CR 95/29

Cour internationale
de Justice

LA HAYE

International Court
of Justice

THE HAGUE

ANNEE 1995

Audience publique

tenue le vendredi 10 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 Friday 10 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 consultif 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 consultif 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 du Costa Rica est représenté par :

S. Exc. M. J. Francisco Oreamuno, ambassadeur de la République du Costa Rica aux Pays-Bas;

M. Carlos Vargas-Pizarro, conseiller juridique et envoyé spécial du Gouvernement du Costa Rica;

M. Rafael Carrillo-Zürcher, ministre-conseiller à ambassade du Costa Rica, La Haye.

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 Theordore 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 Louise 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 ajoint;

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

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

Dato' Abdul Gani Patail, jurisconsulte 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. Neroni Slade, ambassadeur et représentant permanent du Samoa auprès de l'Organisation des Nations Unies, New York;

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

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

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 Costa Rica is represented by:

H.E. Mr. J. Francisco Oreamuno, Ambassador of the Republic of Costa Rica to The Netherlands;

Mr. Carlos Vargas-Pizarro, Legal Counsel and Special Envoy of the Government of Costa Rica;

Mr. Rafael Carrillo-Zürcher, Minister Counsellor, Embassy of Costa Rica, The Hague.

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 Governement 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 Governement 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 Theordore 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 Zeland 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. Neroni Slade, Ambassador and Permanent Representative of Samoa to the United Nations, New York;

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

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

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

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

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

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

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 Louise 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.

The PRESIDENT: Please be seated. This morning the Court will resume its public hearings in the case of the two requests for advisory opinion submitted by the United Nations General Assembly and the World Health Organization. I now call upon the distinguished representative of the delegation of Qatar, His Excellency Mr. Najeeb Al-Nauimi, Minister of Justice, to make his oral statement.

H.E. Dr. AL-NAUIMI: Mr. President, Members of the Court, as Minister of Justice of the State of Qatar, it is an honour and a pleasure for me to appear today before this Court in the advisory proceedings relating to the Legality of the Threat or Use of Nuclear Weapons requested by the General Assembly of the United Nations. The State of Qatar is present today before the Court because it is convinced of the need to strengthen the rule of law in international relations and as a further example of its contribution to the United Nations Decade of International Law. As Qatar has already indicated, the present advisory proceedings appear, to use the words of the President Bedjaoui, "comme un instrument de 'diplomatie préventive', un moyen privilégié pour la Cour de désamorcer les tensions et de prévenir les conflits en disant le droit"[6].

But also the presence of the State of Qatar today is a continuation of its long-standing support of the Court in the peaceful settlement of disputes through the means of contentious proceedings. I wish also to express to the Court how much the world of international law has lost recently a most distinguished jurist, Judge Aguilar.

2. My oral statement will first try to convince the Members of the Court that it should exercise its discretion to give the advisory opinion requested by the General Assembly and, second, will deal with some substantive issues raised by the question itself which is before the Court. With your permission, Mr. President, I will not read the references to any citation, but I will provide them to the Registry for inclusion in the verbatim record.

PART 1 - THE COURT SHOULD EXERCISE ITS DISCRETION TO GIVE THE

[6] *Les ressources offertes par la fonction consultative de la Cour international de Justice. Bilan et perspectives*. Communication de M. Mohammed Bedjaoui, Président de la Cour internationale de Justice au Congrès des Nations Unies sur le droit international public, New York, 14 March 1995.

3. Under the Statute and Rules of the Court, an advisory opinion does not have the same binding character as a judgment. An advisory opinion provides an authoritative and important guide in the world peace process which can be used as a means of preventive diplomacy. In the past, the Court has emphasized the non-binding nature of its advisory opinions so that no State can oppose the giving of such an opinion. This was highlighted in the case concerning the *Interpretation of Peace Treaties*:

> "The Court's reply is only of an advisory character: as such, it has no binding force. It follows that no State, whether a Member of the United Nations or not, can prevent the giving of an Advisory Opinion which the United Nations considers to be desirable in order to obtain enlightenment as to the course of action it should take."[7]

4. The giving of an advisory opinion is within the mission of the Court, as the principal judicial organ of the United Nations. The present request is within the competence of the General Assembly. Paragraph 1 of Article 96 of the Charter of the United Nations states: "The General Assembly ... may request the International Court of Justice

to give an advisory opinion on any legal question." By virtue of the exercise of its advisory role, the Court contributes to the effective functioning of the United Nations and constitutes its participation in the activities of the United Nations. The Court's advisory opinion on the present question concerning the legality of the threat or use of nuclear weapons will be "an authoritative expression of international law of the question concerned". I quote from the Advisory Opinion given by the Court in 1949 in the *Reparation for Injuries Suffered in the Service of the United Nations* case[8]. In the present advisory proceedings, the Court will not create a new law but will give its opinion only on the basis of existing rules of law. It is therefore improper for some States to lend to the Court any alleged "legislative function" in the exercise of its judicial activity. In the *Western Sahara* case, the

[7] 30 March 1950, *I.C.J. Reports 1950*, p. 71.

[8] *Advisory Opinion, I.C.J. Reports 1949,* p. 174

Court 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 or purpose."[9]

5. It cannot be argued, as some States have done, that due to the generality of the question - the question is allegedly so vague and abstract - that an answer cannot be expected to provide practical guidance to the General Assembly. The present issue is fundamentally practical, even if there are political implications. In concrete terms, the opinion of the Court would provide guidance to the General Assembly as to the relevant legal issues relating to the question of the legality of threat or use of nuclear weapons. If, for example, the Court was of the opinion the use of nuclear weapons would be compatible with international law, the General Assembly would then be entitled to take specific steps to prevent and reduce the chances of a nuclear conflict arising. If, on the other hand, the Court decided that there were no circumstances in which the threat or use of nuclear weapons would be legal under international law, then the General Assembly would assist in the efforts of the Member States to eliminate all nuclear weapons. Therefore, it is clear that the opinion of the Court is not devoid of object or purpose.

6. In any event, the Court does not give an advisory opinion as an end in itself. Its advisory opinion must have practical consequences. In the *Western Sahara* case the Court said:

> "In general, an opinion given by the Court in the present proceedings will furnish the General Assembly with elements of a legal character relevant to its further treatment of the decolonization of Western Sahara ... 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."[10]

The relevance of the question before the Court can be seen from the fact that it is one which has dominated international relations for more than half a century. Bearing in mind the profound implications for the future of humanity that this issue could have and the wide range of opinions on this matter, its relevance and contemporary effect cannot be in question. Although it is the Security

[9] *Advisory Opinion, I.C.J. Reports 1975,* p. 37.

[10] *Advisory Opinion, I.C.J. Reports 1975,* p. 37.

Council and the Conference on Disarmament which deal primarily with the issue of nuclear weapons, the General Assembly which has requested an advisory opinion subject of the present proceedings is not lacking of standing to consider this issue.

A great number of the Member States of the United Nations, albeit indirectly, have been seeking guidance on a fundamental constitutional function, that is to say, that of their defence policies.

