within its domestic jurisdiction and outside the range of international concern." (*Human Rights in the World Court, Justice In International Law: Selected Writings of Judge S. Schwebel*, p. 157.)

Therefore, the manufacture, possession, deployment and threat of use of nuclear weapons, which violate the right to life, cannot be defended by nuclear-weapon States on the grounds that they are essential for the defence in times of public emergency or as matters of domestic jurisdiction.

11. It has been contended that the use of nuclear weapons is not prohibited by any treaty. The law of war is reflected not only in treaties but also in the practice of States which have gradually obtained universal declaration. The international community has formally passed definitive legal judgment on nuclear weapons in three forms:

- (a) Firstly, a lengthy series of United Nations General Assembly resolutions have confirmed the illegality of any use of nuclear weapons. (A schedule of General Assembly resolutions has been attached in the written reply of my learned colleague, Ambassador Tan Sri Razali.)
- (b) Secondly, worldwide scholarly opinion has supported the prohibition of nuclear weapons.
- (c) And thirdly, civil society has widely expressed its abhorrence of nuclear weapons by way of "dictates of public conscience".

12. The Court is requested to give regard to the following instruments. The fact is that, long before the codification of the laws of war in such instruments as the Hague and Geneva Conventions and Protocols, solemn prohibitions against the use of certain types of weapons and ammunition were enacted in many parts of the world. These include, and may I list them all, Mr. President and

Members of the Court:

- (a) The Lieber Code of 1863;
- (b) The Declaration of St. Petersburg of 1868;
- (c) The Hague Conventions of 1899 and 1907;
- (d) The Hague Rules of Air Warfare of 1923;
- (e) The Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare of 1925;
- (f) The Resolution on the Protection of Civilian Populations Against Bombing from the Air in Case of War of 1938;
- (g) A Draft Convention for the Protection of Civilian Populations Against New Engines of War, adopted by the International Law Association in 1938;
- (h) The Nuremberg Charter of 1945;
- (i) The four Geneva Conventions of 1949, which included Convention No. 4 Relative to the Protection of Civilian Persons in Time of War;
- (j) The Draft Rules for the Limitation of the Dangers Incurred by the Civilian Population in Times of War, adopted by the International Committee of the Red Cross;
- (k) The Resolution on Protection of Civilian Populations Against the Danger of Indiscriminate Warfare, again adopted by the International Committee of the Red Cross in 1965;
- (l) The Resolution on Human Rights in Armed Conflict of 1968; and, finally,
- (m) The Resolution on the Distinction Between Military Objectives and Non-Military Objectives in General and Particularly the Problems Associated with Weapons of Mass Destruction of 1969.

13. Thus, Mr. President and Members of the Court, there exist customary international norms that prohibit the use of any weapon or tactics having the properties of nuclear weapons. There are several resolutions of the United Nations General Assembly which, though framed as general principles, provide consolidation of norms. For example, resolution 1653 (XVI) of 1961 which recalled the United Nations determination to protect succeeding generations from the scourge of war went on to declare:

- "(a) that the use of nuclear weapons is contrary to the spirit, letter and aims of the United Nations and, as such, a direct violation of the Charter of the United Nations;
- (b) that their use would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind and civilisation and, as such, is contrary to the rule of international law and to the laws of humanity; and
- (c) that their use in a war is directed not against an enemy or enemies alone but also against mankind in general".

14. There are several resolutions of the General Assembly, the most notable being the resolution on prohibition of the use of nuclear weapons for war purposes, which declare the illegality of the use of nuclear weapons. In 1991, Mr. President, the General Assembly passed resolution 46/37D - the Convention on the Prohibition of the Use of Nuclear Weapons. Such resolution is demonstrative of the view that has grown into an overwhelming majority. State practice requires "some degree of uniformity"¹ rather than complete uniformity. Over 170 States do not have nuclear weapons or policies of threat of use of nuclear weapons. Only five States have both nuclear weapons and declared policies based on the threat to use them. The general practice, therefore, is not to possess nuclear weapons or develop policies based on the threat of their use. Resolution 1653, however, was a declaration and, as such, was an assertion of the law. Schachter, in his lecture on *The Crisis of Legitimation in the United Nations*, notes that "the authority of the General Assembly to adopt such declaratory resolutions was accepted from the very beginning"². Sloan, in his book *United Nations General Assembly Resolutions in Our Changing World*, 1991, observes that this declaratory function

"may be considered either inherent in the position of the General Assembly or acquired by over 45 years of practice ... It is now consecrated beyond any rational challenge or dispute"³.

