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Transmittal Note Verbale (in Spanish) dated 4 July 1995 from the Ministry of Foreign Affairs of Costa Rica, together with Written Comments of the Government of Costa Rica

REPUBLICA DE COSTA RICA
MINISTERIO DE RELACIONES EXTERIORES Y CULTO

DGPE/722-07-95
SUBDIRECCION DE
POLITICA MULTILATERAL

El Ministerio de Relaciones Exteriores y Culto de la República de Costa Rica saluda muy atentamente a la Honorable Secretaría General de la Corte Internacional de Justicia, en ocasión de presentar, adjunto a la presente, de la declaración del Gobierno de la República de Costa Rica en relación a las memorias brindadas por los diferentes gobiernos sobre la Opinión Consultiva requerida por la Organización Mundial de la Salud, respecto a la Legalidad del Uso y Amenaza de Armas Nucleares.

El Ministerio de Relaciones Exteriores y Culto de la República de Costa Rica aprovecha esta oportunidad para reiterarle a la Honorable Secretaría de la Corte Internacional de Justicia las seguridades de su más distinguida consideración.

San José, 04 de julio de 1995

A LA HONORABLE
SECRETARIA GENERAL
CORTE INTERNACIONAL DE JUSTICIA
LA HAYA, HOLANDA

Ministerio de Relaciones Exteriores y Culto

BEFORE

THE INTERNATIONAL COURT OF JUSTICE

The Hague

The Netherlands

Request by the
WORLD HEALTH ORGANIZATION
for an Advisory Opinion on the Legal Question
regarding"In view of the health and environmental effects would the use of nuclear weapons by the state in war or other armed conflicts be a breach of its obligations under international law including the WHO Constitution".

WRITTEN STATEMENT
OF THE
GOVERNMENT OF COSTA RICA

TO THE MEMORIALS PRESENTED BEFORE THE INTERNATIONAL COURT OF JUSTICE

July, 1995

1.- INTRODUCTION

a.-By its *Resolution adopted on June 20 ,1994* , the INTERNATIONAL COURT OF JUSTICE - (THE COURT)- , pursuant Article 66, paragraphs 2 and 4 , of the Statute of the COURT and to Articles 44 ,102 and 105 of the RULES,THE COURT has requested to THE STATES to give comments to the Memorials presented before the Court in the advisory opinion presented by the WHO to the question regarding if :"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..".

b.-Upon receiving the written statements THE COURT has fixed the date of June 20 1995 as the time limit within which written statements to the memorials presented may be submitted to THE COURT by the WHO and by those of its member States who are entitled to appear before THE COURT, in accordance with Article 66,paragraph 2,of the Statute of THE COURT. By its Resolution adopted on June 22 1995, The COURT extends to July 4,1995 the time - limit within which written statements may be sumitted by the Government of Costa Rica to the COURT. The present memorial will examine the written comments to the written pleadings already submitted by the States who appear before the COURT.

The purpose of this memorial , in keeping with Articles 44,102 and 105. of THE RULES OF THE COURT is to demonstrate to the Honorable COURT that:

> 1) THE WHO IS COMPETENT TO REQUEST AN OPINION ON THE LEGALITY OF THE USE OF NUCLEAR WEAPONS and 2) THERE IS A GENERAL INTERNATIONAL LAW PROHIBITION ON THE USE OF NUCLEAR WEAPONS.

To this end every effort has been made to focus only on the major issues above mentioned .

2.-THE JURISDICTION OF THE COURT AND THE ADMISSIBILITY OF THE APPLICATION .

The Goverment of the Republic of Costa Rica is of the opinion that the use of nuclear weapons -(BECAUSE OF THE CATASTROPIC HEALTH DAMAGES PROVOKED IN THE VICTIMS OF NUCLEAR ATTACKS) - involves a health issue [1] arising within the competence of the WHO [2] within the scope of their activities [3] and is a legal question. We consider that even so in this case ,the Advisory Opinion would involve matters of political nature in despite of legal questions [4]it is well known that all

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1 Even so in injourious consequences arising out of acts not prohibited by the international law , like the chemical explotion and fire at CHERNOBYL nuclear power plant . The disaster evidence that dozen died inmediately and as many as 33.000 pleople who participated in cleaning up the disaster area , are now reported to be ill from the effects of radiation poisoning.