7. I would recall that the request for the advisory opinion has been made by the required majority of the General Assembly. 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."

The General Assembly, which is such an authorized body, has put this request to the Court on the basis of a decision reached by a majority vote of its members.

8. Mr. President, Members of the Court, the Court faces no compelling reasons to refuse to give its advisory opinion on this matter. Although the language of Article 65, referred to above, is permissive rather than mandatory, the Court has summarized its practice in the granting of an advisory opinion 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 compelling reasons would justify such a refusal."[11]

On many previous occasions, the General Assembly has asked the Court for advisory opinions on a variety of issues. Some of the requests have related to specific disputes or situations and some to more general issues. *The Court has never refused to give an advisory opinion which has been requested by the General Assembly.* Moreover, the Court has always taken a liberal approach in fulfilling its judicial role, taking the view that,

> "the reply of the Court, itself an 'organ of the United Nations', represents its participation in the activities of the Organization, and, in principle, should not be

[11] *Application for Review of Judgement No. 158 of the United Nations Administrative Tribunal, I.C.J. Reports 1973,* p. 166.

refused"[12].

This applies to the General Assembly's present request. The General Assembly has considered the issue of the legality of the use of nuclear weapons almost since its constitution and it is therefore essential for the conduct of its activities to be enlightened by the Court on this issue.

9. Similarly, it can also be seen that there are no compelling reasons why the Court should not exercise its discretion to give its advisory opinion.

10. The issue before the Court does not relate to a contentious dispute between two States. In the *Eastern Carelia* case, in 1923, the Court said that it could not, by way of advisory opinion, deal with a dispute between two States where one had not recognized its competence, had refused to participate in the procedure and was not even a member of the organization which had requested the opinion. Since the, the Court has stated that only "compelling reasons" would lead it to refuse to reply to a request for an opinion.

Such compelling reasons have always been limited to the situation where the Court has been called upon to address a dispute in respect of which one of the parties thereto has not accepted the competence of the Court. However, the Court itself has stated that "the consent of States is not a condition precedent to the competence of the Court to give [its opinions]"[13] . In the present situation, it is true that the question of the General Assembly does relate to an important debate between Member States of the United Nations, but it cannot be said that a contentious dispute between them exists within the meaning of Article 36 of the Statute of the Court. The present advisory proceedings organized procedurally by the Court involve around 30 States.

11. The Court, in giving its opinion on the legality of the threat or use of nuclear weapons, will remain within the fulfilment of its judicial function. Although the question has political implications, or a political background, the question itself is not of a political *nature*. Of course, the

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[12] *Interpretation of Peace Treaties* case, *Advisory Opinion, 30 March 1950, I.C.J. Reports 1950*, p. 71.

[13] *Privileges and Immunities, I.C.J. Reports 1989*, p. 189.

involvement of political elements is not an obstacle to the giving of an advisory opinion where, as here, the Court has been asked to characterize a particular form of behaviour with respect to the provisions of treaty and customary law. In these circumstances, the Court is performing a task which is essentially *judicial*; it is an interpretative function of the Charter of the United Nations and which concerns general international law, customary international law, and the law of the United Nations system. This interpretative function falls within the normal exercise of its judicial powers. It seems to me to be wrong to argue, as some States have done, that the Court cannot base a judicial decision involving complex, legal and technical issues on hypothetical conditions. Qatar submits that all that is required is the interpretation of already existing provisions of treaty or customary law in relation to one specific identifiable issue, the one of nuclear weapons.

12. Moreover, there is no basis in the argument that the Court would be playing a legislative role. It cannot be claimed that the drawing of a distinction between certain types of weapons is something which the law has not already done. It is clear from the treaties concerning poisonous weapons that it is not a new concept to draw distinctions between certain types of arms, especially those which are capable of mass destruction. Further, it cannot be argued that an advisory opinion by the Court on this issue would jeopardize the operation of the Non-Proliferation Treaty which acknowledges, between the States parties, the legality of the possession of nuclear weapons, nor that it would undermine current nuclear disarmament negotiations. The uncertainty which prevails currently on this issue is far more likely to cause such problems. The Court can therefore exercise its discretion to answer the question without performing a "legislative function" and by remaining within the scope of giving an advisory opinion in the framework of its judicial function.

13. Although the Court has on previous specific occasions held that it should give an advisory opinion as a matter of propriety, it is not logical or reasonable to argue, as some States have done in the present proceedings, that those categories of cases provide an exhaustive list of the situations where the Court is able or willing to give its advisory opinion. As already stated, the Court has *discretion* as to when it gives its opinion. With respect to the particular point of the discretionary

power of an authority. I do not think it can be reduced to a question of admissibility of the request[14].

I would like to recall the definition given at the beginning of the century by a French author:

> "Il y a pouvoir discrétionnaire, toutes les fois qu'une autorité agit librement, sans que la conduite à tenir lui soit dictée à l'avance par une règle de droit."[15]

I have listened with interest to the oral statements of Egypt, Indonesia, Mexico, the Islamic Republic of Iran and Malaysia and I have read with great interest as well the written statements of Ecuador, Samoa, Nauru, India, the Solomon Islands and the Marshall Islands, and in particular the reasons they have advanced to convince the Court to exercise its discretion to give the advisory opinion requested by the General Assembly. All of these statements now allow mine to be short today as the important elements relevant to this issue are already before the Court. The State of Qatar holds the view that the Court should give the advisory opinion because it was requested validly by the General Assembly of the United Nations. In addition, I have listened to and read the statements of other States which have adopted an opposite view. In my opinion, if the Court follows that position, it would render the International Court of Justice a court of appeal of the decision of the General Assembly. Certainly, the drafters of the Charter of the United Nations as well as those of the Statute of the Court have not envisaged this function for the principal judicial organ of the United Nations. This also would be perceived as granting Member States of the Security Council and NATO Member States alone a right to revise a decision of the General Assembly to request an advisory opinion it needs to perform the task entrusted to it by the Charter of the United Nations.

14. The advisory opinion requested of the Court must relate to a legal question. As the Court itself has stated:

> "In accordance with Article 65 of its Statute, the Court can give an Advisory Opinion only on a legal question. If a question is not a legal one, the Court has no discretion in the matter; it must decline to give the opinion requested."[16]

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[14] See CR 95/23, p. 29 and CR 95/23, p. 64, para. 16.

[15] Michoud, "Etude sur le pouvoir discrétionnaire", Revue Génér. d'Adm. 1914, III, p. 9, in de Laudadère, *Traité de droit administratif,* 1984, p. 286.

[16] *Certain Expenses of the United Nations, Advisory Opinion, 20 July 1962, I.C.J. Reports 1962*, p. 155.

For Qatar, the question before the Court is not a political question but a legal one which involves the interpretation of legal norms such as treaties and the interpretation of the principles of international law. Since it is arguable that the prohibitions on the use or threat of nuclear weapons has already been achieved under general international law, whether or not by the cumulative effect of a series of bilateral and multilateral treaties and agreements, the answer to the question raised must lie in the interpretation of such treaties and agreements. The inescapable conclusion is that this must characterize the question as a legal one.

