

Letter dated 15 June 1995 from the Permanent Representative of Samoa to  
the United Nations, together with Written Statement of the  
Government of Samoa



PERMANENT MISSION OF SAMOA  
TO THE UNITED NATIONS  
320 Second Avenue • New York, N.Y. 10017  
Tel: (212) 599-5196 • Fax: (212) 599-0797

15 June 1995

The Registrar  
International Court of Justice  
Peace Palace  
2517 The Hague  
Netherlands

Dear Sir,

I have the honour to attach the submission of Samoa in respect of the General Assembly request for an Advisory Opinion on the legality of the threat or use of nuclear weapons.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Tuiloma Neroni Slade', written in a cursive style.

Tuiloma Neroni Slade  
Ambassador and Permanent Representative



PERMANENT MISSION OF SAMOA  
TO THE UNITED NATIONS  
820 Second Avenue • New York, N.Y. 10017  
Tel.: (212) 599-6196 • Fax: (212) 599-3797

Legality of the Threat or Use of Nuclear Weapons  
(Request for Advisory Opinion)

Submission by Samoa

The Government of the Independent State of Western Samoa (Samoa) refers to the request from the General Assembly of the United Nations for an advisory opinion of the International Court of Justice (the Court) on the following question:

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

Samoa believes that the question should be answered "No."

Samoa is a small island state located in the Pacific Ocean. The Pacific was the scene of the only hostile use of nuclear weaponry and the scene of much nuclear explosions for testing purposes. Such nuclear testing has had significant and long term effects on the health of Pacific people and the environment. Samoa is not a member of any military grouping. It has no military forces and it has no enemies. The danger to it from nuclear weaponry is that of fallout from someone else's war. Samoa has a large stake in safeguarding its environment, and in the survival of the planet.

Samoa became independent in 1962. It joined the World Health Organization the same year, and the United Nations in 1976. Before joining the United

Nations, it became a party to the Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and Under Water in 1965, and to the Treaty on the Non-Proliferation of Nuclear Weapons in 1975. It is a party to and strong supporter of the South Pacific Nuclear Free Zone Treaty (Treaty of Rarotonga) which prohibits the stationing of nuclear weapons on the territories of the parties to the Treaty. It has voted for many General Assembly resolutions on nuclear disarmament issues.

Samoa believes that there is a continuing threat of use of nuclear weapons which must be addressed by the international community. Notwithstanding the end of the cold war, nuclear states have yet to relinquish their policies of first use, use and threat of use of nuclear weapons: not all have signed Protocols 1, 2 or 3 to the Treaty of Rarotonga under which they would refrain from using or threatening to use any nuclear explosive devices and from testing or stationing any nuclear devices in the area defined by the Treaty.

Samoa shares the view which it believes to be generally accepted among nations that the threat or use of nuclear weapons is illegal.

Samoa places considerable importance on the role of international law in governing the practice of States. It believes that an opinion from the Court would clarify the legal situation and would be of assistance to small states in their efforts to protect themselves from the threat or use of nuclear weapons. Samoa believes that an advisory opinion from the Court would also be an important step towards a universally accepted and legally binding prohibition on the threat or use of nuclear weapons, and would also be an important step towards the elimination of nuclear weapons.

On 16 September 1994, Samoa submitted to the Court that it believes that the use of nuclear weapons is illegal. This was in response to the question asked by the World Health Organisation whether the use of nuclear weapons by a State in war or other armed conflict would be a breach of its obligations under international law. Samoa will continue to work towards the complete elimination of such weapons, including the destruction of all existing stockpiles.

Samoa believes that the prohibition of the use or threat of use of nuclear weapons has been achieved under general international law. It has occurred by the cumulative effect of a series of multilateral treaties and of a series of resolutions of the General Assembly. In particular, Samoa relies on the:

- Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight (St. Petersburg Declaration) (1868);
- Convention (No. IV) Respecting the Laws and Customs of War on Land, done at The Hague, 1907;
- Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925);
- Charter of the United Nations (1945);
- Constitution of the World Health Organisation (1946);
- Geneva Conventions of 12 August 1949;
- Nuremberg Principles as codified by the International Law Commission (1950);
- Geneva Protocol I (1977);
- Declaration on the Prohibition of the Use of Nuclear and Thermo-Nuclear Weapons, G.A. Res. 1653 (XVI) (1961);
- Non-use of Nuclear Weapons and Prevention of Nuclear War, G.A. Res. 33/71B (1978);
- Non-use of Nuclear Weapons and Prevention of Nuclear War, G.A. Res. 35/152D (1980);
- Non-use of Nuclear Weapons and Prevention of Nuclear War, G.A. Res. 36/92I (1981);
- Convention on the Prohibition of the Use of Nuclear Weapons, G.A. Res. 45/59B (1990);
- Convention on the Prohibition of the Use of Nuclear Weapons, G.A. Res. 46/57D (1991).

Samoa further believes that the combined weight of these instruments is so overwhelming that the fundamental principles contained therein bind all states.

The General Assembly resolutions and treaties noted above have already been discussed in many of the statements presented to the Court concerning the advisory opinion requested by the World Health Organization on the use of nuclear weapons. They will no doubt be canvassed by others in the present proceedings. Samoa does not propose to repeat those arguments, but it does believe that it will be helpful for the Court to be apprised of some deeply-felt views of a small-state member of the international community.

