

Communication dated 20 June 1995 from the Embassy of Egypt, together  
with Written Statement of the Government of Egypt

*Embassy  
of the  
Arab Republic of Egypt*

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Mr. Eduardo Valencia-Ospina,

The Embassy of the Arab Republic of Egypt presents its compliments to the International Court of Justice and has the honour to inform the honourable Court that, with reference to its letter dated 8 February 1995 and in connection with the order of the International Court of Justice of 1 February 1995, the Embassy of the Arab Republic of Egypt has the honour to present, herewith enclosed, the written statement of the Arab Republic of Egypt on the Legality of the threat or use of Nuclear Weapons.

The Embassy of the Arab Republic of Egypt avails itself of this opportunity to renew to the International Court of Justice the assurances of its highest consideration



*chargé d'affaires a.i.  
E. Saad El Sayed*

The Hague, 20 June 1995

Mr. E. Valencia Ospina, Registrar of  
The International Court of Justice  
PEACE PALACE  
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**LEGALITY OF THE THREAT OR USE  
OF NUCLEAR WEAPONS**

(REQUEST FOR ADVISORY OPINION)

ORDER OF 1 FEBRUARY 1995

WRITTEN STATEMENT OF EGYPT

June 1995

## INTRODUCTION

### I. Terms of the Request and Standing of Egypt

1. By resolution 49/75K of 15 December 1994, the General Assembly of the United Nations decided, pursuant to Article 96, paragraph 1, of the Charter of the United Nations, to request the International Court of Justice urgently to render its advisory opinion on the following question:

"Is the threat or use of nuclear weapons in any circumstance permitted under international law?"

2. The Court, by its Order of 1 February 1995, fixed 20 June 1995 as the time-limit within which written statements relating to the question may be submitted to the Court by Member States who are entitled to appear before the Court, in accordance with Article 68, paragraph 2, of its Statute. That Order of the Court was notified to the Government of the Arab Republic of Egypt. Egypt, is an original Member of the United Nations, and by virtue of Article 93 of the United Nations Charter *ipso facto* a party to the Statute of the Court. It is in these circumstances a State to which the Court is open under Article 35 of the Statute of the Court and entitled to appear before the Court.

### II. Egypt's Interest in the Question

3. Egypt is a non-nuclear State. Egypt has a definite interest in avoiding any use of nuclear weapons. As a peaceful and peace-loving State, Egypt has entered the Treaty on the Non-prolifera-

tion of Nuclear Weapons of 1966.<sup>1</sup> She has, also, acceded to the I.A.E.A. safeguard agreements. Furthermore, she is a leading country in the efforts for disarmament, and in particular nuclear disarmament, through regional and universal means. Egypt, *inter alia*, has launched a campaign in 1974 to establish a Nuclear Weapons Free Zone in the Middle East. Furthermore, she has made an initiative in 1980 to create an area free of weapons of mass destruction in the Middle East. Egypt believes that the most efficient way to eliminate the nuclear threat is by absolutely prohibiting and eliminating nuclear weapons.

Equally, Egypt is concerned by the threat or use of nuclear weapons for reasons of human rights and humanitarian considerations, as well as from the economic, social and environmental perspectives. Egypt entirely depends on river waters for irrigation and drinking. She also largely depends on sea waters for fishing as well as on wide areas of agricultural land for subsistence. The use of nuclear weapons is surely to cause long-term and severe damage to these resources making life almost impossible.

For these reasons, *inter alia*, Egypt has voted in favour of General Assembly resolution 49/75K, and has a special interest in the advisory opinion of the Court. From this perspective, Egypt is making its written statement.

4. This written statement is divided into two Parts. Part I ascertains the competence of the General Assembly to request an advisory opinion from the Court on the subject-matter of the request. It also establishes that the Court is competent to give, and should give, an advisory opinion on the question submitted. Part II demonstrates that the threat or use of nuclear weapons in any circumstance is illegal under international law.

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<sup>1</sup> 7 *I.L.M.* 811 (1968).