15. The overwhelming majority of States do not possess or deploy nuclear weapons. The practice and belief of a minority, albeit a powerful one, does not create custom. History is full of

¹Malcolm N. Shaw, *International Law*, p. 65.

²Shachter, Alf Ross Memorial Lecture, *The Crisis of Legitimation in the United Nations*, *Nordisk Tidsskrift for International Ret: Acta scandinavica juris gentium*, Vol. 50 (1981), p. 16.

³Sloan, *United Nations General Assembly Resolutions In Our Changing World*, 1991, p. 46.

examples, Mr. President, of States acting in violation or ignorance of the law, particularly in the area of national security. The notion and claim that because a State does something it must be legal is a novel but highly questionable contribution to jurisprudence. The General Assembly resolutions declaring the use of nuclear weapons unlawful represent State practice in the interpretation of the laws of war. Although they are not binding in the sense that a treaty is, they provide proof of international community standards and commitments, and the frequent reaffirmation of these standards underscores their importance. There are several representations that advance the view that since there is no treaty specifically prohibiting the use of nuclear weapons therefore it implies that there is no such prohibition. Treaties which recognize and regulate nuclear weapons such as the Treaty on the Non-Proliferation of Nuclear Weapons only presume the existence but not the legality of nuclear weapons. A State which initiates an illegal armed conflict is not exempt from the standards of international humanitarian law even though it violated international law in the first place. The resolution regarding weapons of mass destruction in outer space, that is the United Nations General Assembly resolution 1884 (18) adopted by the United Nations General Assembly by acclamation on 17 October 1963, "solemnly calls upon all States to refrain from placing in orbit around the earth any objects carrying nuclear weapons or any weapons of mass destruction". It would indeed be a strange argument - and I dare say a preposterous and absurd argument - that by singling out outer space for a prohibition on the siting of weapons of mass destruction this resolution would "legalize" the siting or use of weapons of mass destruction on earth. None of the treaties regulating nuclear weapons sanctions the use of these weapons.

16. Mr. President, Members of the Court, it has been argued that military necessities or military advantage of using nuclear weapons is justifiable irrespective of the unnecessary suffering it might cause. Unnecessary suffering is inherent in the nuclear weapon itself. It is not just another weapon. Nuclear weapons are by their very nature weapons of mass destruction. It has also been argued that there can be precise targeting of a military objective with a nuclear weapon, that there can be a surgical weapon that will not cause widespread indiscriminate destruction of civilian and the environment. This is indeed a fallacious argument which is totally absurd. The Treaty of Tlatelolco defines nuclear weapons as "any device which is capable of releasing nuclear energy in an

uncontrolled manner and which has a group of characteristics that are appropriate for warlike purposes". In the context of nuclear weapons the so-called proportionality and necessity principles cannot apply at all. If a weapon is inherently in violation of the Martens Clause, that is, if it is a weapon incompatible with the laws of humanity and the dictates of public conscience, its use cannot be justified on grounds of proportionality, military necessity, self-defence, reprisal, deterrence, or any other principle.

17. Mr President and Members of the Court, the issue at hand is whether nuclear deterrence has contributed significantly to world peace. The case for nuclear deterrence rests on the assumption that Governments, like individuals, act rationally and would not therefore make a deliberate decision that could lead to nuclear war. These assumptions are erroneous. The Korean and Gulf Wars are good examples of irrational decision-making by Governments. Like individuals the Government can fall prey to ideological and psychological imperatives which override the long-term interests of the country. On the other hand, a nuclear strike while being inhuman and illegal, may appear to be rational in certain circumstances, as when a nuclear State aims at a quick victory over a non-nuclear State. The atomic bombing of Hiroshima and Nagasaki by the United States secured Japan's immediate surrender, despite the fact that Japan was already on the verge of surrender. There are many studies being made, the latest being one by Alperovitz, *The Decision to Drop the Atomic Bomb and the Making of an American Myth*, 1995.

18. Mr. President, Members of the Court, in addition, the possession and deployment of nuclear weapons creates conditions for the use of nuclear weapons by miscalculation or accident. The possibilities of miscalculations are heightened by the very nature and postulated value of deterrence. In order for deterrence to work, an adversary must be led to believe that the enemy would indeed use its nuclear weapons. In a period of severe tension, a nuclear State would be under pressure to increase the threat or to use nuclear weapons in order to prove that the threat is not hollow.