Samoa believes that the General Assembly is well within its powers in requesting the advisory opinion, and that, in so far as the Court has a discretion whether to respond to the question, it should exercise that discretion in favour of answering.

Article 96, paragraph 1 of the Charter empowers the General Assembly to request the Court "to give an advisory opinion on any legal question." (Samoa's emphasis.) To the extent that organisations such as the World Health Organization are under any limits on the subjects about which they may ask for advisory opinions by virtue of the words "on legal questions arising within the scope of their activities" (Samoa's emphasis) contained in Article 96, paragraph 2, there is no such restriction on the right of the General Assembly. (Samoa does not doubt the power of the World Health Organization to make its request; the point is simply that the General Assembly's power is even clearer.) The question asked by the General Assembly is one which can only be answered by an analysis of sources of law such as those contained in Article 38 of the Statute of this Court. Samoa is of the view that "international custom, as evidence of a general practice accepted as law" (in the words of Article 38, paragraph 1.b of the Statute) is broad enough to encompass widely ratified multilateral treaties (even so far as non-ratifying states are concerned) and certain resolutions of international organisations.

The question which the General Assembly has asked is, moreover, a question which concerns quite fundamental interests of the General Assembly and its members. The General Assembly has a very broad mandate under the Charter to consider matters affecting war and peace and the survival of the planet. Article 11, for example, empowers the Assembly to "consider the

general principles of co-operation in the maintenance of international peace and security, including the principles governing disarmament and the regulation of armaments, and may make recommendations with regard to such principles to the Members or to the Security Council or to both."

Acting pursuant to such mandate, the General Assembly has, beginning in its very first session in 1946, given careful consideration to the issue of disarmament, including nuclear disarmament. It has done so at its regular sessions, at three special sessions, and through the Disarmament Commission which it created and which reports to it. The Assembly follows carefully the work of the Conference on Disarmament which meets in Geneva. Both on the basis of the language of the Charter and the subsequent practice of the General Assembly, the question of the legality of the threat or use of nuclear weapons is of abiding concern to the General Assembly.

Samoa is a faithful member of the United Nations and follows closely the work of the General Assembly. Its ultimate strength, like that of other small states, lies in the rule of law. It thus believes that it is very important to the General Assembly - and to states like Samoa - that the Court answer the question referred to it by the General Assembly.

Samoa does not believe that any pronouncement by the Court will harm the ongoing negotiations on nuclear disarmament. On the contrary, Samoa believes that advice from the Court confirming the illegality of the threat or use of nuclear weapons will be a necessary force towards the conclusion of current negotiations on a comprehensive test ban treaty and a fissile-material cut-off, and will also be a stimulus to the commencement of negotiations on a convention prohibiting and eliminating nuclear weapons.

It is important in this connection to bear in mind the function of the First Committee of the United Nations General Assembly and its role in the introduction of and adoption of the question now before this Court. The First Committee is responsible for recommending to the Conference on Disarmament disarmament measures which should be negotiated. The Committee would not have agreed to the request for an advisory opinion from this Court if it believed that such a request would undermine in any way the

negotiations on nuclear disarmament. And neither would the General Assembly.

Samoa also believes that an opinion from the Court would assist in the implementation of Article VI of the Treaty on Non-Proliferation of Nuclear Weapons, according to which parties to the Treaty pledge themselves to "pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control." A pronouncement of illegality from this Court would, Samoa believes, enhance that negotiation process by emphasising the illegality of the use or threat of use of nuclear weaponry, and will help to bring home to public opinion - especially in nuclear states - the ultimate need for nuclear disarmament under suitable control arrangements.

The argument against the legality of nuclear weapons relies in part, as we have suggested, on the General Assembly's pronouncements on the subject. It is noted that there are resolutions of the General Assembly, such as Res. 1653 (XVI), which declare the illegality of the use of nuclear and thermo-nuclear weapons, and then go on to contemplate the possibility of "convening a special conference for signing a convention on the prohibition of the use of nuclear and thermo-nuclear weapons for war purposes." Samoa submits that the requirement for such a convention does not detract from the normative effect of the declaratory part of the resolution.

Samoa believes that the practice of the General Assembly, from the first days of the organisation supports such a submission. For example, one of the early resolutions adopted by the GA was Resolution 96(I) on the Crime of Genocide. That resolution affirmed that "genocide is a crime under international law which the civilised world condemns." It went on to request the Economic and Social Council "to undertake the necessary studies, with a view to drawing up a draft convention on the crime of genocide." In its advisory opinion on Reservations to the Convention on the Punishment of the Crime of Genocide, 1951 I.C.J. 4, 23, this Court noted that "the principles underlying the Convention are principles which are recognised by civilised



nations as binding on States, even without any conventional obligation." The same is true here.

Samoa understands that there may be many reasons for following up a determination by a political organ of the illegality of an action or situation by treaty commitments. This may be for such reasons as to focus the attention of domestic legislative bodies where they have a role in ratifying treaties, to clarify the concrete details of what may have been stated only at the level of principle, or to provide for a regime to deal with dismantling or preventing that which is illegal. That was what happened with genocide. The definition was made more concrete. A regime was created for its suppression. In the present instance, a treaty regime is still needed for the destruction of nuclear weapons. The law develops step by step. An affirmative answer to the General Assembly's question will, however, contribute towards nudging the negotiations in the right direction.

To the extent that the Court may consider hearing oral statements Samoa would wish to avail itself of the opportunity to make such a statement or to be part of a joint presentation in that respect.

15 June 1995