2 In relation the Article 76 of the Constitution of the WHO establish that:

" UPON THE AUTHORIZATION BY THE GENERAL ASSEMBLY OF THE UNITED NATIONS OR UPON AUTHORIZATION IN ACCORDANCE WITH ANY AGREEMENT BETWEEN THE ORGANIZATION AND THE UNITED NATIONS , THE ORGANIZATION MAY REQUEST THE INTERNATIONAL COURT OF JUSTICE FOR AN ADVISORY OPINION ON ANY LEGAL QUESTION ARISING WITHIN THE COMPETENCE OF THE ORGANIZATION "

3 See in relation that article 1 of the Constitution of the WHO says that : " THE OBJETIVE OF THE WORLD HEALTH ORGANIZATION SHALL BE THE ATTAINMENT BY ALL PEOPLES OF THE HIGHEST POSSIBLE LEVEL OF HEALTH "

4 These commitments were expressed by the Government of " THE RUSSIAN FEDERATION "

conflicts in the sphere of international politics can be reduced to conflicts of legal nature, and that THE COURT practice refuse to remove a case from the COURT,when some of the parties claim that matters were political and no legal [5]

We are not able to join the point of view presented by some governments BEFORE THE COURT.[6] regarding the idea , that the WHO is *not competent to request an advisory opinion in concerns the legality or* illegality of the threat and use of nuclear weapons .In the opinion of the Government of Costa Rica no compelling reason [7] exiting in order to lock the COURT jurisdiction , and make it impossible to examine the advisory opinion requested.

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[5] See in relation THE CERTAIN EXPENSES OF THE UNITED NATIONS CASE -(1962-I.C.J. REP.151 and THE MILITARY AND PARAMILITARY ACTIVITIES CASE -NICARAGUA vs. U.S.A.- (1984-I.C.J. 392)

[6] See on reference the arguments presented by :THE U.S.A. GOVERNMENT, THE FRENCH REPUBLIC,THE FEDERAL REPUBLIC OF GERMANY,THE GOVERNMENT OF THE UNITED KINGDOM ,THE RUSSIAN FEDERATION AND THE NETHERLANDS GOVERNMENT.

[7] The COURT has repeatedly stated that:" ALTHOUGH ITS POWER TO GIVE ADVISORY OPINION UNDER ARTICLE 65 OF ITS STATUTE IS DISCRETIONARY, ONLY COMPELLING REASONS WOULD JUSTIFY REFUSAL OF SUCH REQUEST " -(NAMIBIA CASE:1971 ,I.C.J.,16.; CERTAIN EXPENSES OF THE UNITED NATIONS:1962,I.C.J.,151)-

3.- THERE EXISTS A GENERAL PROHIBITION ON THE USE OF NUCLEAR WEAPONS .

The Costa Rica Government identified the issue of the relationship between the Human Rights to Life and Health , and the Human Rights to International Peace and Security. Furthermore,the international law has recognized the fundamental connection between those rights and that one right cannot be pursued at the jeopardy of the other .In this connection we recognized that: 1) Human rights violation lead to the international peace and security degradation and vice - versa. 2) And reaffirm the universality , indivisibility and interdependence of all those rights.

Consecuently we consider that there exists enough evidence of international community concern to the potentially and irreversible damage to life and human health of which nuclear weapons, affecting the international peace and security are capables, [8] and consecuently of a general violation of the international law, and a prohibition on the use of nuclear weapons .In this order we would like to focus several important points ,that are necessarily to take into consideration by the COURT in this case.

