

Cour internationale
de Justice

LA HAYE

CR 95/35
International Court
of Justice

THE HAGUE

ANNEE 1995

Audience publique

tenue le mercredi 15 novembre 1995, à 15 heures, au Palais de la Paix,

sous la présidence de M. Bedjaoui, Président

*sur la Licéité de l'utilisation des armes nucléaires
par un Etat dans un conflit armé
(Demande d'avis consultatif soumise par
l'Organisation mondiale de la Santé)*

et

*sur la Licéité de la menace ou de l'emploi d'armes nucléaires
(Demande d'avis consultatif soumise par
l'Assemblée générale des Nations Unies)*

COMPTE RENDU

YEAR 1995

Public sitting

held on Wednesday 15 November 1995, at 3 p.m., at the Peace Palace,

President Bedjaoui presiding

in the case

*in Legality of the Use by a State of Nuclear Weapons in Armed Conflict
(Request for Advisory Opinion Submitted by the World Health Organization)*

and

*in Legality of the Threat or Use of Nuclear Weapons
(Request for Advisory Opinion Submitted by
the General Assembly of the United Nations)*

VERBATIM RECORD

Présents :

- M. Bedjaoui, Président
- M. Schwebel, Vice-Président
- MM. Oda
Guillaume
Shahabuddeen
Weeramantry
Ranjeva
Herczegh
Shi
Fleischhauer
Koroma
Vereshchetin
Ferrari Bravo
- Mme Higgins, juges

- M. Valencia-Ospina, Greffier

Present:

President	Bedjaoui
Vice-President	Schwebel
Judges	Oda
	Guillaume
	Shahabuddeen
	Weeramantry
	Ranjeva
	Herczegh
	Shi
	Fleischhauer
	Koroma
	Vereshchetin
	Ferrari Bravo
	Higgins
Registrar	Valencia-Ospina

Licéité de l'utilisation des armes nucléaires par un Etat dans un conflit armé (Demande d'avis consultatif soumise par l'Organisation mondiale de la Santé)

L'Organisation mondiale de la Santé est représentée par :

M. Claude-Henri Vignes, conseiller juridique;

M. Thomas Topping, conseiller juridique adjoint.

Licéité de l'utilisation des armes nucléaires par un Etat dans un conflit armé (Demande d'avis consultatif soumise par l'Organisation mondiale de la Santé)

et/ou

Licéité de la menace ou de l'emploi d'armes nucléaires (Demande d'avis consultatif soumise par l'Assemblée générale des Nations Unies)

Le Gouvernement de l'Australie est représenté par :

M. Gavan Griffith, Q.C., *Solicitor-General* d'Australie, conseil;

L'Honorable Gareth Evans, Q.C., sénateur, ministre des affaires étrangères, conseil;

S. Exc. M. Michael Tate, ambassadeur d'Australie aux Pays-Bas, conseil;

M. Christopher Staker, conseiller auprès du *Solicitor-General* d'Australie, conseil;

Mme Jan Linehan, conseiller juridique adjoint du département des affaires étrangères et du commerce extérieur, conseil;

Mme Cathy Raper, troisième secrétaire à l'ambassade d'Australie, La Haye, conseiller.

Le Gouvernement de la République fédérale d'Allemagne est représenté par :

M. Hartmut Hillgenberg, directeur général des affaires juridiques du ministère des affaires étrangères;

Mme Julia Monar, direction des affaires juridiques, ministère des affaires étrangères.

Le Gouvernement du Costa Rica est représenté par :

S. Exc. M. J. Francisco Oreamuno, ambassadeur de la République du Costa Rica aux Pays-Bas;

M. Carlos Vargas-Pizarro, conseiller juridique et envoyé spécial
du Gouvernement du Costa Rica;

M. Rafael Carrillo-Zürcher, ministre-conseiller à ambassade
du Costa Rica, La Haye.

Le Gouvernement de la République arabe d'Egypte est représenté par :

S. Exc. M. Ibrahim Ali Badawi El-Sheikh, ambassadeur d'Egypte
aux Pays-Bas;

M. Georges Abi-Saab, professeur de droit international à l'Institut
universitaire de hautes études internationales de Genève, membre de
l'Institut de droit international;

M. Ezzat Saad El-Sayed, ministre-conseiller à l'ambassade d'Egypte,
La Haye.

Le Gouvernement des Etats-Unis d'Amérique est représenté par :

M. Conrad K. Harper, agent et conseiller juridique du département
d'Etat;

M. Michael J. Matheson, conseiller juridique adjoint principal du département d'Etat;

M. John H. McNeill, conseil général adjoint principal au département
de la défense;

M. John R. Crook, assistant du conseiller juridique pour les
questions relatives à l'Organisation des Nations Unies, département
d'Etat;

M. D. Stephen Mathias, conseiller pour les affaires juridiques à
l'ambassade des Etats-Unis d'Amérique, La Haye;

M. Sean D. Murphy, attaché pour les questions juridiques à
l'ambassade des Etats-Unis d'Amérique, La Haye;

M. Jack Chorowsky, assistant spécial du conseiller juridique,
département d'Etat.

Le Gouvernement de la République française est représenté par :

M. Marc Perrin de Brichambaut, directeur des affaires juridiques
au ministère des affaires étrangères;

M. Alain Pellet, professeur de droit international à l'Université de
Paris X et à l'Institut d'études politiques de Paris;

Mme Marie-Reine d'Haussy, direction des affaires juridiques
du ministère des affaires étrangères;

M. Jean-Michel Favre, direction des affaires juridiques du ministère des affaires étrangères.

Le Gouvernement de la Fédération de Russie est représenté par :

M. A. G. Khodakov, directeur du département juridique du ministère des affaires étrangères;

M. S. M. Pounjine, premier secrétaire à l'ambassade de la Fédération de Russie, La Haye;

M. S. V. Shatounovski, expert au département juridique du ministère des affaires étrangères.

Le Gouvernement des Iles Marshall est représenté par :

L'Honorable Theodore G. Kronmiller, conseiller juridique, ambassade des Iles Marshall aux Etats-Unis;

Mme. Lijon Eknilang, membre du conseil, gouvernement local de l'atoll de Rongelap.

