

THE  
**WORLD  
COURT**

PROJECT ON

**NUCLEAR  
WEAPONS**

AND

**INTER-  
NATIONAL  
LAW**

A  
Joint Project  
of the  
International  
Association of  
Lawyers  
Against  
Nuclear Arms,  
the  
International  
Peace Bureau,  
and the  
International  
Physicians for  
the Prevention  
of Nuclear War

Legal  
Memorandum  
by  
Nicholas Grief  
Foreword  
by  
Peter Weiss  
and  
Saul Mendlovitz

**The World Court Project on  
Nuclear Weapons and  
International Law**

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for the Prevention of Nuclear War

Legal Memorandum by Nicholas Grief  
Foreword by Peter Weiss and Saul Mendlovitz

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## Contents

Contributors .....	vii
Foreword .....	xi
Preface .....	xv
Chapter I .....	1
The Advisory Role of the World Court .....	
Chapter II .....	5
Sources of International Law Relevant to the Nuclear Weapons Question .....	
Chapter III .....	11
The Illegality of the Use of Nuclear Weapons .....	
Chapter IV .....	15
The Illegality of the Threat of Use of Nuclear Weapons .....	
Chapter V .....	17
The Importance of the World Court Project .....	
Appendix I .....	21
The Hague Declaration on the Illegality of Nuclear Weapons of the International Association of Lawyers Against Nuclear Arms .....	
Appendix II .....	25
Resolutions Adopted by the United Nations General Assembly on the Illegality of Nuclear Weapons, 1961-1991 .....	
Notes .....	39
Bibliography .....	43

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## Contributors

**The International Association of Lawyers Against Nuclear Arms (IALANA)** was founded on April 8, 1988, in Stockholm, Sweden, by lawyers assembled from eleven countries: the United States, the Soviet Union, Great Britain, Sweden, Australia, Japan, Finland, the German Democratic Republic, the Federal Republic of Germany, Yugoslavia, and The Netherlands.

IALANA takes the position that the use or threat of use of nuclear weapons violates international law and constitutes both a crime against humanity and a crime against peace. As of February, 1992, IALANA affiliated organizations include: Australian Lawyers for Nuclear Disarmament, Bangladesh Lawyers Association Against Nuclear Arms, Juristen tegen Kernwapens (Belgium), Juristes contra la Guerre Nucleaire (Belgium), International Association of Lawyers of the Commonwealth of Independent States (Russia), Jurister for Fred (Denmark), Palestinian Lawyers Union (Egypt), Finnish Lawyers for Peace and Survival, Juristes contre l'Arme Nucleaire (France), the IALANA section in Germany, Indian Lawyers Against Nuclear Arms (India), Centro di Iniziativa Giuridica contro la Guerra (Italy), Movement of Lawyers for the Elimination of Nuclear Weapons (Japan), Vereniging Juristen voor de Vrede (The Netherlands), New Zealand Lawyers for Nuclear Disarmament, Norsk Medlemsgruppe IALANA (Norway), Swedish Lawyers Against Nuclear Arms, Lawyers for Nuclear Disarmament (United Kingdom), The Lawyers Committee on Nuclear Policy (New York City, U.S.A.), and the Association des Juristes de la Republique Socialiste du Vietnam.

**The International Peace Bureau (IPB)**, which received the Nobel Peace Prize in 1910, is a global network of independent and nonaligned organizations. The permanent secretariat of the IPB is located in Geneva, Switzerland.

Since its inception one hundred years ago in 1892, the IPB has organized annual Universal Peace Congresses promoting disarmament, a League of Nations (later the United Nations), and an International Court of Justice. A special IPB emphasis has been the strengthening of international law, the United Nations, and other international institutions. The IPB supports general and complete disarmament (conventional and nuclear), the right for all countries and peoples to self-determination, and freedom from military, economic, and political intervention.

International Organizations and National Peace Movement Umbrella Organizations that serve as member organizations to the IPB include (with their year of affiliation): the International Fellowship of Reconciliation (1919), the International Progress Organization (1985), the International Union of Food and Allied Workers Association (1987), Pax Christi International (1987), the Quaker Peace and Service Committee (1892), the War Resisters International (1984), the World Conference on Religion and Peace (1989), the Australian Coalition for Disarmament and Peace (1986), the Irish Peace Council (1987), the Japan Council Against Atomic and Hydrogen Bombs (1975), the National Peace Council of Great Britain (1908), the National Peace Council of Norway (1964), the New Zealand Peace Movement (1987), the Peace Union of Finland (1923), and the Swedish Peace Council (1945).

**The International Physicians for the Prevention of Nuclear War (IPPNW)** is a federation of physicians' organizations with affiliates in 76 countries and more than 200,000 members committed to the prevention of war and the promotion of nonviolent means of conflict resolution. Since its founding in 1980, IPPNW has been dedicated to ending the nuclear arms race, and in 1985 it received the Nobel Peace Prize for its efforts to educate the public about the medical consequences of nuclear warfare. The abolition of nuclear weapons continues to be a central goal of the organization. The programs and activities of IPPNW have been in the areas of research, education, advocacy, and international diplomacy.

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## Foreword

The idea of petitioning the International Court of Justice (the World Court) to render an advisory opinion on the legality of nuclear weapons has been widely discussed among international law scholars and peace groups for the past decade. There are a number of reasons why we have decided to act upon this idea now.

The first and foremost reason is the end of the Cold War. The advent of the atomic bomb, as Albert Einstein once remarked, "has changed everything save our mode of thinking." But the end of the Cold War *has* changed our mode of thinking, or, at least, *has made it possible* for our thinking to change.

As long as the United States and the Soviet Union remained poised on the edge of war, it was difficult to get more than a handful of world leaders to think intelligently about the nature and possible consequences of nuclear confrontation. Justification for that confrontation, as manifested in military, budgetary, and propaganda policy, occupied the minds of these leaders to the exclusion of everything else. Their common zeal caused them to discard considerations of humanity, legality, and what Aristotle called practical reason.

When many of us sought to engage our professional colleagues in the Pentagon and the Kremlin in a discussion on the illegality of the use and threat of use of nuclear weapons, we were shrugged off with nonarguments: the law was "beside the point," the "reality" of nuclear weapons superseded principle, morality, and prudence, we were told. And so it happened that, for the first time in history, national suicide, as expressed through our Mutual

Assured Destruction (MAD) policy, became an acceptable national policy. How will future generations regard the legacy of nuclear war that we might leave to them if we do not use this unprecedented opportunity to discredit and terminate this policy?

Today, thank heavens, we have an opportunity to put the long nightmare of the threat of nuclear war behind us. The nuclear weapons of the former Soviet Union have been or are being retargeted away from U.S. cities; indeed, those who control them are open to offers of technical and financial assistance for their destruction. However, one must consider the possibility of a nuclear "backlash" in the republics of the former Soviet Union if their own disarmament efforts are not reciprocated by the other nuclear weapons-possessing States.