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[8] See in relation : RESOLUTION ON THE NON - USE OF FORCE IN INTERNATIONAL RELATIONS AND PERMANENT PROHIBITION OF THE USE OF NUCLEAR WEAPONS , G.A. RES. 2936,U.N. .GAOR,20th Sess., Supp .N.31, AT 5,U.N. DOC. A/8730 1972.; RESOLUTION ON NON -USE OF NUCLEAR WEAPONS , AND PREVENTION OF NUCLEAR WEAPONS, G.A. RES. 33/ 71 B, 33 U.N. GAOR; RESOLUTION ON NON-USE OF NUCLEAR WEAPONS AND PREVENTION OF NUCLEAR WAR.G.A. RES. 34/ 83 G, 34 U.N. GAOR; RESOLUTION ON THE CONVENTION ON THE PROHIBITION OF THE USE OF NUCLEAR WEAPONS . G.A. RES. 45/ 59B , 45 U.N. GAOR

a.- THE USE OF NUCLEAR WEAPONS VIOLATES THE HUMAN RIGHTS TO LIFE AND HEALTH.

The Human Rights to Life [9] and Health [10] has found support both within the United Nations Treaties , Declarations and Resolutions as well as in Regional and International Agreements.

The use of nuclear weapons would produce a terrible impact with many human victims [11] and the violations of those human rights ; even so

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9 In the light of the foregoing ,Article 3 of the 1948 UNIVERSAL DECLARATION OF HUMAN RIGHTS provided that :" EVERY ONE HAS THE RIGHT TO LIFE , LIBERTY AND SECURITY OF PERSON ..". Regarding this matter other international law instruments established similar regulations as follows:
1)Article 2 (1) of the 1950 of "THE EUROPEAN CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS ".
2) Article 6(1) of the 1966 "INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS". Article 4(1) of the 1969 "AMERICAN CONVENTION ON HUMAN RIGHTS". Articule 4 of the 1981 " AFRICAN CHARTER ON HUMAN AND PEOPLE´S RIGHTS ". Article 1(a) of the 1981 "UNIVERSAL ISLAMIC DECLARATION OF HUMAN RIGHTS ". Article 6(1) of the 1989 "CONVENTION ON THE RIGHTS OF THE CHILD "

10 See ,in particular : Preamble to the 1946 "CONSTITUTION OF THE WHO ". Article 25 of the 1948 "UNIVERSAL DECLARATION OF HUMAN RIGHTS ".Article 12(1) of the 1966 "INTERNATIONAL COVENANT ON ECONOMIC , SOCIAL AND CULTURAL RIGHTS ". Article 16 of the 1981 "AFRICAN CHARTER ON HUMAN AND PEOPLE´S RIGHTS and Article 24(1) of the 1989 "CONVENTION ON THE RIGHTS OF THE CHILD ".

11 See in reference that the United Nations General Assembly, in 1958 , adopted the Report of the United Nations Scientific Committee on the Effects of the Atomic Radiation whic observes that:

" RADIOACTIVE CONTAMINATION OF THE ENVIRONMENT RESULTING FROM EXPLOSIONS OF NUCLEAR WEAPONS

the injurious consequences of their use arising out of acts not prohibited by the international law.

As it can be seen , through the evolution from the Universal Declaration of Human Rights to the present time, the principles and articles of the legal precedents mentioned , build upon each other to construct a strong structure where it is conclusive that the use of nuclear weapons violates the international law governing the Human Rights to Life and Health.

b.-THE USE OF NUCLEAR WEAPONS VIOLATES THE HUMAN RIGHT TO ENVIRONMENT.

The Human Right to Environment is more recent in origin than other human rights.However it is similary based upon United Nations precedents and regional practice.

The Universal Declaration of Human Rights has the main objetive of acknowledging and assuring the Right to Life , the first condition of all other human rights within this declaration.Consequently if environmental degradation by the use of nuclear weapons threatens present and future life, the Right to Life manifested in article 3) of the Declaration is violated.