Le Gouvernement des Iles Salomon est représenté par :

L'Honorable Victor Ngele, ministre de la police et de la sécurité nationale;

S. Exc. M. Rex Horoi, ambassadeur, représentant permanent des Iles Salomon auprès de l'Organisation des Nations Unies, New York;

S. Exc. M. Levi Laka, ambassadeur, représentant permanent des Iles Salomon auprès de l'Union européenne, Bruxelles;

M. Primo Afeau, *Solicitor-General* des Iles Salomon;

M. Edward Nielsen, consul honoraire des Iles Salomon à Londres;

M. Jean Salmon, professeur de droit à l'Université libre de Bruxelles;

M. James Crawford, professeur de droit international, titulaire de la chaire Whewell à l'Université de Cambridge;

M. Eric David, professeur de droit à l'Université libre de Bruxelles;

Mme Laurence Boisson de Chazournes, professeur adjoint à l'Institut universitaire de hautes études internationales, Genève;

M. Philippe Sands, chargé de cours à la *School of Oriental and African Studies*, Université de Londres, et directeur juridique de la *Foundation for International Environmental Law and Development*;

M. Joseph Rotblat, professeur émérite de physique à l'Université de Londres;

M. Roger Clark, professeur à la faculté de droit de l'Université Rutgers, Camden, New Jersey;

M. Jacob Werksman, directeur de programme à la *Foundation for International Environmental Law and Development*;

Mme Ruth Khalastchi, *Solicitor* de la *Supreme Court of England and Wales*;

Mme Louise Rands, assistante administrative à la *Foundation for International Environmental Law and Development*, Université de Londres;

M. Edward Helgeson, chercheur associé à l'Université de Cambridge, *Research Center for International Law*.

Le Gouvernement de l'Indonésie est représenté par :

S. Exc. M. Johannes Berchmans Soedarmanto Kadarisman, ambassadeur d'Indonésie aux Pays-Bas;

M. Malikus Suamin, ministre et chef de mission adjoint à l'ambassade d'Indonésie, La Haye;

M. Mangasi Sihombing, ministre-conseiller à l'ambassade d'Indonésie, La Haye;

M. A. A. Gde Alit Santhika, premier secrétaire à l'ambassade d'Indonésie, La Haye;

M. Imron Cotan, premier secrétaire de la mission permanente d'Indonésie auprès de l'Organisation des Nations Unies, Genève;

M. Damos Dumoli Agusman, troisième secrétaire à l'ambassade d'Indonésie, La Haye.

Le Gouvernement de la République Islamique d'Iran est représenté par :

S. Exc. M. Mohammad J. Zarif, ministre adjoint aux affaires juridiques et internationales, ministère des affaires étrangères;

S. Exc. M. N. Kazemi Kamyab, ambassadeur de la République islamique d'Iran aux Pays-Bas;

M. Saeid Mirzaee, directeur, division des traités et du droit international public, ministère des affaires étrangères;

M. M. Jafar Ghaemieh, troisième secrétaire à l'ambassade de la République islamique d'Iran, La Haye;

M. Jamshid Momtaz, conseiller juridique, ministère des affaires étrangères.

Le Gouvernement italien est représenté par :

M. Umberto Leanza, professeur de droit international à la faculté de droit de l'Université de Rome «Tor Vergata», chef du service du contentieux diplomatique du ministère des affaires étrangères et agent du Gouvernement italien auprès des tribunaux internationaux, chef de délégation;

M. Luigi Sico, professeur de droit international à faculté de droit à l'Université de Naples «Frederico II»;

Mme Ida Caracciolo, chercheur auprès de l'Université de Rome «Tor Vergata».

Le Gouvernement du Japon est représenté par :

S. Exc. M. Takekazu Kawamura, ambassadeur, directeur général au contrôle des armements et aux affaires scientifiques, ministère des affaires étrangères;

M. Koji Tsuruoka, directeur de la division des affaires juridiques, bureau des traités, ministère des affaires étrangères;

M. Ken Fujishita, premier secrétaire à l'ambassade du Japon, La Haye;
M. Masaru Aniya, division du contrôle des armements et du désarmement, ministère des affaires étrangères;

M. Takashi Hiraoka, maire d'Hiroshima;

M. Iccho Itoh, maire de Nagasaki.

Le Gouvernement de la Malaisie :

Dato' Mohtar Abdullah, *Attorney-General*, chef de délégation;

S. Exc. M. Tan Sri Razali Ismail, ambassadeur, représentant permanent de la Malaisie auprès de l'Organisation des Nations Unies, chef de délégation ajoint;

Dato' Heliliah Mohd. Yusof, *Solicitor-General*;

S. Exc. Dato' Sallehuddin Abdullah, ambassadeur de Malaisie aux Pays-Bas;

Dato' Abdul Gani Patail, juriconsulte et chef de la division du droit international, cabinet de l'*Attorney-General*;

Dato' R. S. McCoy, Expert;

M. Peter Weiss, Expert.

Le Gouvernement du Mexique est représenté par :

S. Exc. M. Sergio González Gálvez, ambassadeur, ministre adjoint des affaires étrangères;

S. Exc. M. José Carreño Carlón, ambassadeur du Mexique aux Pays-Bas;

M. Arturo Hernández Basave, ministre à l'ambassade du Mexique, La Haye;

M. Javier Abud Osuna, premier secrétaire à l'ambassade du Mexique, La Haye.

Le Gouvernement de la Nouvelle-Zélande est représenté par :