## FART I

### COMPETENCE AND ADMISSIBILITY

#### III. The General Assembly of the United Nations is Competent to Request an Advisory Opinion on the Present Question

5. According to paragraph 1 of Article 96 of the Charter of the United Nations "[t]he General Assembly ... may request the International Court of Justice to give an advisory opinion *on any legal question*."<sup>2</sup> The General Assembly now requests an advisory opinion from the Court on a legal question. The advisory opinion requested relates to the legality of the threat or use of nuclear weapons in any circumstance under international law, which necessarily, and by definition, is a "legal question". It concerns the *international legal aspects* of nuclear weapons; *i.e.* whether the threat or use of nuclear weapons is compatible with the rules of international law. And, thus, if there would be a breach of obligations under international law when there is a threat or use of such weapons. This question involves the *interpretation* of international norms which might be applicable to the threat or use of nuclear weapons which is a legal process. Hence, the Assembly's request for an advisory opinion satisfies the conditions of Article 96(1) both *ratione personae* (it being authorized to make a request) and *ratione materiae* (the request being on a legal question). The General Assembly, therefore, is competent to request an advisory opinion on the present question, and has thus acted *intra vires*.

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<sup>2</sup> Italics added.

6. The General Assembly has a special interest that the Court answer the question put to it in the affirmative. The question falls squarely within the ambit of the Assembly for it includes, as it does, both the *jus ad bellum* question of the threat or use of force (Articles 2(4), 10, 11, 12 and 14 of the Charter), as well as that of the *jus in bello* relating to certain weapons of mass destruction. Answering the request by the Court would enlighten the General Assembly on the legal aspects involved.

#### IV. The Court is Competent to Render its Advisory Opinion on the Present Question

7. Article 65 of the Statute of the Court stipulates that:

"The Court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request."

Accordingly, the Court, has the discretion to render advisory opinions on "legal questions" put to it by duly "authorized" organs of the United Nations or international organizations. In the present request the two conditions (*vis.* a legal question and an authorized body) are fulfilled. Although it is not duty-bound to give this legal advice, for the language of Article 65 is permissive rather than mandatory,<sup>3</sup> the Court has summarized its practice in the granting of advisory opinions as follows:

"The Court has repeatedly stated that a reply to a request for an advisory opinion should not, in principle, be refused and that only

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<sup>3</sup> *Interpretation of Peace Treaties (First Phase), Advisory Opinion of 30 March 1950*; I.C.J. Reports 1950, p. 65 at pp. 71 f.; and *Western Sahara, Advisory opinion of 16 October 1975*, I.C.J. Reports 1975, p. 12, para. at p. 21.

compelling reasons would justify such a refusal."<sup>4</sup>

In the present case there are no "compelling reasons" in the sense that the advisory opinion does not relate to a dispute in which one of the parties has not recognized the competence of the Court to decide its dispute which is referred to the Court in the guise of an advisory opinion.<sup>5</sup> As no compelling reasons for its refusal exist, there is no reason why the Court must not render its advisory opinion.

6. The mere fact that the question may have been politically motivated cannot prevent the Court from rendering its advisory opinion. It is the Court that has affirmed that:

"In institutions in which political considerations are prominent it may be particularly necessary for an international organization to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate ..."<sup>6</sup>

Furthermore, the Court said that:

"It has been argued that the question put to the Court is intertwined with political questions, and that for this reason the Court should refuse to give an opinion. It is true that most interpretations of the Charter of the United Nations will have political significance, great or small. In the nature of things it could not be otherwise. The Court, however, cannot attribute a political character to a request which invites it to undertake an essentially judicial task ..."<sup>7</sup>

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<sup>4</sup> *Application for Review of Judgment No. 158 of the United Nations Administrative Tribunal*, I.C.J. Reports 1973, p. 166, para. 40 at p. 183.

<sup>5</sup> I.C.J. Reports 1975, p. 12, at p. 25.