In addition to the traditional threat posed by the nuclear superpower confrontation, the proliferation of nuclear weapons technology and manufacture now constitutes a very serious problem. An advisory opinion from the World Court would most likely interpret the law as applied to every nation, and would not discriminate between the "national security" and "deterrence" exemptions to the law claimed by the nations of the North and the arguments by the nations of the South, that cite the exemptions precedent established by the North, to justify their own manufacture and deployment. The collapse of the nonproliferation regime, codified in the Treaty on the Non-Proliferation of Nuclear Weapons (1968), seems likely given the antagonism between North and South on this question. An advisory opinion from the World Court, however, could greatly strengthen the legal basis for the nonproliferation regime by reaffirming the obligation of each party to the treaty 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."

There are, of course, other reasons for challenging the fallacy of the nuclear weapons-based strategies for national and global security. There are the environmental hazards of nuclear weapons production and waste disposal, and the enormous and unaffordable costs of maintaining nuclear arsenals. The law has but one part to play in solving these problems. But the role of law, indeed, the rule of law, is central to their resolution.

We argue in the pages that follow that now is the time for nuclear disarmament by all of the nuclear weapons-possessing

states. And we assert that, to achieve this goal, the principles and rules of international law provide us with the legitimacy of the cumulative wisdom and sanction of humankind.

Today, as at other moments in history when reason has asserted itself over dread (witness the antiwar movement following the first world war and the establishment of the United Nations following the second world war), talk of a new world order under law is in the air. It is a good time, then, to define what that law is with regard to the most horrible of weapons, and, in the pursuit of this goal, to obtain a ruling from the judicial body best suited to render such a ruling, the International Court of Justice. A world just emerging from four decades of teetering on the brink of nuclear destruction needs to send itself a message: stop playing with fire, listen to the commands of civilized behavior, of the right to life, and the right to peace.

The day for the abolition of nuclear weapons has arrived. Let us seize the day!

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## Preface

In April 1988 the inaugural meeting of the International Association of Lawyers Against Nuclear Arms (IALANA) was held in Stockholm, Sweden. The intention to form this worldwide organization of lawyers had been declared in New York City in August 1987 during an international conference on nuclear weapons and international law, sponsored by the Lawyers Committee on Nuclear Policy (U.S.A.) and the Association of Soviet Lawyers. Since nuclear war would be the ultimate negation of the rule of law, lawyers bear a special responsibility for preventing such a war and for enforcing, developing, and strengthening the international legal order.

In September 1989 at The Hague, seat of the International Court of Justice, and venue of historic international peace conferences, IALANA adopted its Hague Declaration on the Illegality of Nuclear Weapons (see Appendix I). The Hague Declaration affirms that the use or threat of use of nuclear weapons is a war crime and a crime against humanity, as well as a gross violation of other norms of international customary and treaty law. More specifically, it appeals to the governments of all Member States of the United Nations to take immediate steps toward obtaining a resolution of the U.N. Charter, requesting the World Court to render an advisory opinion on the legality of the use of nuclear weapons.

In January 1992 in Amsterdam, the members of IALANA, by consensus agreement and acting upon its own recommendation to seek an advisory opinion from the World Court, initiated the World Court Project, in cooperation with the International Peace Bureau, recipient of the Nobel Peace Prize in 1910, and the

International Physicians for the Prevention of Nuclear War, recipient of the Nobel Peace Prize in 1985.

It is especially appropriate that initiation of the World Court Project coincides with the Decade of International Law, as the 1990s was declared by the United Nations General Assembly.<sup>1</sup> Among the purposes of the Decade of International Law is promotion of the acceptance of and respect for the International Court of Justice. It is also significant, in the context of the World Court Project, that the General Assembly has repeatedly declared that the use of nuclear weapons constitutes a violation of the U.N. Charter and a crime against humanity (see Appendix II).

The purpose of this Legal Memorandum is to outline the legal case against nuclear weapons, primarily for the benefit of diplomats at the United Nations, government officials, lawyers, journalists, and concerned citizens, and to describe the legal proceedings that we hope will lead to an advisory opinion on nuclear weapons by the World Court.

The Memorandum draws on the scholarship of various international jurists and makes particular use of material published by The Lawyers Committee on Nuclear Policy. It could not have been written without the advice, assistance, and encouragement of Phon van den Biesen (The Netherlands), Harold Evans (New Zealand), Erich Geiringer (New Zealand), Saul Mendlovitz (U.S.A.), Manfred Mohr (Germany), and Peter Weiss (U.S.A.). My thanks go to them and also to Willemijn Straeter of IALANA's International Secretariat in The Hague. A selection of books and articles, which provide a more detailed analysis of the illegality of nuclear weapons, is presented in the Bibliography.

In some senses, of course, the work represented here is still in progress. Responses to this Memorandum and participation in the World Court Project by other groups and organizations will therefore be welcomed.

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March 1992

# I

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## The Advisory Role of the World Court

The World Court, which sits at the Peace Palace in The Hague, is the principal judicial organ of the United Nations. It consists of fifteen independent judges elected by the U.N. General Assembly and Security Council "regardless of nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law."<sup>2</sup>

As of March 1992 the President of the World Court is Sir Robert Jennings (U.K), formerly Whewell Professor of International Law at the University of Cambridge. The other judges are: Roberto Ago (Italy), Andres Aguilar (Venezuela), Bola Ajibola (Nigeria), Mohammed Bedjaoui (Algeria), Jens Evensen (Norway), Gilbert Guillaume (France), Manfred Lachs (Poland), Shigeru Oda (Japan), Raymond Ranjeva (Madagascar), Stephen Schwebel (U.S.A.), Mohammed Shahabuddeen (Guyana), Nikolai Tarrasov (Russia), Christopher Weeramantry (Sri Lanka), and Ni Zhengyu (China).

The Court's jurisdiction (its power to hear and decide cases) is governed by its Statute, which forms an integral part of the U.N. Charter. Within its authority to hear the cases brought before it, the World Court possesses both contentious jurisdiction and advisory jurisdiction. Its jurisdiction to hear contentious cases (involving disputes between States) is based entirely upon the consent of the parties to the dispute, either for the particular case or in a general way before the dispute arises.<sup>3</sup> Moreover, only States may be parties in contentious cases before the Court.

Private persons, international organizations, and other bodies have no *locus standi* (standing).

*Nicaragua v. United States* is a case that provides an example of the exercise of the Court's contentious jurisdiction. Another example is *Australia v. France; New Zealand v. France* (the *Nuclear Tests* cases),<sup>4</sup> in which Australia and New Zealand sought a ruling on the legality of atmospheric testing by France in the Pacific Ocean. Due to the French government's announcement that it would stop conducting nuclear tests in the atmosphere, however, the Court did not actually have an opportunity to decide whether such tests violate international law. To date, the *Nuclear Tests* cases are the only cases in which the World Court has come close to considering aspects of the legal status of nuclear weapons.