L'Honorable Paul East, Q.C., *Attorney-General* de Nouvelle-Zélande;

S. Exc. Madame Hilary A. Willberg, ambassadeur de Nouvelle-Zélande aux Pays-Bas;

M. Allan Bracegirdle, directeur adjoint de la division juridique du ministère des affaires étrangères et du commerce extérieur de Nouvelle-Zélande;

M. Murray Denyer, deuxième secrétaire à l'ambassade de Nouvelle-Zélande, La Haye.

Le Gouvernement des Philippines est représenté par :

M. Merlin M. Magallona, professeur, doyen de la faculté de droit de l'Université des Philippines, agent;

S. Exc. M. Rodolfo S. Sanchez, ambassadeur des Philippines aux Pays-Bas;

M. Raphael Perpetuo Lotilla, professeur, directeur de l'*Institute of International Legal Studies, UP Law Centre*;

M. Carlos Sorreta, mission permanente des Philippines auprès de l'Organisation des Nations Unies;

M. Emmanuel C. Lallana, directeur adjoint, *Foreign Service Institute*.

Le Gouvernement de Qatar est représenté par :

S. Exc. M. Najeeb ibn Mohammed Al-Nauimi, ministre de la justice;

M. Sami Abushaikha, expert juridique du Diwan Amiri;

M. Richard Meese, cabinet Frere Cholmeley, Paris.

Le Gouvernement du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord est représenté par :

Le Très Honorable sir Nicholas Lyell, Q.C., M.P., *Attorney-General*;

Sir Franklin Berman, K.C.M.G., Q.C., conseiller juridique du ministère des affaires étrangères et du Commonwealth;

M. Christopher Greenwood, conseil;

M. Daniel Bethlehem, conseil;

M. John Grainger, conseiller;

M. Christopher Whomersley, conseiller;

M. Andrew Barlow, conseiller.

Le Gouvernement de Saint-Marin est représenté par :

Mme Federica Bigi, conseiller d'ambassade, fonctionnaire en charge de la direction politique au ministère des affaires étrangères.

Le Gouvernement de Samoa est représenté par:

S. Exc. M. Neroni Slade, ambassadeur et représentant permanent du Samoa auprès de l'Organisation des Nations Unies, New York;

M. Jean Salmon, professeur de droit à l'Université libre de Bruxelles;

M. James Crawford, professeur de droit international, titulaire de la chaire Whewell à l'Université de Cambridge;

M. Roger Clark, professeur à la faculté de droit de l'Université Rutgers, Camden, New Jersey;

M. Eric David, professeur de droit à l'Université libre de Bruxelles;

Mme Laurence Boisson de Chazournes, professeur adjoint à l'Institut universitaire de hautes études internationales, Genève;

M. Philippe Sands, chargé de cours à la *School of Oriental and African Studies*, Université de Londres, et directeur juridique de la *Foundation for International Environmental Law and Development*;

M. Jacob Werksman, directeur de programme à la *Foundation for International Environmental Law and Development*;

Mme Ruth Khalastchi, *Solicitor* de la *Supreme Court of England and Wales*;

Mme Louise Rands, assistante administrative à la *Foundation for International Environmental Law and Development*, Université de Londres.

Le Gouvernement de la République du Zimbabwe est représenté par :

M. Jonathan Wutawunashe, chargé d'affaires a.i., ambassade de la République du Zimbabwe, Bruxelles.

*Legality of the Use by a State of Nuclear Weapons in Armed Conflict
(Request for Advisory Opinion Submitted by the World Health
Organization)*

The World Health Organization is represented by:

Mr. Claude-Henri Vignes, Legal Counsel;

Mr. Thomas Topping, Deputy Legal Counsel.

*Legality of the Use by a State of Nuclear Weapons in Armed Conflict
(Request for Advisory Opinion Submitted by the World Health
Organization)*

and/or

*Legality of the Threat or Use of Nuclear Weapons (Request for Advisory
Opinion Submitted by the General Assembly of the United Nations)*

The Government of Australia is represented by:

Mr. Gavan Griffith, Q.C., Solicitor-General of Australia, Counsel;

The Honorable Gareth Evans, Q.C., Senator, Minister for Foreign
Affairs, Counsel;

H.E. Michael Tate, Ambassador of Australia to the Netherlands,
Counsel;

Mr. Christopher Staker, Counsel assisting the Solicitor-General of
Australia, Counsel;

Ms Jan Linehan, Deputy Legal Adviser, Department of Foreign Affairs
and Trade, Counsel;

Ms Cathy Raper, Third Secretary, Australian Embassy in the
Netherlands, The Hague, Adviser.

The Government of Costa Rica is represented by:

H.E. Mr. J. Francisco Oreamuno, Ambassador of the Republic of
Costa Rica to The Netherlands;

Mr. Carlos Vargas-Pizarro, Legal Counsel and Special Envoy of the
Government of Costa Rica;

Mr. Rafael Carrillo-Zürcher, Minister Counsellor, Embassy of
Costa Rica, The Hague.

The Government of the Arab Republic of Egypt is represented by:

H.E. Mr. Ibrahim Ali Badawi El-Sheikh, Ambassador of Egypt to the Netherlands;

Mr. Georges Abi-Saab, Professor of International Law, Graduate Institute of International Studies (Geneva), Member of the Institute of International Law;

Mr. Ezzat Saad El-Sayed, Minister Counsellor, Embassy of Egypt, The Hague.

The Government of the Republic of France is represented by:

Mr. Marc Perrin de Brichambaut, Director of Legal Affairs, Ministry of Foreign Affairs;

Mr. Alain Pellet, Professor of International Law, University of Paris X and Institute of Political Studies, Paris;

Mrs. Marie-Reine Haussy, Directorate of Legal Affairs, Ministry of Foreign Affairs;

Mr. Jean-Michel Favre, Directorate of Legal Affairs, Ministry of Foreign Affairs.

