

## **IN THE INTERNATIONAL COURT OF JUSTICE**

### **ADVISORY OPINION ON THE LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS**

#### **MEMORIAL OF THE REPUBLIC OF THE MARSHALL ISLANDS**

NOW COMES the Republic of the Marshall Islands and in support of the illegality of the threat or use of nuclear weapons, to the Court states the following:

#### **STATEMENT OF JURISDICTION:**

1. The Statute of the International Court of Justice, Article 65 states that “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. Article 96 of the UN Charter specifically grants the General Assembly the authority to make a request for an advisory opinion to the court.
3. Under the Geneva Convention, Article 8, of 12 August 1949, established that this Court shall have jurisdiction in breaches of war crimes.

#### **STATEMENT OF FACT:**

The Republic of the Marshall Islands, henceforth referred to as “the Marshall Islands,” while under the United States authority, was subject to approximately sixty-seven nuclear weapon test explosions between 1946 and 1958. This has caused devastating and ever-lasting harms to multiple islands and Marshallese. The Bikini and Enewetak Atolls were evacuated and remain uninhabitable as well as Ailinginae and Rongelap Atolls from nuclear fallout. The National Cancer Institute (NCI) has estimated 1.6% of the Marshallese alive during the time of these testing have developed a form of cancer as a direct result, with the range being from 0.4% to 3.6%, approximately 81,000 of the Marshall Islands population today, with a range of 324-2,916. (For perspective that would be equivalent to 5,344,000 of the US population today and 944,000 of Italy's population today.)

Following the various tests globally of nuclear weapons, the UN enacted its Treaty on the Non-Proliferation of Nuclear Weapons (NPT) on 11 May 1995, and the Comprehensive Nuclear-Test-Ban Treaty on 10 September 1996. Similarly, the use of nuclear weapons by the United States on Hiroshima and Nagasaki, Japan have proven to be detrimental to the

environment, Japanese civilians and cause significant fallout globally. However, some of the tests conducted in the Marshall Islands “were up to a thousand times greater than the nuclear bombs detonated in Hiroshima and Nagasaki. In fact, one of the biggest hydrogen bombs ever tested in the world, code name Bravo, was detonated in March 1954” (Clarence N. Edwards, 2). As a result, some of the Marshall Islands were vaporized and ceased to exist, and others remain permanently inhabitable.

#### **STATEMENT OF LAW:**

1. The Geneva Convention, Article 8, of 12 August 1949, established breaches of war crimes, specifically Article 8, Section 2a, iv. extensive destruction and appropriation of property; Section 2b, i. intentionally directing attacks against civilian populations, iv. knowledge that an attack will cause widespread, long-term and severe damage to the natural environment, and xx. that employing weapons of such nature to cause unnecessary suffering.
2. The UN Charter, Article 2, paragraph 4 states 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.”
3. The Treaty on the Non-Proliferation of Nuclear Weapons (NPT), Article VI, of 11 May 1995, established that parties shall pursue good faith efforts in cessation of nuclear weapons and control thereof.
4. The Comprehensive Nuclear-Test-Ban Treaty, Articles I and V, 10 September 1996, established that testing is prohibited, specifically Article I, Section 1, that each state party shall not conduct further nuclear weapon testing; Article V, Section 3, stating cases where damage as a result of non-compliance will recommend conformity with international law.
5. The Outer Space Treaty, Article IV prohibits the placement of nuclear weapons in orbit, upon celestial bodies, or in outer space in any other manner.
6. UN General Assembly Resolution 1653 declares that the use of nuclear 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.”

#### **ARGUMENTS:**

1. The inherently indiscriminate and disproportionate destruction caused by nuclear weapons unavoidably violates international laws of war. The Geneva Convention of 12 August 1949 established war crimes, including Article 8, Section 2a, iv. extension destruction and appropriation of property; Article 8, Section 2b, i. intentionally directing attacks against a civilian population, iv. knowledge that attack will cause widespread, long-term and severe damage to the natural environment, and xx. employing weapons of a nature to cause unnecessary suffering. Nuclear weapons, by their very nature, inherently and unavoidably violate all of these provisions.
2. The threat to use nuclear weapons is also prohibited under the United Nations Charter (Article 2 (4)) which prohibits the threat or use of force, and the Nuremberg Principles, which prohibit the planning and preparation of a war crime. While other provisions of the UN Charter permit the use of force under restricted conditions (i.e. Article 42, Article 51), the use of nuclear weapons is never necessary, proportionate, or consistent with those conditions. The UN General Assembly has expressed its interpretation as such in Resolution 1653 (XVI) and reiterated it with large majorities in numerous subsequent resolutions.
3. The combination of the strict non-use of nuclear weapons since 1945; the limitations on nuclear weapons as expressed in the Non-Proliferation Treaty, the Comprehensive Nuclear Test Ban Treaty, and the Outer Space Treaty; and the repeated interpretations by the UN General Assembly that the use of nuclear weapons would be contrary to international law; constitute an *opinio juris* of the prohibition of nuclear weapons under customary international law.

## **SUMMARY AND REQUESTS:**

The Marshall Islands calls upon the Court to uphold the illegality of the threat and use of nuclear weapons, having considered the detrimental effects thereof. Threat or the use of nuclear weapons is in direct violation of the Geneva Conventions, the United Nations Charter, and customary international law. The Marshall Islands further request the Court to order all nuclear weapons banned and take all the compulsory steps to prevent such inhumane use, testing or threat for all UN members. Furthermore, to award victim countries, such as the Marshall Islands, rewards and assistance in the reversal and treatment of the nuclear effects.