The Court's advisory jurisdiction enables it to give advisory opinions on any legal question at the request of any body which is authorized to make such a request. Under Article 96 of the U.N. Charter, the General Assembly and the Security Council have the right to request an advisory opinion on any legal question. Other organs and specialized agencies of the United Nations may request advisory opinions on legal questions arising within the scope of their activities if they have been authorized to do so by the General Assembly. The current list of authorized organs and agencies includes the Economic and Social Council and the World Health Organization.<sup>5</sup> States themselves cannot request advisory opinions and, more importantly, no State can prevent the World Court from giving an advisory opinion which the United Nations considers to be necessary for the proper exercise of its functions.<sup>6</sup>

The Court has indicated that a "legal question" refers to a question which may be answered on the basis of law.<sup>7</sup> It makes no difference that a question is framed in abstract terms or relates to a sensitive political issue. The words "legal question" certainly cover a request concerning the interpretation of rules of customary international law, treaties, and even the U.N. Charter itself. Although the Court is not bound to give an advisory opinion on a legal question whenever it is requested to do so by an authorized body (the Statute itself uses the words "may give"), it takes the view that since it is itself an organ of the United Nations, such a request should not, in principle, be refused, however

controversial or far-reaching the political implications of the opinion might be. The Court considers that its response to a request for an advisory opinion represents its own participation in the activities of the United Nations Organization.<sup>8</sup>

One unresolved matter is the voting procedure governing General Assembly requests for advisory opinions by the Court. The U.N. Charter states that decisions of the General Assembly on "important questions," including recommendations relating to the maintenance of international peace and security, require a *two-thirds majority* of the Members present and voting. Decisions on other questions can be made by a *simple majority* of the Members present and voting.<sup>9</sup> It is not clear whether a proposal to request an advisory opinion on the legality of nuclear weapons would constitute an "important question." In 1949 the U.N. Secretary-General ruled that a simple majority was sufficient for the adoption of a proposal to request an advisory opinion on the international status of South-West Africa (now Namibia). His ruling was not challenged and in any case the proposal was adopted by more than a two-thirds majority.<sup>10</sup> Even if a simple majority is sufficient for a reference to the Court concerning the legal status of nuclear weapons, it is obviously desirable that the request for an advisory opinion should be strongly supported by U.N. Member States.

It is important that, for the purposes of seeking an advisory opinion, the questions are clearly formulated. The Statute of the Court states that the legal question for which an advisory opinion is being sought must be presented by means of a written request containing an exact statement of the question and accompanied by all documents likely to throw light on the question.<sup>11</sup> Requests for advisory opinions from United Nations organs are normally submitted to the Court by means of a letter from the U.N. Secretary-General containing the text of the resolution adopted, and it is customary for the Secretary-General (or his representative) to present written and oral statements to the Court.<sup>12</sup>

The Registrar of the Court gives notice of the request for an advisory opinion to all States entitled to appear before the Court.<sup>13</sup> The Court is open to all U.N. Member States. It is also open to other States under certain conditions. Although States cannot request an advisory opinion, they may participate in the

proceedings by submitting written or oral statements relating to the question, as may any international organization which the Court (or, should it not be sitting, the President) considers likely to be able to furnish relevant information.<sup>14</sup> Private individuals and other bodies have no right to be heard by the Court. However, they may be able to express their views indirectly through a State or an international organization.

Advisory opinions are delivered in open court. While they have no direct binding force, they do possess considerable legal authority. Indeed, one of the purposes of the Court's advisory jurisdiction is to provide authoritative interpretation of international law so that States and U.N. organs and agencies may be given the proper guidance to conduct policy in compliance with international law.

## II

### Sources of International Law Relevant to the Nuclear Weapons Question

The primary sources of international law are international conventions (treaties), international custom (rules of law derived from the general practice of States), and general principles of law (such as the fundamental humanitarian principles which the World Court emphasized in the *Nicaragua* case).

Treaties are normally only binding upon those States that are parties to them. To the extent that they are declaratory of customary international law or of general principles of law, however, the rules set out in a treaty must also be observed by third States. Many treaties relating to the threat and use of armed force, the laws of warfare, and the protection of human rights have this declaratory effect.

In international law, a distinction is drawn between obligations of a State *vis-a-vis* another State and obligations toward the international community as a whole. The World Court has held that obligations toward the international community derive "in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person."<sup>15</sup> Therefore, all States have a legal interest in the observance of such obligations.

A State may contract out of a customary rule which is in the process of formation by consistently and unequivocally demonstrating its refusal to accept the emerging rule.<sup>16</sup> However, the customary rules and humanitarian principles which outlaw

nuclear weapons are well established and no State may claim that these rules and principles are not binding upon it. Indeed, some of the relevant rules and principles constitute rules of *jus cogens* or "peremptory norms of general international law." These are norms accepted and recognized by the entire international community as norms from which no derogation is permitted. Such legal norms constitute the most fundamental rules and principles of international law. The rule contained in Article 2(4) of the U.N. Charter, which prohibits the threat or use of force by States in any manner inconsistent with the purposes of the United Nations, is a clear example of such a norm. Other norms are the prohibition of genocide and of other crimes against humanity.<sup>17</sup>

Judicial decisions and the teachings of the most highly qualified legal scholars are regarded as subsidiary means for the determination of rules of international law. It follows that the ruling by a Japanese court that the atomic bombing of Hiroshima and Nagasaki violated international law cannot be ignored.<sup>18</sup> Moreover, in recent years many of the world's most distinguished legal scholars have examined the status of nuclear weapons in international law and their work has resulted in an impressive body of literature.<sup>19</sup> Many jurists have concluded that the use or threat of use of such weapons is a direct contravention of international treaties and customary rules and general principles of international law.<sup>20</sup>

There are numerous relevant treaties, generally declaratory of customary international law and humanitarian principles relating to the conduct of armed conflict and the protection of human rights, to which the Court will be referred when the advisory opinion on nuclear weapons is requested. They include:

*The Declaration of St. Petersburg, 1868.* The Declaration of St. Petersburg banned the use of exploding bullets and created a general prohibition in respect of any weapons "which uselessly aggravate the sufferings of disabled men or render their deaths inevitable."

*The Hague Conventions, 1899 and 1907.* The Hague Conventions forbid the use of poison and all weapons which would cause unnecessary suffering. They also proclaim the inviolability of neutral territory. The preamble to the Conventions contain the "Martens Clause," which states that "in cases not included in the Regulations...the inhabitants and the belligerents remain under

the protection and the rule of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of the public conscience." A similar clause is included in the Geneva Conventions of 1949 and Protocol I of 1977. The legal significance of the Martens Clause was recognized by the World Court in the *Nicaragua* case.<sup>21</sup>

*The Geneva Gas Protocol, 1925.* The Geneva Gas protocol prohibits the use in war of asphyxiating, poisonous or other gases, and all analogous liquids, materials, and devices.

*The United Nations Charter, 1945.* The U.N. Charter establishes the duty of all States to settle their international disputes by peaceful means and to refrain from the threat or use of force in the conduct of their international relations except in self-defense or under the authority of the United Nations. Under the Charter, a State has the right to defend itself against an actual armed attack by another State, but its response must be directed at the sole purpose of defense and must not involve any means which are not strictly necessary. Moreover, in exercising the right of self-defense a State must observe the constraints imposed by international law on the use of weapons and methods of warfare.