The Government of the Federal Republic of Germany is represented by :

Mr. Hartmut Hillgenberg, Director-General of Legal Affairs, Ministry of Foreign Affairs;

Ms Julia Monar, Directorate of Legal Affairs, Ministry of Foreign Affairs

The Government of Indonesia is represented by:

H.E. Mr. Johannes Berchmans Soedarmanto Kadarisman, Ambassador of Indonesia to the Netherlands;

Mr. Malikus Suamin, Minister, Deputy Chief of Mission, Embassy of the Republic of Indonesia, The Hague;

Mr. Mangasi Sihombing, Minister Counsellor, Embassy of the Republic of Indonesia, The Hague;

Mr. A. A. Gde Alit Santhika, First Secretary, Embassy of the Republic of Indonesia, The Hague;

Mr. Imron Cotan, First Secretary, Indonesian Permanent Mission of Indonesia to the United Nations, Geneva;

Mr. Damos Dumoli Agusman, Third Secretary, Embassy of the Republic of Indonesia, The Hague.

The Government of the Islamic Republic of Iran is represented by:

H.E. Mr. Mohammad J. Zarif, Deputy Minister, Legal and International Affairs, Ministry of Foreign Affairs;

H.E. Mr. N. Kazemi Kamyab, Ambassador of the Islamic Republic of Iran to the Netherlands;

Mr. Saeid Mirzaee, Director, Treaties and Public International Law Division, Ministry of Foreign Affairs;

Mr. M. Jafar Ghaemieh, Third Secretary, Embassy of the Islamic Republic of Iran, The Hague;

Mr. Jamshid Momtaz, Legal Advisor, Ministry of Foreign Affairs, Tehran, Iran.

The Government of Italy is represented by:

Mr. Umberto Leanza, Professor of International Law at the Faculty of Law of the University of Rome "Tor Vergata", Head of the Diplomatic Legal Service at the Ministry of Foreign Affairs and Agent of the Italian Government before the International Courts, Head of delegation;

Mr. Luigi Sico, Professor of International Law at the Faculty of Law of the University of Naples "Federico II";

Mrs. Ida Caracciolo, Researcher at the University of Rome "Tor Vergata".

The Japanese Government is represented by:

Mr. Takekazu Kawamura, Ambassador, Director General for Arms Control and Scientific Affairs, Ministry of Foreign Affairs;

Mr. Koji Tsuruoka, Director of Legal Affairs Division, Treaties Bureau, Ministry of Foreign Affairs;

Mr. Ken Fujishita, First Secretary, Embassy of Japan in the Netherlands

Mr. Masaru Aniya, Arms Control and Disarmament Division, Ministry of Foreign Affairs;

Mr. Takashi Hiraoka, Mayor of Hiroshima;

Mr. Iccho Itoh, Mayor of Nagasaki.

The Government of Malaysia is represented by:

Dato' Mohtar Abdullah, Attorney-General - Leader;

Ambassador Tan Sri Razali Ismail, Permanent Representative of Malaysia to the United Nations in New York - Deputy Leader;

Dato' Heliliah Mohd. Yusof, Solicitor-General;

Dato' Sallehuddin Abdullah, Ambassador of Malaysia to the Netherlands;

Dato' Abdul Gani Patail, Head of Advisory and International Law Division, Attorney-General's Chambers;

Dato' Dr. R. S. McCoy, Expert;

Mr. Peter Weiss, Expert.

The Government of Marshall Islands is represented by:

The Honorable Theodore G. Kronmiller, Legal Counsel, Embassy of the Marshall Islands to the United States;

Mrs Lijon Eknilang, Council Member, Rongelap Atoll, Local Government.

The Government of Mexico is represented by:

H.E. Ambassador Sergio González Gálvez, Undersecretary of Foreign Relations;

H.E. Mr. José Carreño Carlón, Ambassador of Mexico to the Netherlands;

Mr. Arturo Hernández Basave, Minister, Embassy of Mexico, The Hague;

Mr. Javier Abud Osuna, First Secretary, Embassy of Mexico, The Hague.

The Government of New Zealand is represented by:

The Honorable Paul East, Q.C., Attorney-General of New Zealand;

H.E. Ms. Hilary A. Willberg, Ambassador of New Zealand to the Netherlands;

Mr. Allan Bracegirdle, Deputy Director of Legal Division of the New Zealand Ministry of Foreign Affairs and Trade;

Mr. Murray Denyer, Second Secretary New Zealand Embassy, The Hague;

The Government of Philippines is represented by:

Professor Merlin M. Magallona, Dean, College of Law, University of the Philippines, Agent;

H.E. Mr. Rodolfo S. Sanchez, Ambassador of the Philippines to the Netherlands;

Professor Raphael Perpetuo Lotilla, Director, Institute of International Legal Studies, UP Law Centre;

Mr. Carlos Sorreta, Philippine Mission to the United Nations, New York;

Dr. Emmanuel C. Lallana, Deputy Director, Foreign Service Institute.

The Government of Qatar is represented by:

H.E. Mr. Najeeb ibn Mohammed Al-Nauimi, Minister of Justice;

Mr. Sami Abushaikha, Legal Expert of the Diwan Amiri;

Mr. Richard Meese, Frere Cholmeley, Paris.

The Government of the Russian Federation is represented by:

Mr. A. G. Khodakov, Director, Legal Department, Ministry of Foreign Affairs;

Mr. S. M. Pounjine, First Secretary, Embassy of the Russian Federation in the Netherlands;

Mr. S. V. Shatounovski, Expert, Legal Department, Ministry of Foreign Affairs.