<sup>6</sup> *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt*, I.C.J. Reports 1980, p. 73, para. 33 at p. 87.

<sup>7</sup> *Certain Expenses of the UN*, Advisory opinion of 20 July 1962, I.C.J. Reports 1962, p. 151 at p. 155.



9. The advisory opinion of the Court will be of great practical value. By virtue of the exercise of its advisory role, the Court contributes to the effective functioning of the United Nations. In fact, the Court has abundantly reiterated that its advisory function constitutes its participation in the activities of the United Nations of which it is the principal judicial organ.<sup>8</sup> The present request pertains to a question that lies within the core mandate of the United Nations and particularly the General Assembly, viz. the maintenance of international peace and security, and disarmament and arms control efforts. The advisory opinion of the Court is, also, very likely to contribute to a greater understanding and appreciation of the principles of humanitarian law. A statement by the Court on the legality of the threat or use of nuclear weapons under international law will surely have a positive effect on the long-standing negotiations in the United Nations and elsewhere, and would resolve any controversy over the issue. The Court itself has declared that:

"The function of the Court is to give an opinion based on law, once it has come to the conclusion that the questions put to it are relevant and have a practical and contemporary effect and, consequently, are not devoid of object and purpose."<sup>9</sup>

In the light of its *dictum*, the Court should entertain the request made by the General Assembly for its advisory opinion because the question put to it in resolution 49/75K is relevant and has practical and contemporary effect.

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<sup>8</sup> *Interpretation of Peace Treaties (first phase), Advisory Opinion, I.C.J. Reports 1950*, at p. 71.; and *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, I.C.J. Reports 1951*, p. 15 at p. 19.

<sup>9</sup> *I.C.J. Reports 1975*, p. 12, para. 73 at p. 37.

## CONCLUSION:

10. By virtue of Articles 96(1) of the Charter and 65 of the Statute the of Court and of their combined effect, and for the reasons set out above, it is submitted that the General Assembly of the United Nations is competent to request an advisory opinion from the Court on the subject-matter of the request; and that the Court is competent to give, and should give, its advisory opinion on the question addressed to it.

## PART II

### MERITS

11. Nuclear war has been "[r]esolutely, unconditionally and for all time condemn[ed] ... as being contrary to human conscience and reason, as the most monstrous crime against peoples and as a violation of the foremost human right - the right to life".<sup>10</sup> Nuclear weapons pose the greatest danger to mankind and to the survival of civilization.<sup>11</sup> General Assembly resolution no. 1888 (XVI) of 24 November, 1961 entitled "Declaration on the Prohibition of the Use of Nuclear and Thermo-nuclear Weapons" must be seen as a prohibition *de lege lata* of nuclear weapons.<sup>12</sup> It declared that the use of nuclear weapons would be

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<sup>10</sup> General Assembly resolution no. 38/75 B of 15 December, 1983.

<sup>11</sup> Paragraph 47 of the Final Document of the First Special Session on Disarmament of the General Assembly of 1978.

<sup>12</sup> Its preamble states that:

contrary to the spirit, letter and aims of the United Nations and, as such, "a direct violation of the Charter of the United Nations". Besides being a violation of the Charter of the United Nations, the resolution stated that it "would be contrary to the rules of international law and the laws of humanity and a crime against mankind and civilization."

12. Equally, resolution 2836 (XXVII) of 29 November, 1972 on the Non-Use of Force in International Relations and Permanent Prohibition of the Use of Nuclear Weapons, declared "the permanent prohibition of the use of nuclear weapons". By the inherent qualitative and quantitative characteristics of their effect, nuclear weapons necessarily have indiscriminate effects and are thus harmful to man and his environment. The international consensus on their illegality leaves no room for convictions to the contrary.