*The Nuremberg Principles, 1945.* The norms of international law concerning war crimes and war criminals that are present in the Nuremberg Principles were first formulated in the Charter of the International Military Tribunal annexed to the London Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis. The Nuremberg Principles were subsequently recognized in the judgment of the Tribunal and unanimously affirmed by the U.N. General Assembly. They provide that an individual who commits an act which constitutes a crime against peace, a war crime, or a crime against humanity, is responsible for that act and liable to punishment under international law. "Crimes against peace" includes planning, preparation, initiation or waging of a war in violation of international treaties; "war crimes" refers to violations of the laws or customs of war;<sup>22</sup> and "crimes against humanity" refers to inhumane acts committed against a civilian population.

*The Genocide Convention, 1949.* This Convention makes it a crime under international law to kill or cause serious bodily or mental harm to members of a national, ethnic, racial, or

religious group with intent to destroy the group in whole or in part.

*The Geneva Conventions, 1949.* These four universally accepted Conventions formulate rules relating to the treatment of civilian populations and captured or wounded members of the armed forces. They reflect the basic principles prohibiting the infliction of unnecessary suffering and requiring the parties to an armed conflict to distinguish between combatants and noncombatants, only the former being legitimate military targets. According to the World Court's judgment in *Nicaragua*, the rules contained in the Geneva Conventions of 1949 reflect "elementary considerations of humanity."

*The International Covenant on Civil and Political Rights, 1966.* Based upon the Universal Declaration of Human Rights, this Covenant proclaims the inherent right to life from which no derogation is permitted, even in time of national public emergency. In light of this fundamental and inalienable right, the United Nations Human Rights Committee (which supervises the implementation of this Covenant) has declared that "the designing, testing, manufacture, possession and deployment of nuclear weapons are among the greatest threats to the right to life which confronts mankind today."<sup>23</sup>

*Protocol I of 1977 to the Geneva Conventions, 1949.* Protocol I expands upon the well-established principles prohibiting the infliction of unnecessary suffering and requiring the parties to an armed conflict to distinguish between combatants and noncombatants as legitimate military targets. It also codifies the customary rule of "proportionality," according to which weapons or military tactics that would cause excessive incidental civilian losses (in relation to any concrete and direct military advantage) are condemned. It also prohibits reprisals against civilians and the use of methods or means of warfare which may be expected to cause widespread, long-term, and severe damage to the environment.

On the basis of these and other international conventions, the extensive body of humanitarian law as it relates to warfare can be summarized for purposes relevant to seeking an advisory opinion on the legality of nuclear weapons. Under these rules of international law:

1. It is prohibited to use weapons or tactics which cause

unnecessary or aggravated devastation or suffering.

2. It is prohibited to use weapons or tactics which cause indiscriminate harm as between combatants and noncombatants, and military and civilian personnel.

3. It is prohibited to use weapons or tactics in warfare which violate the neutral jurisdiction of nonparticipating States.

4. It is prohibited to use asphyxiating, poisonous or other gas, and all analogous liquids, materials and devices, including bacteriological methods of warfare.

5. It is prohibited to use weapons or tactics which cause widespread, long-term, and severe damage to the natural environment.

6. It is prohibited to effect reprisals which are disproportionate to the antecedent provocation, or disrespectful of persons, institutions, or resources protected by the laws of war.

It is within the legal and humanitarian context of these fundamental rules of international law that the legality of the use and threat of use of nuclear weapons must be determined.

### III

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#### The Illegality of the Use of Nuclear Weapons

Any use of nuclear weapons would violate one or more of the established laws of war. The cardinal principal of proportionality (rule 6), applicable both in attack and defense, is the rule that would be most clearly violated. A nuclear war of "assured destruction," which represents a quantum leap from conventional war, would make a mockery of this principal. Once a massive nuclear attack is launched, all conceptions of proportionality become meaningless. Even the so-called limited use of tactical nuclear weapons against military targets in unpopulated areas would violate the proportionality doctrine, since it would represent a deliberate escalation of hostilities and would most likely provoke further escalation to strategic nuclear war.

The use of either strategic or tactical nuclear weapons would also violate the prohibition against causing unnecessary or aggravated devastation or suffering (rule 2) and the related prohibition against using "asphyxiating, poisonous or other gas, and all analogous liquids, materials or devices" (rule 4). Nuclear weapons are unacceptably cruel and it is absurd to consider their use lawful when the use of dumdum bullets or gas is clearly unlawful. In any case, the unqualified prohibition of the use of poison "and all analogous liquids, materials or devices" is sufficient to render any use of nuclear weapons illegal.

Furthermore, the use of nuclear weapons would violate the rule which requires the parties to a conflict to distinguish at all times between combatants and noncombatants (rule 1). In any



nuclear war, a small fraction of the dead would be military personnel. Cities and regions with large civilian populations would be targeted. The resulting annihilation of entire population groups would clearly violate the nondiscrimination principle. The use of "battlefield" nuclear weapons would also fail the nondiscrimination test of international law. Such a battle would probably strike close to urban areas with dense populations, resulting in significant, perhaps thousands or even millions of human casualties. And once the nuclear threshold was crossed, one side or both would be likely to resort to an all-out use of nuclear weapons.

An all-out nuclear war would violate the Genocide Convention since the purpose of such a war would be the destruction of entire ethnic groups, peoples, or nations. And even if a nuclear war could somehow be limited to an adversary's industrial, military, or command and communications installations, it would still be unlawful since the majority of these so-called military targets are located in or near urban population centers.

Given the uncontrollable nature of radiation, nuclear war would also violate the neutrality principle (rule 3). Many neutral countries would necessarily be "downwind" of belligerent countries subjected to nuclear attack. Any country which decided to engage in a nuclear attack would draw in other nations not involved in the conflict. Even a so-called limited use of tactical nuclear weapons would have devastating effects on nonparticipating countries. The penetrative effects of such weapons would extend far beyond the areas of actual conflict.

Indeed, given the vast environmental destruction that resulted from the 1991 war in the Persian Gulf (in which no nuclear weapons were used), it is no exaggeration to assert that even a "limited" nuclear war, which might result in the use of one hundred 1-megaton nuclear warheads, representing roughly 1/500 of the total nuclear stockpile that exists today, would possibly destroy the global ecosystem and most of humanity. The use of nuclear weapons in numbers smaller than one hundred would most likely result in the permanent radiation poisoning and ecological destruction of hemispheric regions, including oceans, rivers, forests, farmlands, and water tables. As The Lawyers Committee on Nuclear Policy observed in a recent statement: "The growing understanding that human beings are part of a complex web of life has helped bolster the idea that destruc-

tion of the environment, e.g., nuclear winter, is an international crime. This rule was added to the international laws of war by the 1977 Protocol I Additional to the 1949 Geneva Conventions." It is clear, then, that even a "limited" use of nuclear weapons, resulting in either regional or total environmental destruction, would constitute a war crime in this regard (rule 5).

Even the use of nuclear weapons in reprisal would be illegal (rule 6). Reprisals contemplate a return to legality, not the annihilation of the adversary. Thus, the doctrine of reprisal is inapplicable in the context of nuclear warfare. In any case, the use of force in reprisal is subject to the principle of proportionality, and reprisals against persons or objects protected by international law (including civilians, objects indispensable to the survival of the civilian population, and the natural environment) are prohibited.