The Government of Samoa is represented by:

H.E. Mr. Neroni Slade, Ambassador and Permanent Representative of Samoa to the United Nations, New York;

Mr. Jean Salmon, Professor of Law, *Université libre de Bruxelles*;

Mr. James Crawford, Whewell Professor of International Law, University of Cambridge;

Mr. Roger Clark, Distinguished Professor of Law, Rutgers University School of Law, Camden, New Jersey;

Mr. Eric David, Professor of Law, *Université libre de Bruxelles*;

Mrs. Laurence Boisson de Chazournes, Assistant Professor, Graduate Institute of International Studies, Geneva;

Mr. Philippe Sands, Lecturer in Law, School of Oriental and African Studies, London University, and Legal Director, Foundation for International Environmental Law and Development;

Mr. Jacob Werksman, Programme Director, Foundation for International Environmental Law and Development;

Ms Ruth Khalastchi, Solicitor of the Supreme Court of England and Wales;

Ms Louise Rands, Administrative Assistant, Foundation for International Environmental Law and Development, London University.

The Government of San Marino is represented by:

Mrs. Federica Bigi, Official in charge of Political Directorate, Department of Foreign Affairs.

The Government of Solomon Islands is represented by:

The Honorable Victor Ngele, Minister for Police and National Security;

H.E. Ambassador Rex Horoi, Permanent Representative of Solomon Islands to the United Nations, New York;

H.E. Ambassador Levi Laka, Permanent Representative of Solomon Islands to the European Union, Brussels;

Mr. Primo Afeau, Solicitor-General for Solomon Islands;

Mr. Edward Nielsen, Honorary Consul, Solomon Islands, London;

Mr. Jean Salmon, Professor of Law, *Université libre de Bruxelles*;

Mr. James Crawford, Whewell Professor of International Law, University of Cambridge;

Mr. Eric David, Professor of Law, *Université libre de Bruxelles*;

Mrs. Laurence Boisson de Chazournes, Assistant Professor, Graduate Institute of International Studies, Geneva;

Mr. Philippe Sands, Lecturer in Law, School of Oriental and African Studies, London University, and Legal Director, Foundation for International Environmental Law and Development;

Mr. Joseph Rotblat, Emeritus Professor of Physics, University of London;

Mr. Roger Clark, Distinguished Professor of Law, Rutgers University School of Law, Camden, New Jersey;

Mr. Jacob Werksman, Programme Director, Foundation for International Environmental Law and Development;

Ms Ruth Khalastchi, Solicitor of the Supreme Court of England and Wales;

Ms Louise Rands, Administrative Assistant, Foundation for International Environmental Law and Development, London University;

Mr. Edward Helgeson, Research Associate, University of Cambridge, Research Center for International Law.

The Government of the United Kingdom of Great Britain and Northern Ireland is represented by:

The Right Honorable Sir Nicholas Lyell, Q.C., M.P., Her Majesty's Attorney-General;

Sir Franklin Berman, K.C.M.G., Q.C., Legal Adviser to the Foreign and Commonwealth Office;

Mr. Christopher Greenwood, Counsel;

Mr. Daniel Bethlehem, Counsel;

Mr. John Grainger, Adviser;

Mr. Christopher Whomersley, Adviser;

Mr. Andrew Barlow, Adviser.

The Government of the United States of America is represented by:

Mr. Conrad K. Harper, Agent and Legal Adviser, US Department of State;

Mr. Michael J. Matheson, Principal Deputy Legal Adviser, U.S. Department of State;

Mr. John H. McNeill, Senior Deputy General Counsel, US Department of Defense;

Mr. John R. Crook, Assistant Legal Adviser for United Nations Affairs, US Department of State;

Mr. D. Stephen Mathias, Legal Counsellor, Embassy of the United States, The Hague;

Mr. Sean D. Murphy, Legal Attaché, Embassy of the United States, The Hague;

Mr. Jack Chorowsky, Special Assistant to the Legal Adviser, US Department of State.

The Government of the Republic of Zimbabwe is represented by:

Mr. Jonathan Wutawunashe, Chargé d'Affaires a.i., Embassy of
the Republic of Zimbabwe, Brussels.

The PRESIDENT: Please be seated. This afternoon the Court will resume its public hearings in the case of the two advisory opinions requested by the United Nations General Assembly and the World Health Organization. I give the floor to His Excellency Mr. Jonathan Wutawunashe of Zimbabwe for his oral statement.

Mr. WUTAWUNASHE: Mr. President, distinguished Members of the Court, it is an honour to appear before you today to present oral testimony on the questions asked by the World Health Organization and the United Nations General Assembly on the legality of the threat or use of nuclear weapons.

Zimbabwe believes that these questions are of the utmost concern to the international community, and it is only appropriate that it should be brought to the attention of such an esteemed body as this. The Court's opinion, clarifying the law on this issue, will have great weight and influence in the strengthening of international law and in the development of justice and peace. I might add that we feel that it is mischievous to try to exclude this Court from playing a role that is so obviously appropriate for it.

May we express at the outset our sympathy and condolences at the sad and untimely death of Judge Aguilar. We pass our respects especially to his family and colleagues.

As the last State to appear in these proceedings, it behoves Zimbabwe to attempt at least a brief recapitulation of the dialectic which has engaged the attention of the Court for the past two weeks.

The majority of States have argued for the admissibility of the WHO request; a minority against it.

A minority has argued for the exercise of negative discretion; the majority against it.

On these points, the issues have been joined quite clearly.

On the merits of the question before the Court, one side has based its arguments for illegality on the uniquely destructive and uncontrollable nature of nuclear weapons; the other side has made

no reference to this, treating nuclear weapons essentially as if they were just another type of conventional weapon.

One side has asked the Court to apply general principles to a particular weapon; the other side has largely ignored this, harping on the fact that there is no treaty or convention prohibiting such weapons specifically.

