

Letter dated 20 June 1995 from the Ambassador of Qatar, together with  
Written Statement of the Government of Qatar

EMBASSY OF  
THE STATE OF QATAR  
LONDON  
Ambassador's Office



سفارة دولة قطر  
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1 South Audley Street,  
London W1Y 5DQ  
071 493 2200

H.E. Dr. Eduardo Valencia-Ospina  
Registrar  
International Court of Justice  
Peace Palace  
2517 KJ The Hague  
The Netherlands

London, 20 June 1995

Re: Legality of the threat or use of nuclear weapons (Request for Advisory Opinion)

Sir,

The Embassy of the State of Qatar presents its compliments to the International Court of Justice and, in pursuance of Article 66, paragraph 2, of its Statute and with reference to the Order of the Court dated 1 February 1995, has the honour to transmit to you herewith the Written Statement of the Government of the State of Qatar covering the points which it would like to submit for the consideration of the Court in the court's advisory proceedings on the "Legality of the threat or use of nuclear weapons" requested by Resolution 49-75K of the General Assembly of the United Nations dated 15 December 1994. The Written Statement is signed by Qatar's representative, H.E. Dr. Najeeb Al-Nauimi, Minister Legal Adviser.

Please accept, Sir, the assurance of my highest consideration.

Ali M. Jaidah

# WRITTEN STATEMENT OF THE GOVERNMENT OF QATAR

20 June 1995

## Legality of the Threat or Use of Nuclear Weapons (Request for Advisory Opinion)

1. The question upon which the advisory opinion of the Court has been requested was laid before the Court by a letter dated 19 December 1994 addressed by the Secretary-General of the United Nations to the Registrar. In that letter the Secretary-General informed the Court of Resolution 49/75K adopted by the General Assembly of the United Nations on 15 December 1994, in accordance with Article 96, paragraph 1, of the Charter of the United Nations, by which it had decided to submit one question to the Court for advisory opinion<sup>1</sup>. The text of that Resolution is as follows:

*"The General Assembly,*

*Conscious that the continuing existence and development of nuclear weapons pose serious risks to humanity,*

*Mindful that States have an obligation under the Charter of the United Nations to refrain from the threat or use of force against the territorial integrity or political independence of any State,*

*Recalling its resolutions 1653 (XVI) of 24 November 1961, 33/71 B of 14 December 1978, 34/83 G of 11 December 1979, 35/152 D of 12 December 1980, 36/92 I of 9 December 1981, 45/59 B of 4 December 1990 and 46/37 D of 6 December 1991, in which it declared that the use of nuclear weapons would be a violation of the Charter and a crime against humanity,*

*Welcoming the progress made on the prohibition and elimination of weapons of mass destruction, including the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction,*

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<sup>1</sup> Resolution 49/75 was adopted by 78 votes to 43, with 38 abstentions.

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*Convinced* that the complete elimination of nuclear weapons is the only guarantee against the threat of nuclear war,

*Noting* the concerns expressed in the Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, that insufficient progress had been made towards the complete elimination of nuclear weapons at the earliest possible time,

*Recalling* that the General Assembly, convinced of the need to strengthen the rule of law in international relations, has declared the period 1990-1999 the United Nations Decade of International Law,

*Noting* that Article 96, paragraph 1, of the Charter empowers the General Assembly to request the International Court of Justice to give an advisory opinion on any legal question,

*Recalling* the recommendation of the Secretary-General, made in his report entitled "An Agenda for Peace", that United Nations organs that are authorised to take advantage of the advisory competence of the International Court of Justice turn to the Court more frequently for such opinions,

*Welcoming* resolution 46/40 of 14 May 1993 of the Assembly of the World Health Organisation, in which the organisation requested the International Court of Justice to give an advisory opinion on whether the use of nuclear weapons by a State in war or other armed conflict would be a breach of its obligations under international law, including the Constitution of the World Health Organisation,

*Decides*, pursuant to Article 96, paragraph 1, of the Charter of the United Nations, to request the International Court of Justice urgently to render its advisory opinion on the following question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?"

2. Article 65, paragraph 1, of the Statute of the Court is the basis of the jurisdiction of the Court in advisory proceedings. It provides as follows:

"The Court may give an advisory opinion on any legal question at the request of whatever body may be authorised by or in accordance with the Charter of the United Nations to make such a request".

Article 96, paragraph 1, of the Charter of the United Nations provides that:

"The General Assembly or the Security Council may request the International Court of Justice to give an advisory opinion on any legal question".

By virtue of each of these provisions, the Court is competent to give advisory opinions "on any legal question". The question now before the Court is a legal one since the matter lies in the interpretation of the Charter of the United Nations. Also the question raises legal issues of profound importance concerning general international law, customary international law, and the law of the United Nations System.

The wording of Article 65 of the Statute - "The Court may give an advisory opinion" - does not impose upon the Court the duty to comply with a request, *i.e.* the Court has the discretionary power to give an advisory opinion<sup>2</sup>. But the Court has held that "the reply of the Court, itself an 'organ of the United Nations', represents its participation in the activities of the Organisation, and, in principle, should not be refused<sup>3</sup>". Furthermore, "[i]t is well settled in the Court's jurisprudence that... the Court should entertain the request and give its opinion unless there are 'compelling reasons' to the contrary<sup>4</sup>". The fact that some States have denied the Court's jurisdiction does not qualify as such a reason. As the Court has held, "As the opinions are intended for the guidance of the United Nations, the consent of States is not a condition precedent to the competence of the Court to give them<sup>5</sup>". The question before the Court is not a political matter<sup>6</sup> even though the present request for an advisory opinion has a political background. Furthermore it does not relate to the conduct and position of a number of States which own nuclear weapons and have not given their consent to the Court's jurisdiction<sup>7</sup>. When it examines the propriety of giving an opinion on the present subject,

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<sup>2</sup> *Western Sahara*, ICJ Reports 1975, p. 21. *Application for Review of Judgment No. 333 of the United Nations Administrative Tribunal*, ICJ Reports 1987, p. 31.

<sup>3</sup> *Interpretation of Peace Treaty with Bulgaria, Hungary and Romania, First Phase. Advisory Opinion*, ICJ Reports 1950, p. 71.

<sup>4</sup> *Privileges and Immunities*, ICJ Reports 1989, p. 191.

<sup>5</sup> *Ibid.*, p. 188-189.

<sup>6</sup> See S. Rosenne, *The Law and Practice of the International Court*, Second Revised Edition, Martinus Nijhoff Publishers, 1985, No. 283, pp. 702-708.

<sup>7</sup> *Eastern Carelia*, 1923, PCIJ Series B, No. 5, pp. 27-28.

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the Court will be unable to find any circumstance or compelling reason to refuse an advisory opinion.

Since the request of the General Assembly clearly falls within the advisory jurisdiction of the "principal judicial organ of the United Nations", the Court should give an opinion on the legal question submitted to it by the General Assembly. The present advisory proceedings appear "comme un instrument de 'diplomatie préventive', un moyen privilégié pour la Cour de désamorcer les tensions et de prévenir les conflits en disant le droit"<sup>8</sup>.

Dr. Najeeb Ibn Mohammed Al-Nauimi  
Minister Legal Adviser  
Representative of the Government of the State of Qatar

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<sup>8</sup> *Les ressources offertes par la fonction consultative de la Cour internationale de Justice. Bilan et perspectives.* Communication de M. Mohammed Bedjaoui, Président de la Cour internationale de Justice au Congrès des Nations Unies sur le droit international public, New York, 14 mars 1995.