Mr. President, Members of the Court, allow me to quote from the Chairman of the Joint Chiefs of Staff as stated in the United States Department of the Army's doctrine for joint nuclear operations:

"Although nations possessing weapons of mass destruction have largely refrained from using them their continuing proliferation and the means to deliver them increases the possibility that someday a nation may, through miscalculation or by deliberate choice, employ those weapons. This assumption does not rule out the possibility that an opponent will be willing to risk destruction or disproportionate loss following a course of action based on a perceived necessity, whether rational or in a totally objective sense. In such cases, deterrence, even based on the threat of massive destruction, may fail." (Chairman of the Joint Chiefs of Staff, *Doctrine for Joint Nuclear Operations*, US Department of the Army, 29 April 1993.)

19. The policies of nuclear deterrence espoused by the five declared nuclear-weapon States continue to stimulate the nuclear ambitions of other countries, thereby increasing overall instability. The United Nations General Assembly has consistently recognized this instability and has repeatedly called for the elimination of nuclear weapons.

20. The United Nations General Assembly recognized the inhumanity of nuclear armaments in 1961 when it declared that the use of nuclear weapons would constitute a crime against mankind. Nuclear weapons also violate fundamental principles of humanity because they are anti-ethical to any conception of human dignity. *Jus cogens* rules are grounded in morality reflecting elementary considerations of humanity, fundamental human rights and the dignity and worth of the human person. Nuclear weapons are therefore intrinsically immoral because they deny the values upon which society has been built. Even a nuclear war between two isolated small States would cause social, political, economic and environmental devastation of vast proportions that would transcend to neighbouring States. There are assertions that nuclear weapons cannot be considered illegal *per se*. We have repeatedly heard such assertion being made in this Assembly. Proponents of this position would argue that while certain use of nuclear weapons such as first strike might violate *jus cogens* mere possession would not. If nations were allowed to develop nuclear weapons in the future based on their right to possession the danger of use intentionally or accidentally would remain. It has been asserted that mere possession of nuclear weapons would not produce the horrors associated with use and thus possession in itself is not illegal *per se*.

21. Mr. President and Members of the Court, May I in winding up my submission be permitted again to refer to Judge Nagendra, this time in his address of welcome delivered on the occasion of the visit of His Holiness Pope John Paul II to this International Court of Justice on 13 May 1985. Referring to the year 1986 then being proclaimed as the Peace Year, the year of

peace, the then President said:

"But of course, every year should be Peace Year: every moment an occasion for the pacific resolution of differences. As the principal juridical organ of the United Nations which it became in 1945, the International Court of Justice has its appointed part to play to that end. By its very nature, it is intended to encapsulate a worldwide range of legal doctrines, all with their distinctive outlooks upon matters of sovereignty, diplomacy and public law, and to epitomize, by striving towards common decisions as to that is right and fair, the ultimate capacity of nations in the modern world to arrive at a common understanding, however arduous the road and however remote from each other the points of departure."

He ended his speech with this insightful and prophetic plea:

"Would that swords alone were the instruments of death in men's hands today! It is, alas, now a common place that armed conflict can destroy the world. None but Pyrrhic victories remain. Yet how much closer must we be driven to the brink of Armageddon before the weapons of annihilation are put aside, and the leaders of humanity endeavour by patient dialogue to establish a world order that will preserve their common environment and protect the common man? Indeed, we must fervently hope for that time, when, as the prophet concluded, 'nations shall not learn war any more'. And in this connection I should stress that there is no more important task before humanity than to prevent nuclear war catastrophe because it is necessary to fight against war before it has started.

Where should humanity look for guidance at such time of deep crisis if not to the spiritual leaders of whom you are one? 'In the darkest hours of your existence, seek the wisdom and shelter of the sages' is what is ordained in my scriptures, and Your Holiness is indeed a sage of our times. We Members of the Court sitting upon this bench are appointed solely to deal with concrete problems or to advise on specific questions. But we try to do so in the light of the several principles of justice and equity, hoping on each occasion to clarify and advance the

application of a law acceptable to all nations. To that extent our work represents a moral, if not a spiritual endeavour." (*The International Court of Justice*, ICJ The Hague 1986, Third Ed., pp. 139-140.)

22. Mr. President and Members of the Court, you are our sages, you are our saviours. In the present time of darkness and deep crisis when the world is under the nuclear sword of Damocles, the nations of the world seek the wisdom and shelter of its sages, that is, you the wise Judges of the World Court in this Great Hall of Justice in this great Peace Palace. We await your answers to the questions posed, and have the fullest confidence that, despite scepticism by many eminent commentators of international law, this Court will positively respond to the collective cry for help from the world community.