Under the Nuremberg Principles, moreover, the use of nuclear weapons in violation of the above, well-established principles of international law would constitute a crime against peace ("initiation or waging of a war in violation of international treaties"), a war crime ("violations of the laws or customs of war"), and a crime against humanity ("murder, extermination...and other inhumane acts done against any civilian population").

The Geneva Conventions of 1949 would certainly be violated by any war fought with nuclear weapons. States are required to respect and ensure respect for the Conventions in all circumstances. In the *Nicaragua* case, the World Court confirmed that such obligations derive not only from the Convention themselves but also from the general principles of humanitarian law of which the Geneva Conventions are an expression.<sup>24</sup> The primary objective of the Geneva Conventions is to provide "disinterested aid...without discrimination to all victims of war who on account of their wounds, capture or shipwreck, cease to be enemies but become suffering and defenseless human beings." However, it would be impossible to restrict the devastating effects of nuclear weapons to legally permissible objects of destruction.<sup>25</sup> The indiscriminate nature of nuclear weapons, which inflict horrific injuries upon enemy, prisoner, wounded, and neutral alike, would render meaningless the expression *hors de combat*.

On the basis of these general principles of humanitarian law, the U.N. General Assembly has repeatedly condemned the

use of nuclear weapons as an "international crime." Over thirty years ago, the General Assembly declared that "any state using nuclear or thermonuclear weapons is to be considered as violating the Charter of the United Nations, as acting contrary to the laws of humanity, and as committing a crime against mankind and civilization."<sup>26</sup> In a series of subsequent resolutions, the General Assembly has reiterated its view that the use of nuclear weapons would be a violation of the U.N. Charter and a crime against humanity. Although these resolutions are not in themselves legally binding, they exist as evidence that the use of nuclear weapons, in the words of the Martens Clause, would violate "the laws of humanity and the dictates of the public conscience."

## IV

### The Illegality of the Threat of Use of Nuclear Weapons

If the use of nuclear weapons is contrary to international law, then logically any threat of such use must also be illegal. The symbiotic relationship between the illegality of use and threat is reflected in the cardinal rule of international law, Article 2(4) of the U.N. Charter, which prohibits "the threat or use of force" by a State in the conduct of its international relations. Under this most fundamental rule, when use is prohibited, the threat of such use is also prohibited. Therefore, once one establishes the illegality of the use of nuclear weapons under the U.N. Charter, one may establish the illegality of the threat of use of nuclear weapons under the U.N. Charter.

Since Article 2(4) prohibits the threat or use of force "against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations," and since the use of nuclear weapons would clearly be "inconsistent with the Purposes of the United Nations," and, therefore, illegal under the U.N. Charter, it follows from Article 2(4) that the threat of use of nuclear weapons would constitute a violation of the U.N. Charter as well.

Proponents of deterrence contend that the deployment of nuclear weapons with the aim of preventing nuclear war can be justified under Article 51 of the U.N. Charter, which provides for "the inherent right of individual or collective self-defense" in response to an "armed attack." However, the right of self-defense is not unlimited. A State is not permitted to threaten to use more

force than it would actually be lawful to use. The use of force in self-defense is always subject to the principle of proportionality. In view of their effects, the use of nuclear weapons would violate that legal principle. Secondly, and even more fundamentally, no State may threaten to use methods or means of warfare the actual use of which is prohibited by international law. If a State, purporting to exercise the right of self-defense, threatens to use excessive force or illegal weapons, that threat is unlawful under Article 2(4).

In any case, deterrence is an illusory strategy. The essence of the deterrence doctrine is that each side must believe that the other side's nuclear arsenal is useable and that its will to use the weapons in that arsenal is credible. Deterrence then becomes not the mere storage of weapons with intent to terrify but their deployment with intent to use, which brings the deterrence policy within the ambit of the prohibitions applicable to the use of nuclear weapons. It is clear that nuclear deterrence violates the laws of war insofar as it entails an imminent possibility of use.

Moreover, given that the actual use of nuclear weapons would violate international conventions and customary rules, it follows that the threat of use of nuclear weapons would constitute a crime against peace under the Nuremberg Principles ("planning, preparation...of a war in violation of international treaties, agreements or assurances").

Finally, the threat of use of nuclear weapons jeopardizes the supreme and inalienable right to life as well as the enjoyment of other human rights and fundamental freedoms. The U.N. Human Rights Committee has recognized the seriousness of this threat to life,<sup>27</sup> which is "compounded by the danger that the actual use of nuclear weapons may be brought about, not only in the event of war, but even through human or mechanical error or failure. Furthermore, the very existence and gravity of this threat generates a climate of suspicion and fear between States, a situation that is itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms in accordance with the Charter of the United Nations and the International Covenants on Human Rights."<sup>28</sup>

## V

### The Importance of the World Court Project

As many years ago as 1959, one legal scholar challenged international lawyers to be "willing to consider without fear or favour any changes in the structure of existing world society, however radical, which may be required to break out of the vicious circle of our system of world power politics."<sup>29</sup> It is in the light of that continuing challenge that we are urging the Member States of the United Nations to refer the question of the legality of nuclear weapons to the International Court of Justice.

The terrible reality of nuclear weapons, however, is not solely a legal problem, and a purely legal approach to its resolution would be inadequate. Nevertheless, it is a problem that urgently requires legal action. An authoritative interpretation of international law as it relates to this matter would be fundamental to a comprehensive solution.

As U.N. Charter Article 1(1) proclaims, the primary mission of the United Nations is "to maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace." That mission would be significantly advanced by a request to the World Court by the U.N. Member States for an advisory opinion on the legality of the use and threat of use of nuclear weapons. A legal referral to the World Court on this question would be a vital step toward the elimination of such weapons.

The World Court Project reflects the centrality of the nuclear weapons issue in international law, the desirability of

submitting this issue to judicial scrutiny and determination at the highest level and, above all, our confidence in the International Court of Justice. For as the *Nicaragua* case showed, the Court is ably committed to upholding the fundamental principles of international humanitarian law and the rules governing recourse to armed force. An advisory opinion that reaffirmed the illegality of the use and threat of use of nuclear weapons would assist those within the nuclear weapons powers who are struggling to formulate a rational post-Cold War policy grounded in international law, including the elimination of nuclear weapons. It would also facilitate the adoption of an international treaty that expressly prohibited the manufacture, testing, possession, deployment, use and threat of use of nuclear weapons.<sup>30</sup>

In summary, The World Court Project expresses the conviction that a ruling on the legal status of nuclear weapons by such an authoritative body as the International Court of Justice would, in the words of one distinguished jurist, "mark an important step forward in awakening the people and governments of the world to the extent which modern military weapons have outrun all the basic concepts of the international laws of war, as well as morality and humanity."<sup>31</sup>

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## Appendix I

### **The Hague Declaration of the International Association of Lawyers Against Nuclear Arms**

(Adopted by the IALANA General Assembly on September 24, 1989)

The International Association of Lawyers Against Nuclear Arms (IALANA), meeting at its First World Congress at The Hague, September 22-24, 1989,

*concerned* about the continuation of the nuclear arms race and the maintenance of military strategies based on the use of omnicidal weapons;