Whereas Article 65 (l) of the Statute of the International Court of Justice gives the Court the power to give an advisory opinion "on any legal question", any political elements which the question might also initial will not prevent the Court from giving an opinion. The Court itself has recognized that most interpretations of the Charter of the United Nations will have political significance, and indeed it could not be otherwise. Therefore, the Court cannot attribute a political character to a request which invites it to undertake here an essential judicial task, namely the interpretation of treaty provisions[17].

In addition, the Court need not consider the motive which inspired any request for an advisory opinion. Indeed, the Court has also affirmed that:

> "In situations in which political considerations are prominent it may be particularly necessary for an international organisation to obtain an advisory opinion from the Court as to the legal principles applicable with respect to the matter under debate, especially when these may include the interpretation of its constitution."[18]

As had already been stated, while the question may have a political background, or political implications, the *nature* of the question before the Court today is not a political one.

15. Article 2, paragraph 4, of the Charter forbids not only the use of force against the territorial integrity of a State but also against its political independence or "in any manner

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[17] *I.C.J. Reports 1962*, p. 155.

[18] *Interpretation of the Agreement of 25 March 1951 between the WHO and Egypt, I.C.J. Reports 1980*, p. 87.

inconsistent with the purposes of the United Nations". I am now asking a question. What kind of force, other than military force, can be used by a State against the political independence of another? In the context of the present proceedings, the answer must be the open or veiled threat of the use of force, including armed force, if certain demands of a State are not met by another State. Thus, the concepts of the threat and use of force in Article 2, paragraph 4, merge into each other. Due to the nature and effect of nuclear weapons, the open or veiled threat of the use of nuclear weapons must include the very possession of such weapons.

Moreover, while it is clear that the possession of nuclear weapons by nuclear-weapon States has been regulated and restricted by various treaties, the possession of nuclear weapons by non-nuclear States is, as this point in time, not universally or generally prohibited. Possession is thus in itself a threat and endangers the preservation of peace, notwithstanding the nuclear disarmament and non-proliferation negotiations. This fact only serves as further grounds for the legal issue to be treated with urgency and for the question to be dealt with by the Court in order that these vital uncertainties be removed and guidance to be given to the General Assembly. The existence alone of nuclear weapons is a real and urgent issue in respect of which the General Assembly is entitled to demand clarification for the peace and security of humanity in general.

I have now concluded Qatar's points on the "jurisdictional" issues raised by the question posed in General Assembly resolution 49/75 K; I will, therefore, presently turn to the substantive issues with regard to that question.

PART II - THE SUBSTANTIVE ISSUES RAISED BY THE QUESTION OF THE GENERAL ASSEMBLY

I will preface my address on the substantive issues before the Court by stating that Qatar would like it to be understood that it is placing its arguments at a level at which the use of nuclear energy for peaceful purposes is preserved; it is the substantive issues with regard to nuclear weapons which I will now address.

16. The opinion of the Court is important for the General Assembly in order to clarify a

matter which is of fundamental importance to the human race and to future relations between States. Although the question before the Court raises complex issues of a technical and practical character, and although it involves considerations of the effects and consequences of the threat or use of nuclear weapons, it is still a question which relates to concepts of international law and their interpretation and it is on this basis that the Court must give its Advisory Opinion.

17. No State before this Court has argued that the prohibition of the possession of nuclear weapons is a rule of *jus cogens*: whereas Article 2, paragraph 4, of the United Nations Charter addresses the threat or use of force, it does not deal with the banning of any particular type of weapon. In fulfilment of the Non-Proliferation Treaty of 1968 and the various regional treaties, such as the Treaty of Tlatelolco, most non-nuclear-weapon States have undertaken not to manufacture or acquire nuclear weapons. The disarmament treaties concluded between particular nuclear powers limited certain types of nuclear weapon delivery systems. Deployment of nuclear weapons is prohibited in certain areas by certain parties under the Treaties of Tlatelolco and Rarotonga. Testing is also restricted and regulated by various bilateral and multilateral treaties and agreements. However, none of these treaties attempted to prohibit nuclear-weapon States from possessing nuclear weapons.

18. None the less, we have witnessed recent trends in the development of international law which might lead to the future prohibition of such possession.

A significant number of Member States hold the view that possessing nuclear weapons is equivalent to threatening to use them. As has already been stated, under Article 2, paragraph 4, of the United Nations Charter, the concepts of threat and use of force merge. This being so, a ban on the possession of nuclear weapons would represent the logical corollary to treaty provisions already in place. To repeat an already mentioned point, under the Non-Proliferation Treaty or treaties such as the Treaty of Tlatelolco, most non-nuclear-weapon States are already banned from possessing nuclear weapons. Therefore, this leaves only the five nuclear-weapon States which, by various disarmament treaties, have already agreed to ban the possession of various types of nuclear weapons

in the form of prohibitions of the corresponding delivery systems for those same weapons. The freedom of possessing nuclear weapons is therefore already severely limited. The trend promoted by the various treaties and agreements concerning nuclear weapons has increased the obstruction of the unlimited testing and use of these weapons, and is, therefore, generally pointing towards a ban on the possession of such weapons.

Whereas Article 2, paragraph 4 of the United Nations Charter does not ban any particular weapon, it clearly prohibits the threat or the use of nuclear weapons:

> "All members shall refrain in their international relations from 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."

Article 2, paragraph 4 of the United Nations Charter is a codification of general principles of international law according to which States must refrain from threats of force. When the provision stipulating this prohibition was drafted, it provided no precise definition of the meaning of such provision stipulating this threat or use of force; logically, therefore, the provision is of general application.

19. The Court has recognized the value of declarations of the United Nations and resolutions of the General Assembly and, therein, the frequent confirmation of the principle that States shall refrain from the threat of force in international relations. Specific examples of such United Nations declarations are: the Declaration on the Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations[19] and the 1987 Declaration on the enhancement of the effectiveness of the principle of Refraining from the Threat or Use of Force in International Relations. This latter affirms the binding character of this principle[20]. Various Security Council resolutions have also affirmed the above principle through the granting of security assurances to non-nuclear-weapon States by nuclear-weapon States[21] and

[19]GA res. 2625 (XXXV), 1970.

[20]GA res. 42/44 (XLII).

[21]Res. 984, 11 April 1995.

requiring the Security Council to act immediately should aggression or the threat of aggression with nuclear weapons against a non-nuclear State occur[22].

20. The use of force represents a violation of Article 2, paragraph 4 of the United Nations Charter which has created a general and comprehensive prohibition on the use of force. The prohibition is not restricted to any particular weapon and includes, therefore, by definition, the use of nuclear weapons. Additionally, the preamble of the United Nations Charter states that "armed force shall not be used, save in the common interest". Thus, the nature of Article 2, paragraph 4 is not to be regarded as *jus cogens* or an obligation of an absolute character. Therefore, the threat or first use of force in the promotion of national policy objectives, including the use of nuclear weapons, is wholly illegal. This is a fundamental principle of international law.