The United Nations Conference on the Human Environment held in Stockholm in June on 1972 reinforces the above mentioned idea stating that:

CONTITUTES A GROWING INCREMENT TO WORLDWIDE RADIATION EXPOSURE .THIS INVOLVES NEW AND LARGELY UNKNOWN HAZARDS FOR CURRENT AND FUTURE POPULATIONS; THESE HAZARDS BY THEIR VERY NATURE ARE BEYOND THE CONTROL OF THE EXPOSED PERSONS . *THE COMMITEE CONCLUDES THAT ALL STEPS DESIGNED TO* PREVENT IRRADIATION OF HUMAN POPULATIONS WILL ACT TO THE BENEFIT OF HUMAN HEALTH " Resolution on the Effects of Atomic Radiation . G.S. Res. 114 (XII) . U.N. GAOR, 12 th Sess. Supp.No. 18, at 3 (1958).

"MAN HAS THE FUNDAMENTAL RIGHT TO FREEDOM , EQUALITY , AND ADEQUATE CONDITIONS OF LIFE, IN AN ENVIRONMENT OF A QUALITY THAT PERMITES A LIFE OF DIGNITY AND WELL BEING,AND HE BEARS A SOLEMN RESPONSABILITY TO PROTECT AND IMPROVE THE ENVIRONMENT FOR PRESENT AND FUTURE GENERATIONS ".

The Human Right to Environment , can be viewed as a means of safeguarding human inherent value and dignity, which all humans must acknowledge or deny their existence . The Right to Environment is, for this reason,justified materialy through its basis in human value and dignity.Because protection of the environment is so dependent upon the international peace and security , all of these human rights must be considered sacrosanct and protected together.

The rights set forth in the Stockholm Declaration were supported by subsequent United Nations Treaties,Declarations and Resolutions,which addressed the issue of human responsability for the preservation of the nature [12]These legal precedents demostrate an international consensus, that the continued enjoyment of the environment is a basic right of all humanity and the States have the obligation to protect these rights for present and future generations.Due to the length of the State practice and continued State expression of maintenance and protection of the environment, the Human Right to Environment may be considered a part of

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[12] See in relation that in 1974 the United Nations General Assembly adopted the "CHARTER ON ECONOMIC RIGHTS AND DUTIES OF STATES ". This Charter declared that economic , political and other relations are defined by the principle of respect for human rights. according to the Charter , the international community faces a common responsability of protecting the environment for present and future generations. In the same relation see: the 1982 " DECLARATION OF NAIROBI" -(concerning the protection of the environment over the last ten years since the Stockholm declaration)- Article 24 of the AFRICAN CHARTER ON HUMAN AND PEOPLE´S RIGHTS ". Article 11 of the PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS ". The 1985 " VIENNE CONVENTION FOR THE PROTECTION OF THE OZONE LAYER " and the 1989 "HAGUE DECLARATION OF THE ENVIRONMENT ".

customary international law . Whether it is recognized as a full legal right, its is clear that the Human Right to the Evironment would be violate by the threat or use of nuclear weapons

3.-CONCLUSIONS.

The Costa Rican Government strongly believe that we are in a decade that potentially could face a breakthrough in the attitude of the Sates towards peace,security and human rights protection by the achievement of the international law regulations.We are in the situation that calls not only for implementation of existing principles , but also for a new approach through the development of new principles of international law including new and more effective decision -making and enforcement mechanisms.

This is the reason why ,we appear before the COURT in order to stimulate the acceptance that the Human Rights to Life, Health, Pace Security and Environment are threatened by the use of nuclear weapons.

We refuses to believe that on the international level , there are not current ways of implementing such measures , as the development of binding rules and efficient enforcement procedures to protect those rights against the nuclear threat.We also believe that the COURT is indeed a source of authoritative criteria that not only help decision makers cope with uncertainty, but also constrains them to frame policies within the confines of such knowledge.This is the reason why we understand that the COURT through the present advisory opinion would indisputably contribute to the clarification and development of the international law governing the use of nuclear weapons.

Finally , the Government of the Republic of Costa Rica, believes that much evidence has been presented by the States -(that appears before the COURT in this Consultative Opinion)- in order to prove that 1) The WHO is Competent to request an Opinion on the Legality of the Use of Nuclear Weapons 2). There exists a General International Law Prohibition on the Use of Nuclear Weapons .

San Jose, Costa Rica, July 1994