

IN THE INTERNATIONAL COURT OF JUSTICE

ADVISORY OPINION: LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS (ITALY, MARSHALL ISLANDS, NETHERLANDS, QATAR)

MEMORIAL OF THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS

COMES NOW the Government of the Netherlands and for their Memorial to the Court States the following:

STATEMENT OF THE ISSUE:

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

STATEMENT OF LAW:

1. Article 2(4) of the United Nations Charter declares 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, or in any other manner inconsistent with the purposes of the United Nations.
2. The Court's power to give advisory opinions is a discretionary one, As stated by the Court itself in the Peace Treaties case (ICJ Rep. 1950, p. 71): "Article 65 of the Statute is permissive. It gives the Court the power to examine whether the circumstances of the case are of such a character as should lead it to decline to answer the Request".

STATEMENT OF FACT:

As previously stated, the ICJ is allowed discretion in issuing an advisory opinion. Currently, the Nuclear Non-Proliferation Treaty (NPT), holds the objective of preventing the spread of nuclear weapons and weapon technology, promoting cooperation in the peaceful use of nuclear energy, and furthering the goal of achieving nuclear disarmament in general and complete disarmament. The advisory opinion requested of the ICJ regarding whether the threat or use of nuclear weapons is permissible in any circumstance under international law would undermine the purpose of this treaty.

The Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction (1972) sets out to achieve complete disarmament and elimination of all types of Weapons of Mass Destruction. All State Parties to this treaty are to undertake to dispose of, cease production of, or refrain from ever beginning production of Bacterial and Toxin Weapons. This is necessary to ensure the safety of the international community.

STATEMENT OF JURISDICTION:

3. According to Article 96 of the Charter of the United Nations: “(1) The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question (2)..... ” (emphasis added)
4. According to Article 65 of the Statute of the International Court of Justice which forms an integral part of the UN Charter: "(1) The court may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request. (2) " (emphasis added)
5. While Article 96 of the UN Charter determines who is competent to request an advisory opinion from the Court, Article 65(1) of the Court's Statute determines the competence of the Court to give an advisory opinion. According to Article 96(1) of the UN Charter, only the UN General Assembly or Security Council may request the Court to give an advisory opinion on any legal question.
6. The question submitted to the Court for an advisory opinion concerns the permissibility of the threat or use of nuclear weapons in any circumstance under international law and therefore constitutes a legal question.
7. In the opinion of the Netherlands Government, the General Assembly of the United Nations must be deemed competent to request an advisory opinion on the question submitted to the Court.

ARGUMENTS:

At its 15 December 1994 meeting, the United Nations General Assembly (GA) adopted resolution A/RES/49/75. Section K of the resolution urgently requested the International Court of Justice (ICJ) issue an advisory opinion on the legality of the threat or use of nuclear weapons. The Netherlands holds the opinion that the ICJ should choose to abstain from giving the advisory opinion requested. This would be permissible to request under the Peace Treaties case Article 65. It gives the Court the power to examine whether the circumstances of the case are of such a character as should lead it to decline to answer the request. The Netherlands attaches great value to the Non-Proliferation Treaty (NPT), the operation of which has been indefinitely extended by the NPT conference on May 11, 1995. By electing to extend this treaty indefinitely, the parties to the treaty reaffirmed the importance of this treaty as the international instrument for preventing the proliferation of nuclear weapons. The Marshall Islands entered the NPT through accession on 30 January 1995; Italy signed the NPT on 28 January 1969 and was deposited on 2 May 1975 for the United States and the United Kingdom, and 4 May 1975 for the Russian Federation; and Qatar entered the NPT through Accession on 13 June 1989 for the United States, 3 April 1989 for the United Kingdom, and 10 May 1989 for the Russian Federation. All parties on this matter accept the treaty and are therefore legally bound by it.

If the Court issues an advisory opinion on this matter, there are two realistic outcomes. If ruled illegal, it may inadvertently jeopardize the operation of the NPT. If ruled legal, a number of States may withdraw their support for the treaty or encourage other States from acceding to the treaty, undermining its universal application. Issuing an advisory opinion would undermine the purpose of these treaties.

SUMMARY AND REQUESTS:

For the sake of subsistence of the Non-Proliferation Treaty, we are requesting that the ICJ refrain from administering an advisory opinion. We reiterate the fact that the Court's power to give an advisory opinion is discretionary as stated by the Court itself in the Peace Treaties case (ICJ Rep. 1950, p. 71): Article 65. It is imperative for the safety of the international community in regards to nuclear weapons that the NPT is able to function, which would not be the case if the ICJ was to render an advisory opinion.