

Written Statement of the Government of Sweden

The Government of Sweden has been invited by the International Court of Justice to submit a statement on the question raised in a request for an advisory opinion submitted by the World Health Organization and referred to in the International Court's letter dated 14 September 1993.

Also the Swedish Parliament has taken an interest in the matter. On the initiative of a number of members, the Standing Committee on Foreign Affairs of the Parliament has made an analysis on International Law and Nuclear Arms, included in its Annual Report on Disarmament.

In the Report, which was approved by the Parliament on 2 June 1994, the Standing Committee concludes that the Government, in its reply to the International Court of Justice, should make it clear that the use of nuclear arms would not be in accordance with international law.

The Government of Sweden has taken due note of the decision of the Parliament and hereby submits to the International Court of Justice a translation of the relevant parts of the Report as its answer to the question put by the ICJ.

Unofficial Translation

Extracts from the Report of the Swedish
Parliamentary Standing Committee on Foreign Affairs
(1993/94:UU19)

Nuclear Weapons and International Law

As pointed out in several of the motions, attention was drawn to the question of the legality of the use of nuclear weapons when, at its meeting in May 1993, the WHO decided by a substantial majority, to request a statement by the International Court of Justice in the Hague as to whether the use of nuclear weapons was in compliance with international law. According to those who have presented these motions, the Swedish Government should make it clear in a statement to the International Court that the use of nuclear weapons does not comply with international law.

The Committee has discussed the question of nuclear weapons and international law before on several occasions. This was the case, for example in the most recent disarmament report (Report 1992/93:UU19) which was occasioned by a Social Democratic motion (1992/93:U404 (s*)) which requested i.a. that Sweden should present a proposal in the United Nations under which the use of nuclear weapons would be declared illegal.

A prohibition of the use of nuclear weapons and the closely linked question of non-first-use have been on the agenda of international disarmament forums (including the UN General Assembly) for a great many years, but no progress has been possible in matters of substance. Instead, in the nuclear disarmament process which has finally commenced, the major nuclear weapon powers have now decided on a method involving gradual reductions in their arsenals. The Committee considers it important that these efforts, which have resulted in tangible progress, receive support and encouragement.

2

Thus, the Committee considers that Motion U403 (s*), Petition 18, and Motion U409 (fp*), Petition 3, have been answered.

In his speech to the United Nations General Assembly on the occasion of the UN 40th Anniversary in 1985, the Prime Minister, Mr Palme, raised the question of the use of nuclear weapons. Amongst other things, he said that "We should consider the possibility to prohibit in international law the use of nuclear weapons, as part of a process leading to general and complete disarmament."

In an address to the Special Session of the United Nations General Assembly on Disarmament held in the summer of 1988, the Prime Minister, Mr Carlsson, once again raised the idea of the prohibition of the use of nuclear weapons previously proposed by Sweden. In this context, he recalled the restrictions which already apply under international law as regards the use of nuclear weapons. He also stated that the Swedish Government considered that the conclusion of an agreement prohibiting the use of nuclear weapons would be of considerable importance. At the same time, Ingvar Carlsson emphasized that an agreement of this nature must be supported by concrete disarmament measures in every area, including both nuclear and conventional weapons.

The Committee wishes to express, once again, its support for measures which may prevent the use of nuclear weapons. The question which the WHO posed to the International Court of Justice in the Hague concerns the content of current, applicable international law, but it will obviously have a political effect. Like other member states, Sweden has been given an opportunity to present its views in this question of law. The Committee presumes that the Government will take advantage of this opportunity.

The Committee notes that, as mentioned earlier, Sweden has unambiguously declared that restrictions exist under international law as regards the use of nuclear weapons.

A principle has existed in international law ever since the turn of the century, under which belligerents do not have an unrestricted right to choose weapons or methods of combat. In the Committee's opinion, the use of nuclear weapons would be restricted by the principles of distinction and proportionality under customary international law.

Under the principle of distinction, an attack on a civilian population or civilian property is prohibited. In the case of an attack on a military target, disproportionately substantial damage may not be inflicted on the civilian population or on civilian property.

The Committee notes that a principle of proportionality is embodied in the law of the UN Charter. Reprisals which are disproportionate in comparison with the provocation which preceded them are prohibited. It would be difficult to regard this principle as consistent with the use of nuclear weapons in retaliation against an attack using conventional weapons.

In the Committee's opinion, the Government should therefore make it clear in its reply to the International Court of Justice that the use of nuclear weapons does not comply with international law. This should be conveyed to the Government.

Hence, the Committee proposes that the Parliament, in view of Motion U403 (s*), Petition 17, and Motion U415 (s, fp, c, kds, v*), should inform the Government that it confirms the Committee's view.

The Committee notes that, in exercising its advisory functions, the International Court of Justice shall be guided by the provisions of its Statute in disputes in so far as it recognizes them to be applicable (Statute of the International Court of Justice, Chapter IV, Article 68). The provisions referred to appear in Chapter II, Article 38, Sub-section 1 of the Statute which reads as follows:

4

"The Court, whose function is to decide in accordance with international law such disputes as are submitted to it shall apply:

- a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;
- b. international custom, as evidence of a general practice accepted as law;
- c. the general principles of law recognized by civilized nations;
- d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

(Article 59 states that the Court's decisions are only binding on the parties in dispute and as regards the case which has been adjudged.)

The Committee presumes that, in preparing its response to the International Court, the Government will scrupulously observe what can be adduced from the above guidelines presented in Article 38 of the Statute as regards why, in view of the medical and environmental effects of these weapons, the use of nuclear weapons in warfare or in other forms of armed conflict should constitute a breach of the obligations under international law, including the WHO Charter, of a state employing such weapons.

The Committee is aware that there are different opinions about what may constitute a basis under international law for a decision concerning the use of nuclear weapons. In this context, the Committee would like to draw the Government's attention to certain arguments - in addition to those already presented - which have been raised in the international debate by specialists in international law and which draw the conclusion that the use of nuclear weapons would be a breach of international law. These arguments primarily involve what may be characterized as general, fundamental legal principles, recognized by civilized nations.

- * The Hague Conventions stipulate that the territories of neutral states are inviolable. Radioactive fallout, and other effects of the use of nuclear weapons in armed conflicts, do not stop at the frontiers of neutral states, however. As a result, in most cases the use of nuclear weapons would mean a breach of these conventions.
- * The use of weapons which cause unnecessary suffering must be considered to be prohibited. The codification of the prohibition of dum-dum bullets was undertaken in accordance with this view, for example. The effects of radioactive radiation as a result of the use of nuclear weapons cause unnecessary suffering, not merely for third parties who are directly affected, but also future generations, for example as a result of genetic damage.
- * In accordance with an established basic principle, expressed, for example, in the Declaration made by the 1972 UN Conference on the Human Environment, there are impediments to the use of weapons which cause extensive, long-term and serious damage to the environment. This is expressed in the Declaration as follows: "Man and his environment must be spared the effects of nuclear weapons."
- * As far back as the 17th century, Hugo Grotius stressed that poisoning was not allowed under international law. In certain respects, the principle of the prohibition of toxic weapons has also been codified (chiefly as a result of the 1925 Geneva Convention). Certain residual products resulting from the use of nuclear weapons must undoubtedly be regarded as toxic.

The Committee assumes that these and other considerations which have been raised in the international legal debate, and also the content of existing comprehensive international agreements will be taken into account.

*) Letters in brackets refer to political parties: (c) Centre Party, (fp) Liberal Party, (kds) Christian Democratic Party, (s) Social Democratic Party and (v) Left Party.