23. Mr. President and Members of the Court, we have just heard members of the Japanese delegation spelling out in graphic detail the horrors and devastation in Hiroshima and Nagasaki. We have seen pictures presented by them - as they say, one picture speaks a thousand words, and several of their pictures speak millions and millions of words. However, Mr. President, Members of the Court, please allow me to add a few short words as an epilogue to this tale of horror of a nuclear devastation. Permit me to make certain references to the views expressed by our own medical expert Dato' Dr. McCoy, a member of the Malaysian delegation in relation to the health and environmental effects of the use of nuclear weapons. They are briefly as follows:

"It is in the nature of nuclear weapons to cause immediate, indiscriminate mass destruction and delayed, long-lasting, life-destroying radiation of survivors, resulting in an overwhelming medical catastrophe.

The Constitution of the World Health Organization (WHO) endows and entrusts it with the central task and responsibility of promoting and protecting the health of humanity. Therefore, it follows that the World Health Organization has a moral and humanitarian duty to question the legality of such weapons of mass destruction, knowing full well that biological and chemical weapons have been proscribed.

A similar ban on nuclear weapons holds out the only reasonable hope of protecting humanity against the eventuality of annihilation and of having health systems irretrievably disrupted and destroyed. Another authoritative study, by the International Physicians for the Prevention of Nuclear War (IPPNW), winner of the 1985 Nobel Peace Prize, describes the medical effects of nuclear explosions as follows:

'Our understanding of the potential human devastation of a single nuclear bomb is rooted in the terrible experience of Japanese citizens in Hiroshima and Nagasaki. But the weapons used in 1945 were tiny in comparison to most of the tens of thousands of warheads that still remain in today's nuclear arsenals, even if all of the START and 1991/1992 initiatives to reduce the superpowers' nuclear arsenals are fulfilled. A

single modern weapon, exploded either intentionally or accidentally over a large city, is capable of slaughtering more than one million people. If a larger number of weapons are exploded in warfare, the overall consequences will include not only short- and medium-term medical injuries but also severe environmental effects, disruption of transportation and the delivery of food, fuel and basic medical supplies, and possible famine and mass starvation on a global level.'

According to a summary of the 1986 Report on the Medical Implications of Nuclear War, published by the Institute of Medicine of the United States National Academy of Science,

'Each successive study of the possible human destruction that would result from a nuclear war draws a grimmer conclusion about what the human cost would be. Instead of speculating that the casualties might amount to only a few tens of millions, recent studies have indicated that the casualties are more likely to number a billion or more, and even the survival of human beings on earth has been questioned.'

In 1986, the United Nations General Assembly observed that the

'climatic effects of nuclear war pose an unprecedented peril to all nations even those far removed from the nuclear explosions which would add immeasurably to the previously known dangers of nuclear war, without excluding the possibility of all the Earth being transformed into a darkened, frozen planet, where conditions would be conducive to mass extinction'.

Although it is now extremely unlikely for a 'nuclear winter' to occur, nevertheless these environmental projections convey some idea of the severity and duration of the effects of nuclear war on the human and natural environment and, as a consequence, on the health and well-being of humankind itself."

24. Mr. President and Members of the Court, in conclusion, permit me to refer to the recent declaration of Judge Oda. While fully supporting the Order which dismissed New Zealand's request to reopen the *Nuclear Tests Case (New Zealand v. France)*, Judge Oda expressed his personal hope as follows:

"But, as the Member of the Court from the only country which has suffered the devastating effect of nuclear weapons, I feel bound to express my personal hope that no further tests of any kind of nuclear weapons will be carried out under any circumstances in future."

25. Mr. President and Members of the Court, this Court can turn Judge Oda's hope into reality by taking the bull by its horn, by giving the advisory opinion that we all seek. Malaysia fervently hopes that the advisory opinion of the International Court of Justice will become the beacon that will guide the international community to the nirvana of a nuclear-free world!

26. Mr. President, Members of the Court, my delegation and I wish once again to express our

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deepest gratitude for the kind indulgence you have shown us during our oral submissions. May Almighty God bless all of you. Thank you.

The PRESIDENT: I thank His Excellency Mr. Dato' Mohtar Abdullah, Attorney-General of Malaysia for his statement. That statement put an end to the oral exposé made on behalf of Malaysia. There is no speaker in my list for tomorrow, therefore, the public hearings are adjourned until Thursday next at 10 a.m.

The Court rose at 1 p.m.