*calling attention* to United Nations General Assembly resolution 39/11 of November 12, 1984 on the Right of Peoples to Peace;

*rejecting strongly* any argument that the use or the threat of use of nuclear weapons is permitted because they are nowhere expressly prohibited as such;

*convinced* that such a suggestion conflicts directly with the Martens Clause first mentioned in The Hague Convention of 1898 with Respect to the Laws and Customs of War on Land, and subsequently restated in other universally binding instruments of international law, which clause states that "in cases not included in the Regulations...populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, the laws of humanity, and the requirements of the public conscience";

*affirming* that the use or threat of use of nuclear weapons is a war crime and a crime against humanity, as well as a gross violation of other norms of international customary and treaty law and envisioning as an urgent task the total outlawing of nuclear weapons, including their research, manufacture, and possession;

*envisioning* as an urgent task the total outlawing of nuclear weapons, including their research, manufacture, and possession;

*stressing* the primacy of international law and convinced that the people and nations of the world must for their survival submit themselves to the rule of law in international affairs;

*welcoming* The Hague Declaration of the Ministers of Foreign Affairs of the Movement of Non-Aligned Countries Meeting to Discuss the Issues of Peace and the Rule of Law in International Affairs in June 1989, approved by the Non-Aligned summit in Belgrade in September 1989, which calls on the United Nations General Assembly to declare a Decade of Peace and International Law in order to realize the hope for a peaceful world with justice for all;

*urges* legal and other nongovernmental organizations throughout the world to support the above-mentioned initiative of the Non-Aligned States;

*invites* lawyers throughout the world to sensitize "the public conscience" to the incompatibility of nuclear weapons with international law and to utilize their respective legal processes to build up a body of law dealing with various aspects of the problem;

*calls upon* all Governments to conduct their international relations and their military planning in accordance with the mandates of the United Nations Charter, especially Article 2(4), and the laws of war and other relevant principles of international law, including those relating to the rights of neutral states, the rights to life, peace and development, the environment, self-determination, nonintervention, and other human and peoples' rights;

More specifically, IALANA

*appeals* to the Governments of all States Members of the United Nations to take immediate steps toward obtaining a resolution by the United Nations General Assembly under Article 96 of the

United Nations Charter, requesting the International Court of Justice to render an advisory opinion on the illegality of the use of nuclear weapons;

*dedicates* itself to the enunciation and promotion of the rights to life and peace as the most fundamental of all human rights, in accordance with the United Nations Charter, Articles 3 and 28 of the Universal Declaration of Human Rights, Article 6 of the International Covenant on Civil and Political Rights, and General Comments 6(16) and 14(23) of the Human Rights Committee of the United Nations;

*pledges* to undertake a major effort to bring about a re-examination of the myth of nuclear deterrence as keeper of the peace;

*supports* the worldwide movement toward the establishment of nuclear-free zones and the right of the people at all levels, municipal, national and regional, to establish such zones;

*offers* to work with the International Physicians for the Prevention of Nuclear War and other organizations for a Comprehensive Test Ban;

*believes* that disarmament negotiations must not only deal with existing weapons, but most focus on stopping the development and introduction of new arms technologies relating to all weapons of mass destruction;

*considers* that, quite apart from the legal, moral, strategic, and political aspects of nuclear weapons, the harmful consequences of their production are incompatible with the peoples' right to health and to a clean environment;

*requests* nuclear weapons states to adhere to the Nuclear Non-Proliferation Treaty;

*expresses* its deep concern with the continuing sufferings of the Hibakusha and its sympathy with the "Appeal from Hiroshima and Nagasaki for a Total Ban and Elimination of Nuclear Weapons," and

*calls* on Governments to seize the present historic opportunity to reverse the arms race and utilize the resources thus made available for the task of achieving sustainable development and

economic justice for all people and nations, and especially to solve the problem of Third World Debt on a just basis.

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## Appendix II

### **Resolutions Adopted by the United Nations General Assembly on the Illegality of Nuclear Weapons**

This Appendix contains the texts of certain United Nations General Assembly resolutions concerning nuclear weapons. It should be noted that, while some of these resolutions call for the enactment of an international convention specifically prohibiting the use and threat of use of such weapons, these resolutions also affirm that such use would, even in the absence of such a convention, constitute a violation of the Charter of the United Nations and a crime against humanity. Many conventions and treaties are merely declaratory or confirmatory of existing international law, and do not necessarily create new law.

#### **The 1961 U.N. General Assembly Resolution on Nuclear Weapons (Res. 1653 (XVI))**

#### **Declaration on the Prohibition of the Use of Nuclear and Thermonuclear Weapons**

*The General Assembly,*

*Mindful* of its responsibility under the Charter of the United Nations in the maintenance of international peace and security, as well as in the consideration of principles governing disarmament,

*Gravely concerned* that, while negotiations on disarmament have not so far achieved satisfactory results, the armaments race, particularly in the nuclear and thermonuclear fields, has reached

a dangerous stage requiring all possible precautionary measures to protect humanity and civilization from the hazard of nuclear and thermonuclear catastrophe,

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

*Considering* that the use of nuclear and thermonuclear weapons would bring about indiscriminate suffering and destruction to mankind and civilizations to an even greater extent than the use of those weapons declared by the aforementioned international declarations and agreements to be contrary to the laws of humanity and a crime under international law,

*Believing* that the use of weapons of mass destruction, such as nuclear and thermonuclear weapons, is a direct negation of the high ideals and objectives which the United Nations has been established to achieve through the protection of succeeding generations from the scourge of war and through the preservation and promotion of their cultures,

1. *Declares* that:

(a) The use of nuclear and thermonuclear weapons is contrary to the spirit, letter and aims of the United Nations and, as such, a direct violation of the Charter of the United Nations;

(b) The use of nuclear and thermonuclear weapons would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind and civilization and, as such, is contrary to the rules of international law and to the laws of humanity;

(c) The use of nuclear and thermonuclear weapons is a war directed not against an enemy or enemies alone but also

against mankind in general, since the peoples of the world not involved in such a war will be subjected to all the evils generated by the use of such weapons;

(d) Any State using nuclear and thermonuclear weapons is to be considered as violating the Charter of the United Nations, as acting contrary to the laws of humanity and as committing a crime against mankind and civilization;

2. *Requests* the Secretary-General to consult the Governments of Member States to ascertain their views on the possibility of convening a special conference for signing a convention on the prohibition of the use of nuclear and thermonuclear weapons for war purposes and to report on the results of such consultation to the General Assembly at its seventeenth session.

*1063rd plenary meeting,  
24 November 1961.*



**The 1978 U.N. General Assembly Resolution on Nuclear Weapons (Res. 33/71 B)**

**Non-Use of Nuclear Weapons and Prevention of Nuclear War**

*The General Assembly,*

*Alarmed* by the threat to the survival of mankind and to the life-sustaining system posed by nuclear weapons and by their use inherent in concepts of deterrence,

*Convinced* that nuclear disarmament is essential for the prevention of nuclear war and for the strengthening of international peace and security,

*Recalling* the statement contained in the Final Document of the Tenth Special Session of the General Assembly that all States should actively participate in efforts to bring about conditions in international relations among States in which a code of peaceful conduct of nations in international affairs could be agreed and which would preclude the use or threat of use of nuclear weapons,

**1. Declares that:**

(a) The use of nuclear weapons will be a violation of the Charter of the United Nations and a crime against humanity;

(b) The use of nuclear weapons should therefore be prohibited, pending nuclear disarmament;

**2. Requests** all States, particularly nuclear weapons States, to submit to the Secretary-General before the thirty-fourth session of the General Assembly, proposals concerning the non-use of nuclear weapons, avoidance of nuclear war and related matters, in order that the question of an international convention or some other agreement on the subject may be discussed at that session.