Again, one side has argued that applying general principles of humanitarian, environmental and human rights law to these weapons from hell, they must be declared illegal *per se*; the other side has contended that, while the threat and use of nuclear weapons may be illegal in some circumstances, it may be legal in others, without ever sketching a single scenario in which legality might obtain.

The Court, we hope, will see clearly that one side has proved its case, while the other has argued a case not before the Court.

Having said this, Zimbabwe would like to present its views concerning the case at bar.

Mr. President, Zimbabwe, itself a non-nuclear State on a continent which is determined to rid itself of even the possibility of weapons of mass destruction existing on its soil, in a region - southern Africa - which has defined peace and good neighbourliness as its survival code, and inside borders within which life and health are much cherished, has a direct interest in the consideration of the important question whether or not weapons, which can wipe out entire communities and nations and seriously impair the well-being of neighbouring populations, are healthy not only to keep around but also to use.

The submission of a request for an advisory opinion by the World Health Organization creates an important opportunity for the International Court of Justice to assert the legal and moral authority that we, as members of the Non-Aligned Movement, considered to be essential to the task of realigning the global system with objective standards of legality and reason.

Zimbabwe sees clearly the importance of global institutions, of which this Court is a true example, being strengthened and supported in the role of providing rulings and guidelines based on

law where arbitrary and self-serving approaches would otherwise - and sadly, often do - rule the day.

On the question of the legality or otherwise of the threat or use of nuclear weapons, the International Court of Justice has, in our view, a clear issue on which to provide an effective opinion, the burden of which should be the illegality of resort to such weapons in any circumstance.

Mr. President, it is common knowledge that nuclear weapons have earned their universal notoriety on account of their uniquely horrendous effect on their victims and on the environment, and on the impossibility of confining their effects to precise military targets. If the testing of these weapons holds the potential to harm both populations and the environment, it is frightening to imagine the devastation that the actual use of these weapons would wreak on people and places both inside and outside any theatre of war, particularly when we recall such instances as Hiroshima and Nagasaki, where supposedly small bombs were used to such great and lasting effect.

Zimbabwe is satisfied that the question before the Court should be resolved forthrightly and simply: using such weapons cannot be legal. To threaten to use them is to threaten to perpetrate a criminal act.

Mr. President, distinguished Members of the Court, Zimbabwe has had a very close interest in this initiative from the outset and is therefore grateful for this opportunity to participate in the oral hearings. In 1992, Zimbabwe introduced a draft text to the Non-Aligned Movement for a United Nations General Assembly resolution on this initiative. After consideration by the Non-Aligned Movement, the revised draft resolution was introduced to the General Assembly in 1993.

The decision by the Non-Aligned Movement to introduce the resolution was made by consensus. However, this resolution was not put to a vote in the United Nations General Assembly in 1993. In announcing the decision not to put the General Assembly resolution to the vote, the Indonesian Ambassador, Mr. Soegarda, remarked that there appeared to be a new willingness by the nuclear States to take steps towards the elimination of nuclear weapons. These remarks were prompted by the fact that at the same General Assembly the nuclear States had finally agreed to negotiating a comprehensive test ban treaty and to negotiating a fissile material cut-off treaty. The

Non-Aligned Movement decided to table the resolution in order to allow the nuclear States the chance to demonstrate whether they were committed to the achievement of nuclear disarmament at an early date or not.

Subsequent events demonstrated conclusively that the nuclear States were not and still are not committed to achieving nuclear disarmament at an early date. The Comprehensive Test Ban Treaty (CTBT) is still not negotiated. The negotiations on a fissile material cut-off are stalled. The Non-Proliferation Treaty has been extended without the nuclear States giving a time-frame for implementation of complete nuclear disarmament, as required by Article VI. Two nuclear States are exploding nuclear bombs. In the case of France, this is being done far away from their continental territory, in a region declared as a nuclear-weapon-free zone.

It has recently been announced that the United States will conduct six underground hydronuclear tests, involving nuclear materials, in 1996 and 1997, after they plan to conclude a CTBT (US Department of Energy News Release, 27 October 1995). These would surely violate the spirit, if not the letter, of a comprehensive test-ban treaty. Four of the five nuclear States continue to hold onto policies of first-use of nuclear weapons, and all five declared nuclear States hold on to policies of retaliatory use of nuclear weapons, despite repeated United Nations General Assembly resolutions calling on them to renounce such policies.

It is in that light that the Non-Aligned Movement decided by consensus in 1994 (Cairo Ministerial Meeting, June 1994) to reintroduce the resolution calling for an advisory opinion, and to put it to the vote in the General Assembly. This resulted in it being adopted by a large majority.

Mr. President, Members of the Court, a few States, notably France, Russia, the United Kingdom, the United States, Germany and Italy, have asked the Court to use its discretion not to consider the question asked by the General Assembly. They argue that a decision from the Court could upset disarmament negotiations. It seems to us a curious proposition, coming as it does from those States with a vested interest in *preventing* progress on nuclear disarmament, a point also made by Costa Rica yesterday. If it were true that an opinion would delay nuclear disarmament, which we

believe is not so, these are the States who would welcome such an opinion. On the contrary, it is the non-nuclear States, those which have the greatest interest in progress on nuclear disarmament, which are supporting this case.

It also seems curious and illogical that the General Assembly, which is the principal United Nations organ dealing with disarmament questions, would undermine its own work by adopting a resolution that would be counter-productive to nuclear disarmament. This, we believe, is not the case.

Even if there were some merit, which there is not, to the argument that an opinion from the Court would harm disarmament negotiations, that is for the United Nations General Assembly to decide, not the Court. The Court has been asked by the General Assembly to answer a question which the General Assembly believes will assist it in carrying out its functions. That is the essence of the matter. It is the Court's role not to judge the wisdom of such a request, but to render the opinion requested of it.

Zimbabwe welcomes the comments made on discretion in the oral presentations of Egypt and Malaysia, and in the written statements of Nauru and Solomon Islands.