21. There are also norms in certain treaties which prohibit and limit the use of nuclear weapons with regard to certain aspects and with regard to certain regions. The preamble of the Treaty on the Non-Proliferation of Nuclear Weapons calls 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 and their means of delivery".

This Treaty aims at the prohibition of the manufacture and acquisition of nuclear weapons by non-nuclear-weapon States. The South Pacific Nuclear-Free Zone Treaty, the Treaty of Rarotonga[23], prohibits the manufacture, acquisition, possession or control of nuclear weapons in the covered area. The Treaty for the Prohibition of Nuclear Weapons in Latin America, the Treaty of Tlatelolco[24], prohibits the use, manufacture, production or acquisition of nuclear weapons directly or indirectly by the parties to the Treaty or within the region defined by the Treaty.

22. Thus, the pattern in international law regarding weapons of mass destruction is to prohibit not only the use, but the manufacture and acquisition of these weapons as well. The above treaties

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[22]Res. 255, 1968.

[23]24 I*LM* 1440 (1985), Art. 3.

[24]22 *UST* 762.

seek to eliminate both the use and the threat of the use of nuclear weapons. The illegality of the threat or use of nuclear weapons is underlined by treaty provisions calling for the destruction of nuclear weapons. The norms such treaties create are widely recognized and are universal concepts of international law.

23. It is a well-established principle of international law that every State must respect the territorial sovereignty and inviolability of every other State:

> "The principle of non-intervention involves the right of every sovereign State to conduct its affairs without outside interferences; ... the Court considers it part and parcel of customary international law ... The Court has observed that 'between independent States, respect for territorial sovereignty is an essential foundation of international relations and international law requires political integrity also to be respected'."[25]

The Court itself has recognized "every State's obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States". This principle applies obligatorily to a State's use of nuclear weapons, as nuclear weapons, because of their mere nature, would necessarily infringe the neutrality of third parties or neutral States. The facts given in the present proceedings evidence that radioactive fallout from a nuclear explosion does not respect political borders.

24. Specifically, under Article 1 of the Hague Convention of 1907 and Article 1 of the Hague Convention No. XIII, concerning the rights and duties of the mutual powers and persons in a war, on land and sea, respectively, belligerents are bound to respect the sovereign rights of neutral powers and to abstain in neutral territory or neutral waters from any act which would constitute a violation of neutrality. This obligation must include the indirect threat to life; likewise this duty must also today include the environment of third States.

26. Further, this principle is embodied in the principles of good neighbourliness as set out in Article 74 of the United Nations Charter. This reflects an agreement of the members of the international community that their policies and activities must take account of "the interests and

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[25] *Military and Paramilitary Activities in and Against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 96, citing *Corfu Channel, Merits, Judgment, I.C.J. Reports 1949*, p. 35.

wellbeing of the rest of the world, in social, economic and commercial matters". In addition, the 1963 Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water required each party:

> "to prohibit, prevent and not to carry out any nuclear weapon test explosion or any other nuclear explosion at any place under its jurisdiction or control:
>
> *(a)* in the atmosphere; beyond its limits, including outer space; or under water, including territorial waters or high seas; or
>
> *(b)* in any other environment if such explosion causes radioactive debris to be present outside the territorial limits of the States".

Furthermore, Article 4, paragraph 6 of the Noumea Convention stipulates that:

> "Each party shall ensure that activities within its jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of its national jurisdiction."

27. All of the above must be seen in conjunction with the effects of nuclear weapons. In this respect, the statements of the mayors of Hiroshima and Nagasaki are testimony of such effects on an isolated island State[26]. Clearly, their effects are not confined to national boundaries of belligerent land States; electromagnetic impulses resulting from a nuclear explosion travel at immense speeds and radioactive contamination can quickly reach beyond the State in which the explosion takes place to attain neighbouring countries.

27. The use of nuclear weapons would violate the treaty-based prohibition on causing long-term, widespread and severe damage to the environment.

28. The principle is enshrined in Article 35, paragraph 3, of Protocol I of 1977 which prohibits the use of methods and means of warfare that indeed cause or may be expected to cause such damage to the natural environment. This principle must, necessarily, apply to nuclear weapons owing to their enormous destructive and long-term effects on the environment; the initial radiation alone resulting from a nuclear explosion would have an effect on living organisms similar to that of a very toxic poison, in addition to leading to a significant increase in genetic malfunctions in such

[26]CR 95/27 dated Tuesday 7 November 1995.

organisms. The approach in Protocol I of 1977 follows in general terms the language used in the 1977 Convention on the Prohibition of Military or Hostile Use of Environmental Techniques. Thus is created an obligation not to indulge in military or any other hostile use of environmental modification techniques. Whether or not the use of nuclear weapons would constitute a deliberate manipulation of natural processes, the ENMOD Convention signals the widespread recognition of the need to limit the use of the environment as a weapon of war. Furthermore, Article 55 of Protocol I which relates to the protection of the civilian population, provides, *inter alia*, that:

> "Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes the prohibition of the use of methods or means of warfare which are intended or may be expected to cause such damage to the natural environment and thereby to prejudice the health or survival of the population."

29. Principle 21 of the 1972 Stockholm Declaration on the Human Environment stipulates that States are responsible for any acts in their territory having adverse effects on the environment of other States. Principle 2 of the Rio Declaration of 1992 reflects the same principle. The above examples are illustrative of an expanding area of international law. The progressive development of such law has resulted in recent years in the adoption of a series of treaties such as the Vienna Convention for the Protection of the Ozone Layer (1985) and the Convention on Biological Diversity (1992). It shows the awareness and scientifically-based concern of the international community and the emergency of an *opinio juris* concerning the preservation of the environment.

30. The use of nuclear weapons would violate international humanitarian law and the various treaties setting forth basic human rights. The use of nuclear weapons is subject to the rule of law. The development of new forms of behaviour, including methods and means of armed conflict, does not bring into question the law applicable to it. Thus the law of armed conflict and international humanitarian law in general apply to all forms of weaponry; any other view would undermine international law. Another legal right to consider, in particular, is the right to life. First, Article 66, paragraph 1, of the International Covenant on Civil and Political Rights[27] which entered into force on

[27] 6 *ILM* 638 1967.

23 March 1976 states: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." Second, the United Nations Human Rights Committee has determined that nuclear weapons threaten the non-derogable right to life. It has stated that: "The design, testing, manufacture, possessing and deployment of nuclear weapons are among the greatest threats to the right to life which confront mankind today ..." The right to life is confirmed in the European Convention for the Protection of Human Rights and Fundamental Freedoms[28], and the American Convention of Human Rights[29].