*84th plenary meeting,*

*14 December 1978*

**The 1980 U.N. General Assembly Resolution on Nuclear Weapons (Res. 35/152 D)**

**Non-Use of Nuclear Weapons and Prevention of Nuclear War**

*The General Assembly,*

*Alarmed* by the threat to the survival of mankind and to the life-sustaining system posed by nuclear weapons and by their use, inherent in concepts of deterrence,

*Convinced* that nuclear disarmament is essential for the prevention of nuclear war and for the strengthening of international peace and security,

*Recalling* its declaration, contained in the Final Document of the Tenth Special Session of the General Assembly, that all States should actively participate in efforts to bring about conditions in international relations among States in which a code of peaceful conduct of nations in international affairs could be agreed upon and which would preclude the use or threat of use of nuclear weapons,

*Recalling* its resolutions 1653 (XVI) of 24 November 1961, 33/71 B of 14 December 1978 and 34/84 G of 11 December 1979,

*Taking note* of the report of the Secretary General, to which is annexed the Comprehensive Study on Nuclear Weapons, prepared with the assistance of a group of experts,

**1. Declares once again that:**

(a) The use of nuclear weapons would be a violation of the Charter of the United Nations and a crime against humanity;

(b) The use or threat of use of nuclear weapons should therefore be prohibited, pending nuclear disarmament;

**2. Requests** all States that have so far not submitted their proposals concerning the non-use of nuclear weapons, avoidance of nuclear war and related matters, to do so, in order that the question of an international convention or some other agreement on the subject may be further considered at the thirty-sixth

session of the General Assembly;

3. *Decides* to include in the provisional agenda of its thirty-sixth session the item entitled "Non-use of nuclear weapons and prevention of nuclear war."

*94th plenary meeting,  
12 December 1980*

# **The 1981 U.N. General Assembly Resolution on Nuclear Weapons (Res. 36/92 I)**

## **Non-Use of Nuclear Weapons and Prevention of Nuclear War**

*The General Assembly,*

*Alarmed* by the threat to the survival of mankind and to the life-sustaining system posed by nuclear weapons and by their use, inherent in concepts of deterrence,

*Convinced* that nuclear disarmament is essential for the prevention of nuclear war and for the strengthening of international peace and security,

*Recalling* its declaration, contained in the Final Document of the Tenth Special Session of the General Assembly, that all States should actively participate in efforts to bring about conditions in international relations among States in which a code of peaceful conduct of nations in international affairs could be agreed upon and which would preclude the use or threat of use of nuclear weapons,

*Recalling* its resolutions 1653 (XVI) of 24 November 1961, 33/71 B of 14 December 1978, 34/83 G of 11 December 1979 and 35/152 D of 12 December 1980,

*Taking note* of the Comprehensive Study on Nuclear Weapons prepared by the Secretary-General with the assistance of a group of experts,

1. *Declares* once again that:

(a) the use of nuclear weapons would be a violation of the Charter of the United Nations and a crime against humanity;

(b) The use or threat of use of nuclear weapons should therefore be prohibited, pending nuclear disarmament;

2. *Urges* the consideration, at the second special session of the General Assembly devoted to disarmament, of the question of an international convention on the non-use of nuclear weapons and prevention of nuclear war or some other agreement on the subject,

taking into account the proposals and views of States in this regard;

3. *Decides* to include in the provisional agenda of its thirty-seventh session the item entitled: "Non-use of nuclear weapons and prevention of nuclear war."

*91st plenary meeting*  
*9 December 1981*

### **The 1990 U.N. General Assembly Resolution on Nuclear Weapons (Res. 45/59 A)**

#### **Convention on the Prohibition of the Use of Nuclear Weapons**

*The General Assembly,*

*Convinced* that the existence and use of nuclear weapons pose the greatest threat to the survival of mankind,

*Conscious* that the nuclear arms race increases the danger of the use of nuclear weapons,

*Convinced also* that nuclear disarmament is the only ultimate guarantee against the use of nuclear weapons,

*Convinced further* that a multilateral agreement prohibiting the use or threat of use of nuclear weapons should strengthen international security and help to create the climate for negotiations leading to the complete elimination of nuclear weapons,

*Conscious also* that the recent steps taken bilaterally by the Union of Soviet Socialist Republics and the United States of America towards a reduction of their nuclear weapons and the improvement in East-West relations and the international climate can contribute towards this goal,

*Recalling* that, in paragraph 58 of the Final Document of the Tenth Special Session of the General Assembly, it is stated that all States should actively participate in efforts to bring about conditions in international relations among States in which a code of peaceful conduct of nations in international affairs could be agreed upon and that would preclude the use or threat of use of nuclear weapons,

*Reaffirming* that the use of nuclear weapons would be a violation of the Charter of the United Nations and a crime against humanity, as declared in its resolutions 1653 (XVI) of 24 November 1961, 33/71 B of 14 December 1978, 34/83 G of 11 December 1979, 35/152 D of 12 December 1980 and 36/92 I of 9 December 1981,

*Noting* with regret that the Conference on Disarmament, during

its 1990 session, was not able to undertake negotiations with a view to achieving agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstances, taking as a basis the text annexed to General Assembly resolution 44/117 C of 15 December 1989,

1. *Reiterates* its request to the Conference on Disarmament to commence negotiations, as a matter of priority, in order to reach agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstances, taking as a basis the draft Convention on the Prohibition of the Use of Nuclear Weapons annexed to the present resolution;

2. *Also requests* the Conference on Disarmament to report to the General Assembly at its forty-sixth session on the results of those negotiations.

*54th plenary meeting  
4 December 1990*

#### Annex to Res. 49/59 A

#### Draft Convention on the Prohibition of the Use of Nuclear Weapons

*The States Parties to this Convention,*

*Alarmed* by the threat to the very survival of mankind posed by the existence of nuclear weapons,

*Convinced* that any use of nuclear weapons constitutes a violation of the Charter of the United Nations and a crime against humanity,

*Convinced* that this Convention would be a step towards the complete elimination of nuclear weapons leading to general and complete disarmament under strict and effective international control,

*Determined* to continue negotiations for the achievement of this goal,

*Have agreed* as follows:

#### Article 1

The States Parties to this Convention solemnly undertake not to use or threaten to use nuclear weapons under any circumstances.

#### Article 2

This Convention shall be of unlimited duration.

#### Article 3

1. This Convention shall be open to all States for signature. Any State that does not sign the Convention before its entry into force in accordance with paragraph 3 of this article may accede to it at any time.