With regard to the admissibility of the question asked by the World Health Organization, Zimbabwe welcomes the oral statement by New Zealand and Samoa, and the written statements by Nauru and others which argued that WHO did have a mandate to request the opinion from the Court and that the Court should therefore give a reply. Zimbabwe also refers to the arguments supporting this view in the publication *Nuclear Weapons and the International Court of Justice: The admissibility of the request of the WHO*, by Professor Michael Bothe (IALANA - Schriftenreihe, 1994).

It is absurd to claim, as one nuclear State did in court, that the only role of WHO is "downstream", that "WHO, however, has no competence, if I may say so, except after the event". Does this State believe that WHO should not have conducted its preventive health programmes to combat tuberculosis and smallpox? Does this State believe that nutrition, sanitation and other

preventive health care is not the prerogative of WHO? In the case of nuclear weapons WHO has commented that the threat of nuclear weapons poses the greatest health threat to humanity, and I think that this is no exaggeration at all, this is common sense. Should WHO be prevented from considering preventive health measures on this, the greatest health threat to humanity, merely because a small minority of States - interested States - may need to change their existing policies?

Mr. President, Members of the Court, Zimbabwe is a relatively small developing country with limited resources. Like other small developing countries represented in these proceedings, Zimbabwe is making the effort to participate because this issue is of primary importance to all of us. The nuclear-weapon States argue that their nuclear weapons are not a threat to security, but that they promote security. This is not how we feel. We feel that an honest and true promotion of security is the eradication of nuclear weapons.

Nuclear weapons create a vastly greater threat than any other weapon because of their indiscriminate nature. The radiation from nuclear weapons knows no boundaries. The ones threatened are not only those against whom the weapons are pointed, but the whole world.

Until very recently nuclear weapons were possessed by one of our neighbours, *apartheid* South Africa. The threat to our security was very real during those times. These nuclear weapons were used to bolster an illegal régime of *apartheid*, and to intimidate those front-line States which opposed such a policy. Indeed, it has come out recently in a publication that my own capital, Harare, was one of the specific targets.

While that direct threat has now disappeared with the revelation by South Africa that it has dismantled its nuclear weapons (*Bulletin of Atomic Scientists*, May 1993), other threats from nuclear weapons to Zimbabwe still remain. Should nuclear weapons be used in a Middle East conflict, either by one of the Middle Eastern States¹, or by an outside State², the radioactive fall-out

¹Israel is reported to have up to 200 nuclear weapons.

²The United States is reported to have had nuclear-capable missiles in the Gulf during the war with Iraq.

would surely affect African States as well as Middle Eastern States.

Similarly, if nuclear weapons were to be used in south Asia, as they nearly were in 1991 (Seymour Hersch, "On the Nuclear Edge", *The New Yorker*, 29 March 1993, pp. 56-73), other adjoining regions such as Africa could also be affected by the radioactive fall-out, refugees and relief requirements.

It should be noted, however, that no matter where in the world nuclear weapons are used, the effects could be global. The global radioactive fall-out from Chernobyl and from atmospheric nuclear testing demonstrates the global effects that would occur from the use of just a small proportion of the world's arsenals. The WHO studies on the effects of nuclear war on health and health services, which were submitted to this Court by WHO, clearly support this.

Mr. President, distinguished Members of the Court, the possibility of nuclear weapons being used remains as long as they exist and deterrence policies remain. Their use could occur through conscious decision, miscalculation, or by accident. Since 1945, with the exception of the nuclear bombs exploded for testing purposes, humanity has been saved from the use of nuclear weapons more by luck than good management.

Former United States Department of Defence nuclear strategist, Daniel Ellsberg, has indicated that there have been at least twelve specific situations in which United States Presidents have seriously considered using nuclear weapons ("*How We Use Our Nuclear Arsenal*", in *Protest and Survive*, edited by E. P. Thompson and Dan Smith).

This threat is recognized by all States including the nuclear States. In 1978, the United Nations First Special Session on Disarmament adopted by consensus a final document which noted in its opening:

"Alarmed by the threat to the very survival of mankind posed by the existence of nuclear weapons ... Convinced that disarmament and arms limitation particularly in the nuclear field, are essential for the prevention of the danger of nuclear war and the strengthening of international peace and security ..."

Despite the recognition of the threat they pose to the survival of humankind, the nuclear States refuse to renounce the threat or use of nuclear weapons. It is for that reason that WHO and the

General Assembly have asked for an opinion from the Court.

The way we see it the Court has a role to play that would render an objective legal opinion in the international sense that we all recognize is needed. Zimbabwe believes that the Court should determine that the threat or use of nuclear weapons are illegal in any circumstance.

Substantive written submissions by Nauru, Solomon Islands and Malaysia have highlighted the humanitarian laws of warfare which render the threat or use of nuclear weapons illegal. A number of States including Egypt, Mexico, New Zealand, Iran, Indonesia, Malaysia, and Australia have repeated and added to these arguments in their oral presentations.

Zimbabwe shares fully their analysis that the threat or use of nuclear weapons violates the principles of humanitarian law prohibiting the use of weapons or methods of warfare that create unnecessary suffering, utilize poisonous or analogous substances, are indiscriminate, affect neutral states, are disproportionate or cause long term and severe damage to the environment. The threat to use nuclear weapons violates the United Nations Charter, the Nuremburg Principles and the general principle that it is illegal to threaten to commit a serious crime.

The illegality of threat or use of nuclear weapons is supported by the weight of customary law, conventions, judicial decisions and the teachings of the most highly qualified publicists.

Zimbabwe would like to take this opportunity to emphasize the comments made by some of these countries regarding the unique nature of nuclear weapons and to respond to some of the claims the nuclear states have made in an attempt to justify their nuclear policies.