The right to life is one of the four non-derogable rights which constitute the "irreducible core" of human rights. This means that the right to life cannot be suspended by a State, even in times of public death. Although it is expected that in times of war human beings might perish, such killings should not exceed the limits of law. For example, Article 40 of the Fourth Geneva Convention stipulates that it is prohibited to effect a military order certain to result in no survivors. It can be argued that due to the devastating capabilities of nuclear weapons, ordering their use is equivalent to such an order. Furthermore, it can be argued that once a State has undertaken obligations towards another State or towards the international community in a specified sphere of human rights, that State can no longer maintain that matters in that sphere are exclusively within its domestic jurisdiction. Therefore, the manufacture, possession, deployment and threat of the use of nuclear weapons cannot be defined on the grounds that they are essential for defence in times of public emergency, or as a matter within a State's domestic jurisdiction.

This leads me to conclude that nuclear weapons not only threaten the right to life but that they also contribute to a spirit of mistrust amongst nations. This, in turn, intensifies the likelihood of threats being carried out. The threat of use of nuclear weapons, in fact even the tolerance of such weapons, destroys the structure and the very meaning of those aspects of international law based on respect for the human person.

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[28] *ETS* 5 1950 Art. 2.

[29] *AJIL* 679 1971 Art. 4.

31. I turn now to what is called unnecessary suffering. The humanitarian principles of armed conflict set standards for the conduct of armed hostilities with the purpose of circumscribing areas within which the savagery of war is permissible and limiting and reducing the suffering of individuals. The St. Petersburg Declaration of 1868, one of the earliest attempts to codify this area of customary law, states that international humanitarian law is designed to "conciliate the necessities of war with the laws of humanity". The preamble of the St. Petersburg Declaration of 1868 sets out the following:

> "Considering that the progress of civilization should have the effect of alleviating as much as possible the calamities of war;
>
> that the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;
>
> that for this purpose it is sufficient to disable the greatest possible number of men;
>
> that this object would be exceeded by the employment of arms which uselessly aggravate the suffering of disabled men or render their death inevitable;
>
> that the employment of such arms would, therefore, be contrary to the laws of humanity."

This is in 1868 and now we are in 1995.

The St. Petersburg Declaration serves as the illustration even principles set forth in previous centuries have particular relevance now.

It is therefore a recognized principle under international humanitarian law that it is prohibited to cause unnecessary suffering. Article 23 of the Hague Regulations and Article 35 of the Protocol Additional I of 1977 to the Geneva Conventions of 12 August 1949 reaffirm 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 is therefore a principle of international law that any actions in armed conflict must be proportionate to the legitimate aims of the conflict and therefore it would be unlawful to cause suffering and devastation which is in excess of that required to achieve such aims. It goes without saying that the enormous blast waves, air blasts, fire, residual nuclear radiation, radioactive fall-out,

electromagnetic impulses and thermal radiation, which are the primary effects of nuclear weapons would cause extensive and "unnecessary suffering".

32. According to Article II of the Convention on the Prevention and Punishment of the Crime of Genocide of 1949, any act committed with the intent to destroy the whole or in part a national, ethnical, racial or religious group, is considered genocide. This Convention, which applies in time of war or peace, restates the existing customary law relating to the crime of genocide. It prohibits a wide variety of acts but only where they are committed with intent to destroy a specific group. Nevertheless, it has been argued that due to their uniquely devastating effect, the threat or use of nuclear weapons is likely to breach this convention, especially given the likelihood of escalation the mere use of a single nuclear weapon would engender. Therefore, any use of nuclear weapons, which are capable of destroying large parts of a population, would constitute this crime against humanity and would therefore be illegal.

33. As to the legal issue concerning the health and survival of the population, under Article 12 of the International Covenant on Economic, Social and Cultural Rights, everyone has the right to "the enjoyment of the highest obtainable standard of physical and mental health". More specifically, under Article 55 of Protocol 1 of 1977, belligerents are prohibited from the use of methods or means of warfare which may be expected to cause long-term, widespread and severe damage to the national environment thereby prejudicing the health and survival of the population. This obligation under general international law is additionally set out under Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration. Moreover, it has been accepted by all States; it thus reflects a rule of customary law. This obligation extends to a State's own territories, territories of other States and to areas beyond its jurisdiction. This obligation includes the protection of air quality, free water resources, oceans and seas as well as biodiversity.

It is irrefutable that the adverse effects of a nuclear explosion on human health are immeasurable and irreparable. Two generations continue suffering from the Hiroshima and Nagasaki bomb and it should be borne in mind that existing modern nuclear weapons can be

hundreds of times more powerful than these. The negative effects of nuclear weapons necessarily mean that they are covered by the prohibition on long-term, severe and widespread damage to the environment.

34. I would like to deal now with the issue of poisonous weapons. It is a long-standing principle of international law that poisoning is prohibited. This pre-existing customary law was embodied in the 1925 Geneva Protocol which prohibited the use in war of asphyxiating, poisonous or other gases and of all analogous liquids, materials or devices and extended the prohibition to bacteriological methods of warfare (the Geneva Gas Protocol). In the words of the Protocol, "all analogous liquids, materials or devices", are so comprehensively phrased as to include any weapons of analogous character, irrespective of whether they were known or induced at the time of the signature of the Protocol. The radiation and fall-out effects of nuclear weapons can undoubtedly be likened to poison. It has been argued that the prohibition in this Protocol extends only to weapons whose prime effect is to injure by use of gas, poison or bacterial methods. There is no basis to make a distinction between the physical properties of poisonous gas and the physical properties of radiation as aptly illustrated by the radiation-enhanced neutron bomb.

The Hague Conventions of 1899 and 1907 also support this principle by prohibiting the use of poisoned or poisonous weapons and of arms, projectiles or materials causing unnecessary suffering. The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological and Toxic Weapons or their Destruction of 10 April 1972 and the Protocol Additional I of 1977 to the Geneva Convention of 1949 has already reaffirmed the above principles.

There can be no question that nuclear weapons *must* be included under the above provisions; any exclusion of nuclear weapons would put into question the whole system of international law. If weapons with lesser effect than nuclear weapons are banned, but not nuclear weapons themselves, there would be no logic to the system.

Moreover, a restrictive approach to interpretation is not the rule in international humanitarian law, which should always be interpreted to give the benefit of the doubt in favour of the protection of

the victim.

36. Finally, one sentence on genetic disorders. The well-established principles of international law that every State must respect the territorial sovereignty and inviolability of every other State, and that weapons which have indiscriminate effects must not be used, are reflected in numerous judicial decisions and arbitral awards, as well as treaties and other international acts. The qualitative effects of nuclear weapons mean that they violate those principles of international law as they necessarily and indiscriminately damage the health of the populations of other States, with far-reaching consequences.

This must necessarily include the causing of genetic disorders which is a proven result of the use of nuclear weapons. The effect on living organisms is similar to that of genotoxic poison and causes long term genetic risks even for those who are not directly involved in the conflict, including the children of those who are directly exposed. This is an inherent characteristic of the use of nuclear weapons and would occur in any use.

With the mention of genetic risks I cannot help but stress the importance of the question before the Court for future generations.