2. This Convention shall be subject to ratification by signatory States. Instruments of ratification or accession shall be deposited with the Secretary-General of the United Nations.

3. This Convention shall enter into force on the deposit of instruments of ratification by twenty-five Governments, including the Governments of the five nuclear-weapons States, in accordance with paragraph 2 of this article.

4. For States whose instruments of ratification or accession are deposited after the entry into force of the Convention, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5. The depositary shall promptly inform all signatory and acceding States of the date of each signature, the date of deposit of each instrument of ratification or accession and the date of the entry into force of this Convention, as well as of the receipt of other notices.

6. This Convention shall be registered by the depositary in accordance with Article 102 of the Charter of the United Nations.

#### Article 4

This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally

authentic, shall be deposited with the Secretary-General of the United Nations, who shall send duly certified copies thereof to the Government of the signatory and acceding States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed this Convention, opened for signature at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ one thousand nine hundred and \_\_\_\_\_.

# **The 1991 U.N. General Assembly Resolution on Nuclear Weapons (Res. 46/37 D)**

## **Convention on the Prohibition of the Use of Nuclear Weapons**

*The General Assembly,*

*Convinced* that the existence and use of nuclear weapons pose the greatest threat to the survival of mankind,

*Convinced also* that nuclear disarmament is the only ultimate guarantee against the use of nuclear weapons,

*Convinced further* that a multilateral agreement prohibiting the use or threat of use of nuclear weapons should strengthen international security and contribute to the climate for negotiations leading to the ultimate elimination of nuclear weapons,

*Welcoming* the Treaty between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms, signed on 31 July 1991,

*Welcoming also* their announcements of significant measures, including unilateral steps, which could signal the reversal of the nuclear arms race, and expressing the hope that these will be followed by agreements at an early date on further cuts in strategic nuclear arsenals,

*Conscious* that the recent steps taken by the United States of America and the Union of Soviet Socialist Republics towards a reduction of their nuclear weapons and the improvement in the international climate can contribute towards the goal of complete elimination of nuclear weapons,

*Recalling* that, in paragraph 58 of the Final Document of the Tenth Special Session of the General Assembly, 70/ it is stated that all States should actively participate in efforts to bring about conditions in international relations among States in which a code of peaceful conduct of nations in international relations could be agreed upon and that would preclude the use or threat of use of nuclear weapons,

*Reaffirming* that the use of nuclear weapons would be a violation

of the Charter of the United Nations and a crime against humanity, as declared in its resolutions 1653 (XVI) of 24 November 1961, 33/71 B of 14 December 1978, 34/83 G of 11 December 1979, 35/152 D of 12 December 1980 and 36/92 I of 9 December 1981,

*Noting with regret* that the Conference on Disarmament, during its 1991 session, was not able to undertake negotiations with a view to achieving agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstances, taking as a basis the text annexed to General Assembly resolution 45/59 B of 4 December 1990,

1. *Reiterates* its request to the Conference on Disarmament to commence negotiations, as a matter of priority, in order to reach agreement on an international convention prohibiting the use or threat of use of nuclear weapons under any circumstances, taking as a basis the draft Convention on the Prohibition of the Use of Nuclear Weapons annexed to the present resolution;

2. *Also requests* the Conference on Disarmament to report to the General Assembly on the results of these negotiations.

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## Notes

1. United Nations General Assembly resolution 44/23 of 17 November 1989.
2. Articles 2-4 of the Statute of the International Court of Justice.
3. Article 36 of the Statute of the International Court of Justice.
4. ICJ Reports 1974, pp. 253, 457.
5. See the International Court of Justice Yearbook, 1989-1990, p. 53.
6. *Interpretation of Peace Treaties* case, ICJ Reports, 1950, p. 65, at p. 71; *Western Sahara* case, ICJ Reports, 1971, p. 12, para. 39.
7. *Western Sahara* case, ICJ Reports, 1975, p. 12, para. 15.
8. *Interpretation of Peace Treaties* case, above, note 6. The Court has said that an advisory opinion should only be refused for compelling reasons, e.g., if the principle that a State is not obliged to have its disputes submitted to judicial settlement without its consent would otherwise be circumvented. See the *Western Sahara* case, above, note 6, paras. 23, 33.
9. Article 18 of the U.N. Charter.
10. L.M. Goodrich, E. Hambro, and A.P. Simons, *Charter of the United Nations*, third revised ed., Columbia University Press, 1969.
11. Article 65(2) of the Statute of the International Court of Justice.
12. Goodrich, *et al.*, above, note 10, p. 567.
13. Article 66(1) of the Statute of the International Court of Justice. The Court is open to all U.N. Member States. It is also open to other States under certain conditions.
14. Article 66(2) of the Statute of the International Court of

Justice. In light of Article 34(2), this appears to mean any public international (inter-governmental) organization. Such organizations may also present information to the Court on their own initiative.

15. *Barcelona Traction* case (second phase), ICJ Reports, 1970, p. 3, paras. 33-34.

16. I. Brownlie, *Principles of Public International Law*, fourth ed., OUP, 1990, p. 10.

17. *Ibid.*, p. 513.

18. *Shimoda* case, 1964, 8 Japanese Annual of International Law, p. 212.

19. See, most recently, F. A. Boyle, A. P. Rubin, B. H. Weston, S. MacBride, R. A. Falk, D. Hodgkin, M. Wilkins, P. Weiss, *In re: More Than 50,000 Nuclear Weapons, Analyses of the Illegality of Nuclear Weapons Under International Law*, (Northampton, MA: Aletheia Press, 1991); *The Bomb and the Law, Evidence, Commentary and Judgment of the London Nuclear Warfare Tribunal*, (Stockholm, Sweden: Alva and Gunnar Myrdal Foundation, 1989).

20. See, Boyle, *et al.*, *In re: More Than 50,000 Nuclear Weapons*.

21. See *Nicaragua v. United States* (Case Concerning Military and Paramilitary Activities in and Against Nicaragua), para. 218, ICJ Reports, 1986.

22. According to the International Law Commission's Draft Code of Crimes Against the Peace and Security of Mankind, the use of unlawful weapons constitutes an "exceptionally serious war crime." See U.N. Doc. A/CN.4/L.464/Add.4 (15 July 1991), p. 29.

23. General comment 14(23) on Article 6 of the Covenant, 2 November 1984: U.N. General Assembly Official Records, 40th Session, Supp. No. 40 (Doc.A/40/40), Report of the Human Rights Committee, p. 162, Annex VI.

24. Above, note 21, para. 220.

25. N. Singh, *Nuclear Weapons and International Law*, Stevens, London, 1959, pp. 197-99.

26. Resolution 1653 (XVI) of 24 November 1961.

27. Above, note 23 and accompanying text.

28. *Ibid.*

29. G. Schwarzenberger, *The Legality of Nuclear Weapons*, London Institute of World Affairs, Stevens, London, 1959, pp. 58-59.

30. A Draft Convention on the Prohibition of the Use of Nuclear

Weapons is annexed to General Assembly resolution 46/37 D of 6 December 1991.

31. Niall MacDermot Q.C., "Are Nuclear Weapons Legal?", Bulletin of World Federation of United Nations Associations, December 1984.

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