

IN THE INTERNATIONAL COURT OF JUSTICE

ON THE MATTER OF THE REQUEST FOR AN ADVISORY OPINION CONCERNING THE LEGALITY OF THREATS OR THE USE OF NUCLEAR WEAPONS

MEMORIAL OF THE ITALIAN REPUBLIC

COMES NOW the Italian Republic and for their Memorial to the Court states the following:

STATEMENT OF LAW:

1. Chapter 1 Article 2(1) states that Member States are entitled to their own sovereignty that is equal to all UN Members. The jurisdiction of Members is to be respected by the UN and fellow Member States, with respect to each other's sovereignty and refraining from the use of force or threats of force towards each other.
2. The Treaty on the Non-proliferation of Nuclear Weapons obliges States who have signed to forgo the possession and future acquisitions of nuclear weapons and instead encourages States to pursue peaceful use of nuclear energy. However, Article 51 of the Charter of the UN guarantees States' right to self defense in the situation where the threat or potential threat of violence is present.

STATEMENT OF FACT:

On 14 December 1994 the General Assembly of the United Nations voted on adopting Resolution 49/75, with Section K requesting the International Court of Justice to issue an advisory opinion on the legality as well as the threat or use of nuclear weapons. Determining whether or not the Court had the jurisdiction to issue an advisory opinion on this issue is essential so the Court does not step outside its parameters of control. The main argument against the Court's ability to issue an advisory opinion on this topic is the rights to sovereignty as ensured in Article 2(1) of the Charter of the UN as well as the limitations of UN Organs in their involvement in the matters of States sovereignty as outlined in Article 96 of the Charter.

Should the Court be permitted to issue a judgment on this topic, would that open the avenues to issue opinions on the various other treaties and agreements previously made by the UN and its Members? Where are the limitations of UN Organs and the Court's ability to involve

themselves in the agreements and legislations created by Member States is the question opponents of allowing the Court to give an advisory opinion.

STATEMENT OF JURISDICTION

1. According to Article 96 of the Charter of the UN, organs of the U.N. are permitted to request advisory opinions on matters that fall within the scope of their activities and all requests outside of the scope of their activities may not be considered
2. According to the Charter of the UN Article 1 Paragraph 4, threats or use of force to fellow member states is prohibited therefore the threat of use of nuclear weapons falls within the jurisdiction of the Charter of the UN prohibition of threats or threats of violence against member states.
3. According to Resolution 49/75 of 9 January 1995, the threat and use of nuclear weapons against another state is prohibited in accordance with the Charter of the UN and encourages member states to increase their efforts for nuclear disarmament and nonproliferation.

ARGUMENTS

1. The Court's decision to grant an opinion on the use of nuclear weapons is accepted by the government of Italy, however, the language in which nuclear weapons is discussed affects the parameters in which the Court may render an opinion on. The possession of nuclear weapons falls within the legality of Article 2 Section 4 of the Charter of the UN, but the use of or threat of use of nuclear weapons falls within the jurisdiction of the court.
2. Article 2 Section 4 of the Charter of the UN states that the usage of force in a given case is illegal, however, the threat to use such weapons is not implied to fall within these parameters.
3. Sovereignty is what allows for Member States of the UN to coexist within the jurisdiction of international law as well as within the parameters of the States own jurisdiction, with the international respect for sovereignty being held at the highest level, the acknowledgement of the right of determination must be upheld by the UN.

SUMMARY AND REQUESTS

The Italian Republic strongly supports the premise of sovereignty in the UN and the ability for States to act within their own jurisdiction without the limitations of outside organizations. However following this, States must act within the scopes of the Charter of the

UN by respecting the sovereignty of other Member States and by avoiding the use of force or threats thereof.

Italy believes that the implementation of the Courts plans for the use of nuclear weapons must be done in a fashion so as to not drastically change the systems of military balance. The various treaties and agreements on the disarmament and nonproliferation of nuclear weapons is a welcomed approach and one that requires States to slowly participate in this process. The government of Italy appreciates the use of treaties and agreements to slowly begin the process of denuclearization and hopes the Court agrees to continue through this process rather than a rapid approach process.