

Note Verbale dated 19 June 1995 from the Embassy of the
Islamic Republic of Iran, together with Written Statement of the
Government of the Islamic Republic of Iran



Embassy of the Islamic Republic of Iran
Duinweg 24, The Hague
IN THE NAME OF GOD

No. 1270-01-1368

The Embassy of the Islamic Republic of Iran presents its compliments to the International Court of Justice and has the honour to enclose herewith the written statement of the Islamic Republic of Iran in regard with "legality of the threat or use of Nuclear Weapons (request for advisory opinion)".

The Embassy of the Islamic Republic of Iran avails itself of this opportunity to renew to the International Court of Justice the assurances of its highest consideration.



Encl. written statement

International Court of Justice
Peace Palace
The Hague

The Government of the Islamic Republic of Iran is pleased to see that the International Court of Justice is requested by the General Assembly Resolution 49/57(K) of 15 December 1994 to render its advisory opinion on the following question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?"

This request has been made as General Assembly has competence under Article 96(1) of the Charter of the United Nations to ask the Court for its advisory opinion on any legal question, and, in accordance with Article 11(1), it has the capacity to "... consider the general principles of cooperation in the maintenance of international peace and security including the principles governing disarmament and the regulation of armaments" Our preliminary observations on this question are as follow:

A) Article 2(4) of the Charter stipulates that "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" It is therefore concluded, in accordance with paragraph 1(a) of General Assembly resolution 1653(XVI) of 24 Nov. 1961 that "the use of nuclear and thermo-nuclear weapons is contrary to the spirit, letter and aims of United Nations and, as such, a direct violation of the Charter of the United Nations."

B) Notwithstanding that the prohibition of threat or use of force is a fundamental principle and a preemptory norm of international law, the humanitarian international law imposes certain restrictions on the conduct of States in times of conflict, for the purpose of alleviating the sufferings of human beings in times of armed conflict. Some of these restrictions are clearly stipulated in humanitarian international instruments. In accordance with the Hague Regulations annexed to Convention No. IV respecting the Laws and Customs of War on Land (1907) "the right of belligerents to adopt means of injuring the enemy is not unlimited." Article 35(1) of the Protocol I of

1977 additional to the Four Geneva Conventions (1949) states that "in any armed conflict, the right of the parties to the conflict to choose methods or means of warfare is not unlimited."

It is therefore plausible to conclude that the non-existence of a legally binding instrument on the prohibition of certain types of weapons does not mean that States have an absolute right to use them. It could also be argued that norms: rules and general principles adopted in the field of humanitarian international law with a view to prohibiting and limiting the use of some special conventional weapons, is also effectively extended to nuclear weapons, due to the destructive nature of this kind of weapons. Some of the principles of humanitarian international law from which one can deduce the illegitimacy of the use of nuclear weapons are, inter alia, as follow:

- Prohibition of means and methods of war that cause unnecessary suffering to human societies and environment ¹;
- Distinguishing between military and civilian targets ²;
- The existence of proportionality between military advantages gained and the weapons and methods used ³;
- Prohibition of the use of instruments that cause indiscriminate effects, including means and methods that are used suddenly and equally against both civilian and military targets.

As a result of global efforts, a number of legally binding instruments have been adopted which imposes certain limits on the emplacement, testing and

¹) The Declaration of St. Petersburg of 1866 and Article 23(e) of the Hague Regulations annexed to the 1907 Hague Convention No. IV

²) Article 51, paras. 4 & 5 and Article 52 of Protocol I of 1977

³) Article 57 (2b) of Protocol I of 1977

proliferation of nuclear weapons. These include, inter alia:

- The Antarctic Treaty of 1959 which prohibits nuclear weapons explosion and testing in the Antarctica;
- Treaty Banning Nuclear Weapons Tests in the Atmosphere, in Outer Space and under Water (1963);
- Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies (1967);
- Treaty for the Prohibition of Nuclear Weapons in Latin America (Treaty of Tlatelolco) (1967);
- Treaty on the Non-Proliferation of Nuclear Weapons (1968);
- Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Sea-Bed and the Ocean Floor and in the Subsoil Thereof (1971);
- South Pacific Nuclear-Free Zone Treaty (1985).