13. The abhorrence of nuclear weapons has driven the international community to take measures to eliminate them. The first General Assembly resolution<sup>13</sup> established the Atomic Energy Commission with the view to "control[ling] ... atomic energy to the extent necessary to ensure its use *only for peaceful purposes*".<sup>14</sup> Furthermore, the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space,

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<sup>12</sup>(...continued)

"the use of weapons of mass destruction, causing unnecessary human suffering, was in the past prohibited, as being contrary to the laws of humanity and to the principles of international law, by international declarations and binding agreements, such as the Declaration of St. Petersburg of 1868, the Declaration of the Brussels Conference of 1874, the Conventions of the Hague Peace Conferences of 1899 and 1907, and the Geneva Protocol of 1925, to which the majority of nations are still parties".

<sup>13</sup> Resolution no. 1(I) of 24 January, 1946.

<sup>14</sup> Italics added.

including the Moon and Other Celestial Bodies<sup>15</sup> prohibited the placing in orbit around the earth of any objects carrying nuclear weapons or any other kinds of weapons of mass destruction, the installation of such weapons on celestial bodies, or their stationing in outer space in any other manner.<sup>16</sup> Also, the preamble of the Treaty on the Non-proliferation of Nuclear Weapons of 1968<sup>17</sup> expressed the desire of the international community for the "cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons". Moreover, nuclear weapons have been banned from whole regions in the world. Nuclear Weapon Free Zones have been established in Latin America and the Caribbean and in the Southern Pacific. A similar free zone will soon be established in Africa. Egypt, as already mentioned, has taken two universally supported initiatives that would ban nuclear weapons in the Middle East.<sup>18</sup>

#### V. The Threat or Use of Nuclear Weapons Violates Humanitarian Law

##### A. The *jus ad bellum*:

14. Article 2(4) of the Charter of United Nations prohibits "the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations." Further-

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<sup>15</sup> Signed at London, Moscow and Washington on 27 January, 1967.

<sup>16</sup> Article IV.

<sup>17</sup> 7 I.L.M. 811 (1968).

<sup>18</sup> *Supra*, para. 3.

more, paragraph 7 of the Preamble of the Charter states that "armed force shall not be used, save in the common interest". Thus, the threat or the "first use" of force, including nuclear weapons, is illegal. This being a principle of international law does not need any further argument.

15. As for the legality of the "second use" of nuclear weapons, it must be determined in the light of legal considerations of the exceptions to the principle of non-use of force taking into consideration the characteristics of such weapons. These exceptions are Security Council enforcement actions under Chapter VII of the Charter of the United Nations, and self-defence under Article 51 of the Charter. In both cases the use of nuclear weapons would be illegal. It is not imaginable that the Council would resort to the use of nuclear weapons with all their indiscriminate and immense disastrous effects which would surely upset, and not maintain, international peace and security. Furthermore, the use of nuclear weapons would not respect, in particular, the rule of proportionality which is an important condition for the exercise of the right of self-defence.

16. Consequently, the use of nuclear weapons, even when the use of force becomes permissible, is illegal because such use of force has to correspond to the requirements of the *jus in bello*.

#### B. The *jus in bello*:

17. The prohibition of indiscriminate attack against civilians and their property: As a rule of international law, "[t]he civilian population ... as well as individual civilians, shall

not be the object of attack."<sup>18</sup> It is especially forbidden "[t]o destroy ... the enemy's property, unless such destruction ... be imperatively demanded by the necessities of war".<sup>20</sup> The attack or bombardment, by whatever means, of towns, villages, dwellings, or buildings which are undefended is prohibited.<sup>21</sup> Equally, in "bombardments all necessary steps must be taken to spare ... buildings dedicated to religion, art, science, or charitable purposes, historic monuments, hospitals, and places where the sick and wounded are collected ..."<sup>22</sup> Furthermore, it is also prohibited to attack civilian hospitals, convoys of vehicles, hospital trains, specially provided vessels on sea, aircraft exclusively employed for the removal of wounded and sick civilians, the infirm and maternity cases, or the transport of medical personnel and equipment.<sup>23</sup> In order to ensure respect for and protection of the civilian population and civilian objects, it is required that the parties to the conflict at all times "distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly ... direct their operations only against military objectives."<sup>24</sup> Thus, indiscriminate attacks are prohibited.<sup>25</sup>

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<sup>18</sup> Article 52(2) of the First Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the protection of Victims of International Armed Conflicts of 1977.

