

**Written Statement of the Government of the Russian Federation**

## Considerations of the Russian Federation in connection with the request of the World Health Organization to the International Court of Justice concerning nuclear weapons

The request of the World Health Organization to the International Court of Justice concerning an advisory opinion on the question whether the use of nuclear weapons by a State in war or other armed conflict would be a breach of its obligation under international law including the WHO Constitution creates a whole complex of legal problems that in their totality give rise to doubts as to whether the step taken by the WHO is well founded.

Hereafter follow considerations of the Russian Federation grouped in paragraphs.

1. Though as a UN specialized agency the WHO has a right to request advisory opinions of the International Court of Justice, this right is granted to it only in regard to the legal questions, arising within the scope of its competence (Article 96, paragraph 2 of the UN Charter, Article 76 of the Constitution of the WHO and Article X, paragraph 2 of the Agreement between the UN and the WHO).

In the WHO Constitution, which incidentally was adopted after the appearance of nuclear weapons, among the provisions dealing with the principles, purposes and functions of the WHO and thus determining the framework of its competence there is none that would give the WHO grounds to tackle the question of legitimacy or non-legitimacy of the use of nuclear weapons or to submit this question to the International Court of Justice.

Almost 50 years of international practice and relevant international agreements show that it is the competence of political international fora which is evolved in the given as well as in other questions concerning nuclear weapons, first of all that of the UN and some regional as well as bilateral mechanisms.

Hence the World Health Organisation having addressed the International Court of Justice acted *ultra vires* and the International Court of Justice would not be empowered to consider *bona fidae* the request of the WHO on its merits since the actions of the international organization undertaken in breach of its powers cannot create legal consequences for achievement of which such actions were directed (*ex injuria jus non oritur*).

2. At the same time, irrespective of what opinion the International Court of Justice might come to with regard to the competence of the WHO to address the Court with the above mentioned request, the Court is not bound to give an answer of substance in the form of an advisory opinion. Article 65 paragraph 1 of the Statute of the Court reads that the Court "may give" such an opinion which means that it may also not do that.

One of the predetermining reasons for a Court's decision not to deliver an advisory opinion on the question submitted by the WHO is the prevalence in this question of political component, which in essence makes the question void of a legal character, and

in accordance with Article 96 of the UN Charter and Article 65 of the Statute of the Court only legal questions can be the subject of an advisory opinion.

Inherent political character of the problem is built in the very nature and purpose of nuclear weapons, which have never been used in the numerous armed conflicts of the post-war period, i.e. from the moment when the UN Charter and Statute of the International Court of Justice came into force.

It follows that nuclear weapons are considered - and it is confirmed by inter-state acts and official doctrines and statements of the states - not so much as a means of armed struggle in a war but as a factor of deterrence of war, particularly of a global conflict and as such unlike other weapons fulfill a political function in the modern world.

3. Putting aside the above considerations, which from the legal point of view deligitimize the question submitted by the WHO as a subject for an advisory opinion of the International Court of Justice, one cannot but see that in its essence the question of legitimacy of the use of nuclear weapons does not exist in isolation but in a whole complex of other questions concerning these weapons.

Positive international law in force accepts the fact of existence of nuclear weapons. There is a wide range of international norms aimed at non-proliferation, non-deployment, limitation, reduction of nuclear weapons, prevention of their testing and other forms of control of nuclear weapons. There is a large number of effectively functioning international instruments both multilateral and bilateral dealing with this subject, including well-known bilateral agreements on the prevention of nuclear war. The question of legitimacy or non-legitimacy of the use of nuclear weapons as a whole is not regulated by international law. As shown by numerous reservations of states parties to the Additional Protocol I to the Geneva Conventions for the Protection of Victims of War of 1949 the same should be said with regard to the sphere of laws and customs of war and international humanitarian law.

Moscow,

June 7, 1994