

Written Statement of the Government of Sri Lanka

REQUEST FOR AN ADVISORY OPINION OF THE INTERNATIONAL
COURT OF JUSTICE ON THE QUESTION OF THE LEGALITY OF
THE USE BY A STATE OF NUCLEAR WEAPONS IN ARMED
CONFLICT SUBMITTED BY THE WORLD HEALTH ORGANIZATION

WRITTEN STATEMENT BY THE GOVERNMENT OF SRI
LANKA IN ACCORDANCE WITH
ARTICLE 66, PARAGRAPH 2 OF THE STATUTE OF THE
INTERNATIONAL COURT OF JUSTICE

The reports of the World Health Organization have clearly expressed the massive scale of death, destruction and irremediable suffering that would result from nuclear war. The devastating environmental effects of nuclear explosions were given graphic expression in the United Nations General Assembly Resolution on the Climatic effects of Nuclear War, including Nuclear Winter (GA Res. 41/86) wherein it was stated 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."

Sri Lanka's commitment to the elimination of the threat posed by nuclear weapons and other weapons of mass destruction is reflected in the international treaty obligations it has undertaken in the field of disarmament. Sri Lanka is a party to the Treaty on the Non Proliferation of Nuclear Weapons (NPT), the Chemical Weapons Convention (CWC), the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) and the Biological Weapons Convention (BWC). Sri Lanka has also been in the forefront of major initiatives in the field of disarmament and stands fully committed to the disarmament process.

The government of Sri Lanka is of the view that there exists a substantial corpus of principles of international humanitarian law, developed over the years based on state practice, which provides a solid legal basis for the prohibition of the use of nuclear weapons.

The Charter of the United Nations, which antedated the use of nuclear weapons in Hiroshima & Nagasaki, does not specifically refer to nuclear weapons. Article 51

of the Charter states that "nothing..... shall impair the inherent right of self-defence of a member State". As pointed out by a United Nations Study (A/45/373), the question of which means are acceptable for exercising the right of self-defence is thus left to regulation by treaty and customary law. The Statute of the ICJ indicates as primary sources of international law, besides treaties, also "international custom as evidence of a general practice accepted as law" and "the general principles of law recognised by civilized nations".

Over 150 states parties to the NPT by rejecting the possession of nuclear weapons as a means of self-defence have established through state practice, an important norm supportive of the proposition that any use of nuclear weapons will be contrary to general principles of law recognised by the international community of nations.

Customary law principles which have evolved in the field of armed conflict prohibit the use of weapons and the methods of warfare of a nature to cause superfluous injury or unnecessary suffering. The unacceptability of the use of weapons that fail to discriminate between military and civilian personnel is firmly established as a fundamental principle of international humanitarian law. These principles which prohibit indiscriminate killing and make the fundamental distinction between combatants and non-combatants have also found expression in the body of treaty law which have been incorporated in a series of international conventions, from about the time of the 1899 Hague Peace Conference and culminating with the Geneva Conventions of 1949 and its Additional Protocols of 1977.

Furthermore, a series of UNGA resolutions with substantial legal content and adopted with a wide measure of support of the international community of States, more particularly, the United Nations General Assembly Resolution 1653(XVI) of 24th November 1961 declaring that the use of nuclear and thermonuclear weapons to be :

- a) 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) contrary to the rules of international law and to the laws of humanity; and
- c) a crime against mankind and civilisation,

is evidence of the international consensus on the illegality of the use of nuclear weapons.

A substantial majority of scholarly opinions of jurists from different parts of the world also support the proposition that the use of nuclear weapons violates international humanitarian law.

The protection of the environment in times of armed conflict has also emerged as an established principle of international law. The 1963 Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water, the 1976 Convention on the Prohibition of Military or any other Hostile Use of Environmental Modification Techniques, the Outer Space Treaty (1967) the Sea-Bed Treaty (1971) are some of the relevant treaties in this field. More recently, the 1992 Rio Declaration on Environment and Development provided :

"Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary".

These principles are further developed in the 1992 Convention on Biological Diversity and the 1992 Convention on the Climatic Change.

Taking into account these fundamental principles of international humanitarian law as reflected in treaty law, state practice, opinions of jurists, as well as mankind's moral responsibility given the devastating effects even a limited nuclear conflict could cause to the very survival of humanity and the natural environment, it is respectfully submitted that the International Court of Justice confirm that the use of nuclear weapons by a State, in war or other armed conflict is a clear breach of its obligations under international law.