<sup>20</sup> Article 23 (g) of the Hague Regulations Respecting the Laws of and Customs of War on Land annexed to Convention No. IV of 1907.

<sup>21</sup> *Ibid.*, Article 25.

<sup>22</sup> Article 27 of the First Protocol of 1977.

<sup>23</sup> Articles 18, 21 and 22 of the Geneva Convention Relative to the Protection of Civilian Persons in Time of War, of 12 August 1949. United Nations, *Treaty Series*, Vol. 75, p. 385. Also, Articles 12, 22 and 23 of the First Protocol of 1977.

<sup>24</sup> *Ibid.*, Articles 48 and 51(2).

Therefore, the law has provided that such protected objects shall be marked with a distinctive emblem to make them obvious for the enemy. Hence, the law does not leave room for the use of weapons which might have an incidental effect on civilian and protected targets.

18. Whereas, by the inherent qualitative and quantitative characteristics of their effect, nuclear weapons necessarily have cataclysmic and indiscriminate effects and cannot distinguish between combatants and non-combatants and between protected and unprotected objects, and are expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, their use cannot at all be legal.

19. *The prohibition against the use of weapons which render death inevitable or cause unnecessary suffering: "The right of belligerents to the conflict to adopt means of injuring the enemy*

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28 (...continued)

25 *Ibid.*, Article 51. According to Article 51 indiscriminate attacks are:

"4. ...

a) those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently ... are of a nature to strike military objectives and civilians or civilian objects without distinction.

5. Among others, the following types of attacks are to be considered as indiscriminate:

a) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and

b) an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated."

is not unlimited."<sup>26</sup> This rule imposes on the belligerents the obligation to refrain from cruel or treacherous behavior. As far as weapons are concerned, since the nineteenth century this humanitarian principle has been embodied in two rules: one forbids the use of poisons, while the other prohibits the use of weapons capable of causing superfluous injuries. Nuclear weapons fall in the latter category.

20. The Laws of the Hague<sup>27</sup> and Geneva<sup>28</sup> provide that it is especially forbidden to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. It goes without saying that the enormous blast waves, air blasts, fires, residual nuclear radiation or radioactive fallout, electromagnetic impulses and thermal radiation, which are primary effects of use of nuclear weapons, cause extensive "unnecessary suffering".<sup>29</sup>

21. *The obligations to respect principles of proportionality and humanity:* According to the First and Second Geneva Conventions of 1949, it is prohibited to attack establishments and mobile medical units of the Medical Service, hospital ships<sup>30</sup> military hospital ships and establishments ashore<sup>31</sup> in any circumstance.

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<sup>26</sup> Article 22 of the Regulations of 1907; the preamble of the Declaration of St. Petersburg of 1868 expresses the same idea.

<sup>27</sup> Article 23 (e) of the Regulations of 1907.

<sup>28</sup> Article 35(2) of the First Protocol of 1977.

<sup>29</sup> Also cf. General Assembly resolution no. 1853 (XVI) of 24 November, 1961.

<sup>30</sup> Articles 19 and 20 of the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, of 12 August 1949. United Nations, *Treaty Series*, Vol. 75, p. 62.

<sup>31</sup> Articles 22 and 23 of the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, of 12 August 1949. *Op. cit.*, Vol. 75, p. 116.



However, by reason of the inherent nature of the effects of nuclear weapons such protected objects will nevertheless be indiscriminately attacked.

22. *The prohibition against causing widespread, long-term and severe damage to the environment:* It is prohibited to use "methods or means of warfare which are intended or may be expected to cause damage to the natural environment". It is equally forbidden to carry out "[a]ttacks against the natural environment by way of reprisals".<sup>32</sup> This makes the use of nuclear weapons, even in reprisal, unlawful because its use, even if it were not used with the intent to attack the environment, it will definitely harm the environment.