As I have now turned to the future, Mr. President and Members of the Court, I have reached a point at which a final statement must be made which resumes all the arguments which I have just made through the submissions of Qatar. In summary, Qatar has endeavoured to convince the Court of its role in support of the cause of the General Assembly's responsibility with respect to disarmament. Qatar views your role as the means to ensure peace for future generations.

And I am praying that you save the World's coming generations.

Thank you for your attention, Mr. President and Members of the Court.

The PRESIDENT: Thank you very much, Your Excellency, for your statement. That concludes the oral argument of the State of Qatar. The hearing is suspended for a break of 15 minutes.

The Court adjourned from 11.05 to 11.30 a.m.

The PRESIDENT: Please be seated. I will now give the floor to the delegation of the Government of the Russian Federation.

Mr. KHODAKOV: Monsieur le Président, Madame et Messieurs de la Cour, c'est un grand honneur et un grand privilège de présenter devant cette illustre Cour l'opinion de mon Gouvernement au sujet de deux requêtes sur la licéité des armes nucléaires. Je ne vais pas m'attarder sur l'importance que revêt cette question pour le droit international. Je suis certain que les Membres de cette Cour et son Président comprennent mieux que quiconque la responsabilité qui leur incombe.

Je vais maintenant passer au vif du sujet et avec votre permission, Monsieur le Président, je vais continuer mes remarques en anglais.

Mr. President and distinguished Members of the Court, first of all I would like to emphasize that in our statement we will put aside political as well as emotional aspects of the problem. We intend to concentrate mainly on the legal merits of the issue, which should obviously be of primary importance for the Court in considering the question whether or not to give an advisory opinion on any of the requests before the Court.

It has already been stated in our written submission - and the Government of the Russian Federation maintains it - that the International Court of Justice should refrain from giving an advisory opinion on the WHO request. We submit that the World Health Assembly resolution 46/40 of 14 May 1993, as well as the request formulated therein concerning - and here I emphasize - *the legality* of the use of nuclear weapons by a State in an armed conflict in the light of international law

including the WHO Constitution, fail to be within the competence of the WHO and represent *ultra vires* actions of the Organization.

Under these circumstances if the Court takes a decision to exercise its discretion and to give an advisory opinion, it would in a way establish a precedent of encouraging *ultra vires* actions of an international organization.

In the view of the Government of the Russian Federation it would seriously affect the development of international law as a whole as well as the law of international organizations in particular.

We consider it more appropriate to focus this statement on the consideration of the request put forward by the General Assembly. The question contained in the United Nations General Assembly resolution 49/75K of 15 December 1994 - "Is the threat or use of nuclear weapons in any circumstance permitted under international law?" - is formulated in more general terms and covers in a certain manner the question put forward by the WHO.

But the very wording of the General Assembly question is arguable. It gives rise to a counter-question whether it is in general correct to seek for an international law rule which permits certain actions in order to recognize them as legal. There are, of course, cases where international law permits certain actions. But in its essence international law does not represent a system of permissions. To the contrary, as a system of law it is based on restrictions and limitations.

The Russian Federation submits that by virtue of the principle of sovereignty it is assumed that a State may accomplish any acts which are not prohibited by international law and are not in contradiction with its generally recognized rules and principles. It would hardly be correct to assert that States may take only those actions which are expressly permitted under international law.

The Judgment in the *Lotus* case stipulated:

> "The rules of law binding upon States emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law and established in order to regulate the relations between these co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of States cannot therefore be presumed."

The question whether or not international law permits the use of nuclear weapons somewhat presumes that in absence of such a permission *expressis verbis* the use of nuclear weapons is prohibited. However, just to the contrary, by virtue of the principle of sovereignty it is presumed that a State is free to act in the absence of a specific restriction provided for in international law. Thus, if the question of this kind is to be asked, it should be "whether or not international law prohibits the use of nuclear weapons".

At the same time an extremely broad wording of the question formulated by the General Assembly ought to be mentioned. It somewhat makes an impression that there is no distinction between the use of nuclear weapons for the purpose of aggression and their use as an appropriate means of individual or collective self-defence as it derives from the United Nations Charter including, for instance, the retaliation for the aggressive use of nuclear weapons or any other kind of weapons of mass destruction. Neither makes it any essential difference in connection with the character and consequences of the use of nuclear weapons.

Meanwhile in this case, in our opinion, it is very significant to make such a distinction.

Mr. President, distinguished Judges, the Russian Federation is convinced that international law at this very moment does not contain any general ban on the threat or use of nuclear weapons *per se* (notwithstanding the general ban on the threat or use of force in international relations according to the United Nations Charter).

This conclusion may be substantiated by an analysis of the basic sources of international law - namely international treaties and international customary rules. I shall not consider here general principles of law as being an organic part of common international law.

1. There is no international treaty - either general or special - containing any general ban on the threat or use of nuclear weapons *per se*.

The international treaties dealing specifically with nuclear weapons are widely known. They are enlisted and analysed in our written statement, as well as in the statements of other Governments. I shall not take the attention of this high Court recalling them again. The analysis of these sources

in the context of the issue in debate reveals the following.

First of all these treaties acknowledge the existence of the nuclear weapons, as well as the possession thereof by certain States. At the same time these treaties impose various restrictions and limitations with regard to nuclear weapons, in particular, to their proliferation, testing, deployment on certain territories as well as to certain types of nuclear arms including the requirement of their elimination.

Therefore treaties dealing specifically with nuclear weapons impose a number of certain limitations with regard to them. But there is no treaty that would impose a general ban on the threat or use of nuclear weapons as such.

And, Mr. President and Members of the Court, it is not accidental. The Government of the Russian Federation believes that, so far, there are no objective prerequisites for concluding such a treaty, as well as there are no necessary and sufficient conditions for it. That is exactly why numerous appeals of the General Assembly to the Conference on Disarmament to start, on a priority basis, negotiations aimed at the conclusion of a convention prohibiting the use of nuclear weapons under any circumstances have not yet found an adequate response. Moreover, the very fact that the General Assembly resolutions contain these draft conventions confirms that there is no agreed rule to this effect in the current international law.

In this context, Mr. President and Members of the Court, I would like to stress the following. It is obvious that, while concluding specific treaties dealing with limitations on nuclear weapons, States proceeded from the premise that there is no prohibition of nuclear weapons *per se* in international law. Otherwise the very conclusion of these treaties would be completely meaningless. Therefore, they negotiated either the reduction of the likelihood of their use (the USSR-United States Treaty on the Prevention of Nuclear War of 1973; similar USSR-France (1976) and USSR-United Kingdom (1978) Treaties; the USSR-United States Agreement on the Creation of Nuclear Risk Reduction Centres of 1987) or the renunciation of their use against certain States, in certain regions and under certain circumstances (for instance, the USSR-United States-United Kingdom-France

Additional Protocol II to the Treaty of Tlatelolco, Article 3 of which contains an obligation not to use or threaten to use nuclear weapons against States Parties to the Treaty, and the similar USSR-China Protocol which was signed in addition to the Rarotonga Treaty).