In addition to treaties directly relating to nuclear weapons, certain legal instruments were also concluded in order to eliminate other types of weapons of mass destruction, like:

- Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (1972);
- Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques (1977);
- Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction, (1993)

It would not be logical to conclude that the threat or use of nuclear weapons is permitted, when

the international community has prohibited other weapons of mass destruction with much less effects on human life.

C) Prohibition of the use of nuclear weapons, due to their huge destructive and modifying effects, could also be understood from the rules of international law relating to the environment. First of all reference can be made to Principle 21 of 1972 Stockholm Declaration on Human Environment which, as a customary rule, stipulates that States are responsible for any acts in their territory having adverse effects on the environment of other States. The same idea is also reflected in Principle 1 of Rio Declaration of 1992. It can be argued that, while States are prevented from such conducts in their own territory, they are duly bound to refrain from any such acts against other States.

Article 35 of Protocol I of 1977 should be particularly mentioned which prohibits the use of methods and means of warfare that are indeed, or may be expected to cause widespread, long term and severe damage to the natural environment. No doubt, this prohibition applies to nuclear weapons for their enormous destructive and long term effect on the environment. In this regard mention can also be made of Article 23 of the Fourth Hague Convention of 1907 and Article 52 of the Fourth Geneva Convention (1949).

The progressive development of international environmental law in recent years has resulted in the adoption of a series of treaties, such as:

- Vienna Convention for the Protection of the Ozone Layer (1985)
- United Nations Framework Convention on Climate Change (1992)
- Convention on Biological Diversity (1992)

which is indicative of the awareness of international community and the emergence of an opinio juris concerning the preservation of the environment.

Therefore the use of nuclear weapons, having the most destructive effects on environment, is a great concern of international society.

D) Furthermore, Article 1 of the Fifth Hague Convention of 1907 Respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land states that "the territory of the neutral powers is inviolable." In accordance with Article 1 of the Hague Convention No. XIII concerning the Rights and Duties of Neutral Powers in Naval War, the belligerents are bound to respect the sovereign rights of neutral Powers and to abstain, in neutral territory of neutral waters, from any act which would constitute a violation of neutrality. The belligerent States have an obligation not only to abstain from directly attacking neutral States, but also to refrain from using methods and instruments that threaten indirectly the life and environment of third States. It is clear that the effects of the use of nuclear weapons are not confined to the national boundaries of belligerent States and have far-reaching consequences vis-a-vis the rights of third States.

E) There exists an opinio juris on the right of every person to life and security, which has been confirmed on numerous occasions by the United Nations General Assembly. In this regard, the General Assembly, exercising its functions under Article 11 of the Charter with the ultimate goal of achieving complete nuclear disarmament, has adopted a number of resolutions on the illegality of the threat or use of nuclear weapons, some of which are as follow:

- "The Declaration of the Prohibition of the Use of Nuclear and Thermonuclear Weapons", Resolution 1653 (XVI) of 24 Nov. 1961;
- Resolution 2936 (XXVII) of 29 Nov. 1972 concerning Non-Use of Force in International Relations and Permanent Prohibition of Nuclear Weapons;
- Resolution 33/71 of 14 Dec. 1978 on Non-Use of

Nuclear Weapons and Prevention of Nuclear Weapons;

- Resolution 34/83 of 11 Dec. 1979 on Non-Use of Nuclear Weapons and Prevention of Nuclear War;
- Resolution 35/152 of 12 Dec. 1980 on Non-Use of Nuclear Weapons and Prevention of Nuclear War;
- Resolution 36/92 of 9 Dec. 1981 on Non-Use of Nuclear Weapons and Prevention of Nuclear War;

This opinio juris can also be deduced from the 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons in which States reiterated their belief in "the ultimate goals of complete elimination of nuclear weapons and a treaty of general and complete disarmament"

Taking into consideration the end of the Cold War and the new developments in the international relations, the Islamic Republic of Iran believes that the International Court of Justice is now in a better position to respond to the international public conscience and render its advisory opinion on the illegality of the threat or use of nuclear weapons.