23. *The obligation not to prejudice the health or survival of the population:* Belligerents are prohibited from the use of "methods or means of warfare" which may be expected to cause widespread, long-term and severe damage to the natural environment, and thereby prejudicing the health or survival of the population.<sup>33</sup> Since nuclear weapons are sure to cause such negative effects to the environment and the health or survival of human beings they are covered by that prohibition.

24. *The obligation to distinguish between combatants and non-combatants:* The distinction between combatants and non-combatants is one of the most important victories and accomplishments of international law since the early beginnings of the nineteenth century. Any authorization of nuclear weapons will definitely cause this principle to collapse.

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<sup>32</sup> Article 55 of the First Protocol of 1977.

<sup>33</sup> *Id.* *cit.*

25. The Declaration of St. Petersburg of 1868<sup>34</sup> stipulated that "the *only legitimate object* which States should endeavour to accomplish during war is to *weaken the military forces* of the enemy",<sup>35</sup> thus, ordering belligerents to always distinguish between combatants and non-combatants. By virtue of the customary rule contained in the Declaration, the use of nuclear weapons against civilians is illegal.

## VI. The Threat or Use of Force Violates Modern International Law

### A. The Law of Human Rights:

26. Modern international law has internationalized human rights on a full-blown scale. The well being and welfare of the human person, now considered the centre of the universe, is the main concern of most international organizations including the United Nations. International law has given great attention to the development of the individual and his rights. Human health, civil, political, economic, and social rights, etc., being the subject of many conventional as well as customary rules, form an integral part of modern international law. The threat or use of nuclear weapons, or even the least approval of them, would destroy the whole structure of this modern design of international law based on the respect for the human person, rendering that law devoid of cohesion.

27. *The right to life:* "Every human being has the inherent right

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<sup>34</sup> Signed at St. Petersburg 29 November - 11 December 1868.

<sup>35</sup> Italics added.

to life."<sup>36</sup> Although it is expected that in times of war human beings, whether military or civilians, might perish, the killing of human beings should not exceed the limits of lawful acts of war. It should be recalled that Article 40 of the Fourth Geneva Convention stipulates that "[i]t is prohibited to order that there shall be no survivors". Although an order to use nuclear weapons does not have to state that "there shall be no survivors", it is an indirect order to do so by virtue of the immense devastating and killing capabilities of such weapons. It is submitted that the use of nuclear weapons necessarily cause wide-scale deaths, thus depriving human beings of the right to life.

28. *The right to enjoy the highest attainable standard of physical and mental health:* Everyone has a right to "the enjoyment of the highest attainable standard of physical and mental health."<sup>37</sup> It is needless to say that the adverse effects of nuclear explosions on the human health are immeasurable and irreparable. Two generations continue to suffer from the Hiroshima and Nagasaki bombs. It is noteworthy that existing modern nuclear weapons may be hundreds of times more powerful and damaging than those thrown over Japan in 1945. The use of nuclear weapons is an absolute impediment to the "enjoyment of the highest attainable standard of physical and mental health" by human beings.

B. The prohibition against genocide or crimes against humanity:

29. According to Article II of the Convention on the Prevention

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<sup>36</sup> Article 6(1) of the International Covenant on Civil and Political Rights. United Nations, *Treaty Series*, Vol. 999, p. 171.

<sup>37</sup> Article 12 of the International Covenant on Economic, Social and Cultural Rights. *Ibid.*, p. 3.

and Punishment of the Crime of Genocide of 1948<sup>38</sup> any acts "committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group" is considered genocide. Therefore, any use of nuclear weapons, which are capable of destroying large parts of a population, against civilian population would constitute a crime against humanity, and thus is illegal.

### C. The International Law of Environment:

30. Every State has, in accordance with the Charter of the United Nations and the principles of international law, the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States.<sup>39</sup> More emphatically, Principle 26 of the Stockholm Declaration of 1972 declared, *inter alia*, that:

"Man and his environment must be spared the effects of nuclear weapons and all other means of mass destruction."

