

Written Statement of the Government of Samoa



PERMANENT MISSION OF SAMOA
TO THE UNITED NATIONS
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LEGALITY OF THE USE BY A STATE OF NUCLEAR WEAPONS IN ARMED CONFLICT

(REQUEST FOR ADVISORY OPINION)

Submission by Samoa

The Government of the Independent State of Western Samoa (Samoa) refers to the request from the World Health Organization (WHO) for an advisory opinion of the International Court of Justice (the Court) on the following question:

"In view of the health and environmental effects, would the use of nuclear weapons by a State in war or other armed conflict be a breach of its obligations under international law including the WHO Constitution?"

Samoa has a long-standing concern and interest in the health and environmental effects of the use of nuclear weapons. As a member of the South Pacific Forum and of the United Nations, it has repeatedly condemned the testing of nuclear weapons, particularly in the Pacific region, because of their health and environmental effects. Samoa is a party to the South Pacific Nuclear Free Zone Treaty which prohibits the stationing of nuclear weapons on the territories of parties to the treaty.

Samoa considers that WHO has the mandate and the legal competence to seek the requested opinion from the Court, and that it is appropriate

and desirable for WHO to do so. This is particularly clear from the Constitution of WHO and its practice as reflected in a long line of resolutions of the World Health Assembly relating to human health, the environment, nuclear and other weapons, disarmament and the role of physicians in the preservation and promotion of peace.¹ As a member of WHO, Samoa supported the World Health Assembly resolution WHA 46.40 of 14 May 1993 requesting the Court's advisory opinion.

The authority of WHO to seek advisory opinions from the Court is provided for in Article 96(2) of the Charter of the United Nations, Article X of the Agreement between the United Nations and WHO approved by the UN General Assembly on 15 November 1947 and Article 76 of Constitution of WHO. The Preamble to the WHO Constitution sets out a series of basic principles recognizing the fundamental importance in the protection and enhancement of human health, and their necessary interdependence with related factors including the environment and international peace and security.

WHO reports² have concluded that even a limited nuclear conflict would have devastating effects on health and the environment; and that the only approach to the treatment of health effects of nuclear war is primary prevention, that is, the prevention of nuclear war.

The International Court of Justice is the principal judicial organ of the United Nations: Article 92, UN Charter. Its opinion on the legality of the use of nuclear weapons would thus provide authoritative guidance on the question which would assist WHO in its own task towards primary prevention.

¹See e.g., WHA 13.56 (1960); WHA 13.67 (1960); WHA 15.51 (1962); WHA 17.45 (1964); WHA 20.54 (1967); WHA 23.53 (1970); WHA 32.24 (1979); WHA 33.24 (1980); WHA 34.36 (1981); WHA 34.38 (1981); WHA 36.28 (1983); WHA 40.24 (1987); WHA 42.24 (1989); WHA 43.25 (1990); WHA 45.31 (1992); and WHA 46.20 (1993).

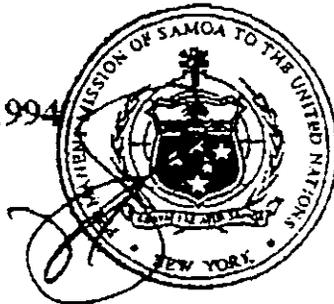
²Effects of Nuclear War on Health and Health Services, WHO, Geneva, 1984; Effects of Nuclear War on Health and Health Services (Second Edition), WHO, Geneva, 1987.

Samoa considers that the use of nuclear weapons by a state in war or other armed conflict would be a violation of international customary law and conventions, including the Hague Conventions and the Geneva Conventions. Such law and conventions prohibit the use of weapons which cannot discriminate between civilians and combatants, which cause unnecessary suffering, which violate the neutral jurisdiction of non-participating states, which cause widespread, long-term and severe damage to the environment, which use poisonous gas or analogous liquids or materials, or which are disproportionate to the antecedent provocation. The use of such weapons would also violate customary and conventional rules adopted to protect human health and the environment, including the WHO Constitution.

Furthermore, UN General Assembly resolutions³, supported by a great majority of states including Samoa, have declared that the use of nuclear weapons would be a crime against humanity and a violation of the UN Charter.

Samoa shares the view generally accepted among nations that the use of nuclear weapons is illegal, and believes that an advisory opinion from the Court confirming that view would be an important step towards the prohibition of the use of nuclear weapons and their elimination. Samoa will continue to work towards the complete elimination of such weapons.

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³See e.g., UNGA Resolutions 1653(XVI) of 24 November 1961, 33/71B of 14 December 1978, 34/83G of 11 December 1979, 35/152D of 12 December 1980, 36/92I of 9 December 1981, 37/100C of 13 December 1982, 39/63H of 12 December 1984, 40/151F of 16 December 1985, 43/76E of 7 December 1988, 44/117C of 15 December 1989, 45/59B of 4 December 1990 and 48/76B of 16 December 1993.