2. A rule prohibiting in general the threat or use of nuclear weapons is not contained either in international treaties which do not deal specifically with nuclear weapons.

It is well known that the United Nations Charter (Art. 2, para. 4) obliges the Member States to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State or in any other manner inconsistent with the aims and purposes of the United Nations. This provision was quoted here several times.

In this context, the threat or use of nuclear weapons is equally prohibited as the threat or use of any other kind of weapons.

Meanwhile, Article 51 of the United Nations Charter provides that nothing in the Charter shall impair in any sense the inherent right of States to individual or collective self-defence if an armed attack occurs against a Member of the United Nations. Accordingly, in this respect the United Nations Charter admits the use of nuclear or other weapons by a State as an appropriate means of self-defence.

Mr. President and Members of the Court, we do not consider the provisions of a number of the United Nations General Assembly resolutions, which stipulate that the threat or use of nuclear weapons *per se* is a violation of the United Nations Charter, to be an authentic and binding interpretation of the United Nations Charter. Such General Assembly resolutions and declarations, regardless of the way of their adoption, are not binding and do not create by themselves obligations for the United Nations Members. A contrary opinion on the impact of such General Assembly resolutions is hardly compatible with the United Nations Charter itself.

A number of international treaties, not specifically dealing with the problem of nuclear weapons, also contain certain restrictions in this regard (the Treaty on Principles Covering the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other

Celestial Bodies of 1967; the Antarctic Treaty of 1959). However, there is not any general prohibition of the use of nuclear weapons *per se* in these treaties.

One can make a reference to international human rights treaties. However, in our view these treaties exist in a quite different dimension. Obviously, they were not designed with a view to cover situations in which nuclear weapons could be used. Suffice it to recall that by their very nature these treaties require peace and democracy as a prerequisite for their full and genuine implementation.

Particular reference can be made to the Convention on the Prevention and Punishment of the Crime of Genocide of 1948. We, however, believe that it is clear from the Convention that it is not the mere use of nuclear or any other type of weapons that constitutes genocide but a respective act "committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group" (Article II of the Convention). Therefore, to qualify certain actions as genocide, i.e., as a violation of international law, one should take into account their aim and intent but not the weapons and means used.

Mr. President, distinguished Judges, may I draw your attention to some arguments relating to the international law of armed conflicts.

Restrictions set by the rules applicable to armed conflicts in respect of means and methods of warfare definitely also extend to nuclear weapons. However, we are convinced that there is no general prohibition on the use of nuclear weapons *per se* in treaties codifying these rules.

The most recent rules applicable to an armed conflict are contained in the Additional Protocols of 1977 to the Geneva Conventions of 1949. Restrictions on the methods and means of warfare are contained, in particular, in Parts III and IV of Additional Protocol I. However, as Frits Kalshoven reasonably stated, the diplomatic conference which adopted the Protocols "was virtually unanimous in its view that it had not been convoked to bring the problems connected with the existence and possible use of nuclear weapons to a solution"[30]. The history of drafting of Protocol I shows that "any new rules and principles, embodied in the Protocol, have not been formulated with potential use

[30]Frits Kalshoven, *Constraints on the Waging of War*, ICRC, Geneva, 1987, p. 82.

of nuclear weapons in view"[31]. This is reflected in the Protocols in both of which there is neither reference to nuclear weapons nor mentioning of any other specific type of weapons, as well as in the declarations made by a number of States, and namely, the USSR, France, the United States, Spain, the United Kingdom, the Netherlands, Belgium, the Federal Republic of Germany and Italy, during the Conference and at the signing or ratification of the Protocol.

Mr. President and Members of the Court, the 1949 Geneva Conventions contain no regulations concerning nuclear weapons either.

Thus, the principal humanitarian law instruments adopted in the nuclear era do not provide for a general ban on the use of nuclear weapons.

Mr. President, distinguished Judges, references to the effect that nuclear weapons cause "unnecessary sufferings while injuring, uselessly aggravate the sufferings of disabled men, or render their death inevitable", and, thus, to Article 23 *(a)* of the Regulation on the Laws and Customs of War on Land annexed to the 1907 Hague Convention with the aim to justify the illegality of their use can hardly be considered as appropriate. The report of the International Committee of the Red Cross experts entitled *Weapons that May Cause Unnecessary Suffering or Have Indiscriminate Effects*" says:

> "It is difficult to define what suffering should be deemed 'unnecessary'. Undoubtedly, the authors of the ban on dum-dum bullets[32] felt that the impact of an ordinary rifle bullet was enough to put a man out of action and that infliction of a more severe wound by a bullet which flattened would cause 'unnecessary suffering' ... The fact that a more severe wound may put a soldier out of action for a longer period of time evidently has not been considered as a justification for permitting the use of bullets having such an effect. The discussed approaches can be applied ... to any weapon that does not secure greater military advantages than other weapons while causing greater suffering ... In addition, the concept of 'unnecessary suffering' would seem to call for correlation between the military advantages of any given weapon and humanitarian considerations."[33]

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[31]*Ibid.*, p. 104. See also: *Commentary on the Additional Protocols of 8 June 1977 to Geneva Conventions of 12 August 1949*, ed. by Y. Sandos, Chr. Swiinarski, Br. Zimmermann, JCRC, m.Nijhoff Publ., Geneva, 1987, p. 590.

[32]The authors of the Hague Declaration Concerning the Prohibition of Using Bullets which Expand or Flatten Easily in the Human Body of 1899 are meant.

[33]ICRC: *Weapons that may Cause Unnecessary Suffering or have Indiscriminate Effects*. Report on the work of experts. Geneva, 1973, p. 13.

These reasonable comments of the ICRC experts confirm that the principle of not causing "unnecessary suffering" is not in itself a general ban on the use of nuclear weapons *per se*.

This is also confirmed by the fact that international law did embark on the road of a special ban of particular types of weapons and their use. That is how appeared the 1925 Protocol on the Prohibition of the Use in War of Suffocating, Poisonous and other Similar Gases and Bacteriological Means; the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects, together with Protocols thereto; the 1972 Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on their Destruction; the 1993 Convention on the Prohibition of Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

3. Mr. President and Members of the Court, I submit that there is no customary rule of international law, which would prohibit the use of nuclear weapons in general either.

To respond in substance to the request of the General Assembly from the point of view of customary international law, the Court in accordance with Article 38, paragraph 1 *(b)*, of its Statute would obviously apply "international custom as evidence of a general practice accepted as law". But as it was stated earlier, it would not be a permissive rule, but the rule prohibiting the use of nuclear weapons *per se*.

Our analysis shows that there is no general practice accepted as law, that provides for such a prohibition.

For the purpose of this statement we do not intend to distinguish between the evidence of presence or, which is more accurate, of absence of relevant practice, on the one hand, and *opinio juris*, on the other hand.