31. Equally, Article I of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (ENMOD) of 1977<sup>40</sup> provides that it is prohibited "to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury to any other State Party." It also prohibits States from assisting, encouraging or inducing any State, Group of States or interna-

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<sup>38</sup> United Nations, *Treaty Series*, Vol. 78, p. 278.

<sup>39</sup> Principle 21 of the Stockholm Declaration of the United Nations Conference on the Human Environment of 1972. 11 *I.L.M.* 1416 (1972); and Principle 2 of the Rio Declaration. 31 *I.L.M.* 851 (1992).

<sup>40</sup> United Nations, *Treaty Series*, Vol. 1108, p. 151.

tional organization to engage in activities contrary to the provisions of paragraph 1 of Article I. Thus, the Convention prohibits the use of nuclear weapons which are weapons the use of which has "widespread, long-lasting or severe effects" on the environment.

D. Use of nuclear weapons violates territorial sovereignty:

32. States have, in accordance with the Charter of the United Nations and the principles of international law, the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of the *other States or of areas beyond the limits of national jurisdiction*.<sup>41</sup> However, electromagnetic impulses resulting from a nuclear explosion at an altitude of 100 k.m. may travel to up to 1100 k.m.<sup>42</sup> Radioactive contamination may also reach the neighbouring countries of the State in which the explosion occurred. This being so, the use of nuclear weapons violates the territorial sovereignty of other States which is a fundamental principle of international law and the principle good neighbourliness provided for in Article 74 of the Charter of the United Nations. In the Nuclear Tests Case, Australia maintained that by carrying out atmospheric nuclear tests France was, *inter alia*, in violation of the territorial sovereignty of Australia. It was claimed that "fall-out had been recorded on Australian territory".<sup>43</sup>

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<sup>41</sup> Principle 21 of the Stockholm Declaration of 1972 and Principle 2 of the Rio Declaration of 1992.

<sup>42</sup> 1987 WHO Report, para. 13 at p. 11 (French).

<sup>43</sup> *Nuclear Tests Case (Australia v. France)*, Judgment of 20 December 1974, I.C.J. Reports 1974, p. 253, para. 19 at p. 258.

## VII. Submissions

### A. Competence and admissibility:

33. It is submitted that:

- the General Assembly of the United Nations is competent to request an advisory opinion from the Court on the subject-matter of the request; and
- the Court is competent to give, and should give, its advisory opinion on the question addressed to it.

### B. The illegality of the threat or use of nuclear weapons:

34. It is submitted that the threat or use of nuclear weapons undermine the whole design of disarmament measures directed at prohibiting their development, acquisition and use since 1945.

35. It is submitted that:

A. The threat or use of nuclear weapons is contrary to principles and rules of general international law, and constitutes a direct violation of the Charter of the United Nations. In particular it violates the following basic principles:

1. The prohibition of threat or use of force in international relations;
2. The obligation to respect the requirement of proportionality in cases of legitimate use of military force;
3. The prohibition against genocide or crimes against humanity;

4. The obligation to respect the territorial sovereignty of other States.

B. The use of nuclear weapons is contrary to principles and rules of the international law of armed conflicts. In particular it violates the following basic principles:

1. The prohibition to attack civilians;
2. The prohibition against disproportionate harm to civilian population;
3. The obligations to respect principles of proportionality and humanity;
4. The obligation to distinguish between combatants and noncombatants;
5. The prohibition against the use of weapons which render death inevitable or cause unnecessary suffering;
6. The prohibition against causing widespread, long-term and severe damage to the environment;
7. The obligation not to prejudice the health or survival of the population.

C. The use of nuclear weapons is contrary to principles and rules of the international law of human rights. In particular it violates the following basic principles:

1. The right to life;
2. The right to enjoy the highest attainable standard of physical and mental health;
3. The right to a clean and safe environment.