As it has been already shown, the treaty practice and the treaty form of reconciliation of wills of States demonstrate not only the absence of a general prohibition of the use of nuclear weapons *per se*, but also the presence of the presumption that in principle the use of nuclear weapons is

admissible. This is confirmed by the treaty instruments in which States voluntarily refuse to use nuclear weapons under certain circumstance or agree to adopt measures to reduce the risk of nuclear war.

There are also other international arrangements of a non-treaty nature which contain similar provisions on voluntary refusal of nuclear States to use nuclear weapons. I mean particularly the memoranda on security guarantees in connection with the adherence to the NPT of Byelorussia, the Republic of Kazakhstan and Ukraine, signed by those States respectively with Russia, the United Kingdom and the United States of America in December 1994.

The will of particular States, their unilateral acts do not confirm the existence of a general, common practice and/or *opinio juris* on the matter under consideration; just to the contrary, what they demonstrate is the lack of such practice and *opinio juris* and the presence of major contradictions in views.

While a number of States claim that any use of nuclear weapons would be contrary to international law, the other officially proclaim the doctrine of nuclear deterrence and stick to it in practice, thus expressly emphasizing the admissibility of the use of nuclear weapons. Besides we should note unilateral statements made by nuclear States, in which they - while granting to non-nuclear States participating in the NPT the security guarantees against an aggression with the use of nuclear weapons - voluntarily gave up their right to use nuclear weapons under certain circumstances.

The written statements submitted to the Court and containing the official point of view, clearly show that there is no consensus among States on this issue.

It is important to stress that the lack of general prohibition of the use of nuclear weapons as such in international law has been noted not only by nuclear States.

Some nuclear States have, at different times, declared that they are not going to be the first to use nuclear weapons (China, the former Soviet Union), which also means that, in their opinion, the use of nuclear weapons has not been banned in principle.

A number of General Assembly resolutions where it is stated that the use of nuclear weapons would amount to a violation of the United Nations Charter and a crime against humanity cannot outlaw these weapons either.

As it has been already mentioned, these General Assembly resolutions as such do not create any obligation for the United Nations Member States. They are not, in our opinion, an expression of *opinio juris* of the world community either. It is not even a question of the outcome of voting on those resolutions (none of them was adopted either unanimously or by consensus, or by a vast majority of the United Nations Members). Many States prefer rather to vote in favour of these resolutions or abstain from voting, than to vote against them, having precisely in mind that, according to the Charter, they do not create any legal norm and do not imply the recognition of any rules as such, but are only of recommendatory nature.

This, however, does not mean that these resolutions do not reflect the *opinio juris* of some States with a different point of view. Nevertheless, they do not represent a form of co-ordination of wills of all United Nations Members in relation to acceptance of these provisions as international law.

The same may be said about the extent to which these General Assembly resolutions form universal practice which is another element of a customary law.

Furthermore, it should be noted that the acts of international organizations even in their substance make it manifest that different opinions exist on the issue under consideration. Thus, the WHA resolution 46/40 states that "over the last 48 years marked differences of opinion have been expressed by Member States about the lawfulness of the use of nuclear weapons". The United Nations Security Council resolution 984 of 11 April 1995 is also illustrative in this respect, for, according to it, the body primarily responsible for the maintenance of international peace and security "takes note with appreciation" of the above-mentioned statements of nuclear States on the guarantees to the non-nuclear parties to the Non-Proliferation Treaty. Moreover, this Security Council resolution points out that according to the relevant provisions of the United Nations Charter

"any aggression with the use of nuclear weapons would endanger international peace and security". Thus, the Security Council resolution as a matter of fact says that only the use of nuclear weapons by an aggressor but not any use of nuclear weapons *per se* would constitute a violation of the United Nations Charter.

In our opinion, the facts stated here demonstrate conclusively that at the present there is neither a universal practice nor a universal *opinio juris* confirming the unlawfulness of the use of nuclear weapons. And if so, there is no customary international law provision which would provide for a general ban on nuclear weapons *per se*.

All aforesaid does not naturally mean that the use of nuclear weapons is not limited at all. Even if the use of nuclear weapons is in certain cases justifiable - as individual or collective self-defence - such use should be made within limitations established by common international law with respect to means and methods of warfare.

The issue of legality of the use of nuclear weapons should not be dealt with in an abstract way, but in each specific case account should be taken whether such use would correspond to the criteria of self-defence and the above-mentioned limitations.

As Hans Blix said:

> "It is certainly correct to state that the legality of the use of most weapons depends upon the manner in which they are used. A rifle may be lawfully aimed at the enemy or it may be used indiscriminately against both civilians and soldiers. Bombs may be aimed at specific military targets or dropped at random. The indiscriminate use of the weapon will be prohibited, not the weapon as such."[34]

We should add that, accordingly, a qualified use rather than the use of weapons as such will be regarded as illegal.

4. Mr. President, distinguished Members of the Court, we do not want anybody to doubt that the Russian Federation stands for arms control, disarmament, cessation of nuclear weapon tests, and in the long run, for the prohibition of weapons of mass destruction, including nuclear weapons.

[34]Hans Blix "Means and Methods of Combat" in *International Dimensions of Humanitarian Law*. Published by Unesco, Martins Nijhoff publ., 1988, pp. 144-145.

However, all these restrictions should be introduced as soon as objective conditions necessary to form a common consent of the world community are ripe.

We have started to move in this direction. I am quite confident that in future the world community will prohibit nuclear weapons.

However, proceeding from the international law *de lege lata* I, as an expert and a lawyer, should acknowledge that today there is no provision of common international law prohibiting the use of nuclear weapons *per se*, although the use of nuclear weapons falls under those restrictions that exist in the international law in respect of use of other unprohibited types of weapons.

Mr. President, honourable Members of the Court, this concludes my statement on behalf of the Government of the Russian Federation. Thank you for your kind attention.

The PRESIDENT: I thank very much His Excellency, Mr. Khodakov, Director of the Legal Department of the Ministry of Foreign Affairs of the Russian Federation, for his statement. That concludes the oral arguments of the Russian Federation.

I give the floor to Judge Vereshchetin, who wishes to ask a question. Judge Vereshchetin, you have the floor.

Judge VERESHCHETIN: Thank you, Mr. President. My question is addressed to all the delegations taking part in the hearings which may wish to answer this question. In view of the different interpretations given to the meaning of the request of the General Assembly in the course of these hearings, does the question posed by the General Assembly, and in particular the words "in any circumstance" contained therein, lend itself grammatically in the English or other official languages of the United Nations to one only, or both, of the following interpretations?

The first interpretation: The Court is asked whether the threat or use of nuclear weapons is permitted under international law in all circumstances. I underline *in all circumstances*.

Or, the second interpretation: The Court is asked whether *there are some circumstances* in which the threat or use of nuclear weapons is permitted under international law.

Thank you, Mr. President.

The PRESIDENT: Thank you. I would like to point out that first, the delegations concerned will immediately receive, in writing, the question put by Judge Vereshchetin; second, that they will have 15 days in which to submit their written replies.

The Court will now adjourn and the public hearings will resume on Monday next at 10 a.m.

The Court rose at 12.10 p.m.