Mr. President, distinguished Members of the Court, the nuclear-weapon countries would have us believe that nuclear weapons are no different from conventional weapons. France argued in its oral statement that "all weapons maim". The United Kingdom and the United States argued in their written statements that modern nuclear weapons are capable of precise targeting and can therefore be directed against specific military objectives without indiscriminate effect on the civilian population.

Zimbabwe finds it hard to believe that the nuclear States can make such claims after considering evidence that we have been presented with in this Court. The Mayors of Hiroshima and

Nagasaki gave disturbing testimony of the blast and radiation effects of nuclear bombs which are small by today's standards. The Marshall Islands gave additional evidence of the severe health and environmental effects nuclear explosions can have many miles away from the explosions themselves. WHO has presented reports to this Court describing the effects of the detonation of one nuclear bomb on a target, and the effects of many nuclear bombs being detonated.

Professor Rotblat, nuclear physicist and Nobel Peace Prize Winner, in a letter to this Court appended to the oral statement of Solomon Islands, argues that any use of nuclear weapons would cause unnecessary suffering, be indiscriminate and would affect the territories of third States. Zimbabwe requests the Court to take special note of Professor Rotblat's opinion.

If the Court has any doubt as to the indiscriminate nature of even the smallest nuclear bomb in the current world's arsenals, Zimbabwe would draw your attention to the research of Professor Rotblat in *Nuclear Radiation in Warfare* (Taylor and Francis Limited, London 1981), which concludes that even a one kiloton nuclear bomb would produce sufficient radiation to cause unnecessary suffering, be indiscriminate and affect the territories of third States. Dr. Frank Barnaby, nuclear physicist and former director of the Stockholm International Peace Research Institute, in the publication "Global Nuclear Arsenals" (*Halting the Spread of Nuclear Weapons*, Oxford Research Group, April 1995), indicates that the smallest bomb in the world's current arsenals is five kilotons.

Zimbabwe would like to emphasize that radiation from nuclear weapons cannot be contained either in space or in time. Australia, in their oral statement, spoke of the principle of intergenerational equity. Radiation damages the genetic code in humans and other life forms. The nuclear explosions in Hiroshima, Nagasaki and in the nuclear test sites have resulted in subsequent births, from parents exposed, of deformed babies and children with genetic disorders. The use of nuclear weapons therefore violates the right to health and the right to life of not only people currently living, but also of the unborn, of those to be born, of subsequent generations.

Mr. President, the experience of Rongelap, so graphically described in Court by the

Marshall Islands, indicates that exposure to radiation could be many years or even decades after the explosion and still generate such genetic damage.

The United States and the Netherlands, in their written statements, argued that the effects of radiation from nuclear weapons should be dismissed because radiation poisoning is merely a secondary effect. The United States for example states that the prohibition against poisonous or other gases and analogous liquids, materials and devices does not apply to "weapons that are designed to kill or injure by other means, even though they may create asphyxiating or poisonous byproducts".

However, there is no distinction made, nor should there be, between primary and secondary effects in the prohibition against the use of poisonous and analogous substances as codified in the Hague Conventions and the Geneva Gas Protocol of 1925. If radiation was an insignificant effect from nuclear explosions, resulting in no poisoning of combatants or civilians, one could make the claim that such use did not violate the prohibitions on poisonous substances. This is clearly not the case. Even in the smaller nuclear weapons, the radiation produced creates a significant threat to the health and life of humans and to the environment. In fact, Professor Rotblat has concluded that in smaller nuclear weapons, the ratio of radiation damage to blast damage is higher even than in larger nuclear weapons (*Nuclear Radiation in Warfare*, p. 70).

Zimbabwe would like to join Costa Rica in drawing the attention of the Court to the letter submitted to the President of the Court by the International Committee of the Red Cross on 19 September 1995 regarding nuclear weapons and the Geneva Protocols of 1977. In this letter the Red Cross stated:

"Indeed, no one can be unaware of the fact that today nuclear arms of all kinds are generally considered to be weapons of mass destruction, as are biological and chemical weapons. *A priori*, their use would thus appear to be incompatible with the prohibition, reaffirmed in Protocol I, of 'methods or means of combat which cannot be directed at a specific military objective', and are thus 'of a nature to strike military objectives and civilians without distinction (Art. 51, para. 4)."

With regard to the possibility that nuclear States had developed nuclear weapons that did not

have indiscriminate effects, the Red Cross stated: "we are not aware of any technical development that might have modified the characteristics of specific nuclear weapons".

Even if it were scientifically possible to develop nuclear weapons which were not indiscriminate, and eminent nuclear physicists including Dr. Barnaby believe that it is not, it is unlikely that any nuclear States would develop such a bomb as it would remove the *raison d'être* of nuclear weapons, which according to the United States Joint Chiefs of Staff is to ensure that:

"United States forces and command and control systems [are] viewed by enemy leadership as capable of inflicting such damage upon their military forces and means of support, or upon their country, as to deny them the military option." (Doctrine for Joint Nuclear Operations, US Joint Chiefs of Staff, 1993.)

In other words, Mr. President, the rationale for nuclear weapons is their ability to inflict massive damage on an enemy's country. This makes them inherently indiscriminate.

The United States and the United Kingdom have argued that military necessity might require the use of nuclear weapons. However, if this assertion were valid, which it is not, the majority of countries would require nuclear weapons in case such a necessity arose, and the current nuclear States would not oppose the spread of nuclear weapons in order that other countries could have, as their right, nuclear weapons for self-defence. It would not, I would argue, it would not be too much of a good thing. The fact that the overwhelming majority of countries do not have nuclear weapons, and that nuclear States oppose them acquiring them, indicates the inadmissibility of this proposition.

President Clinton of the United States was on the mark, we believe, with his opposition to the general notion of military necessity when he praised Belarus for giving up nuclear weapons on their soil. He said:

"It would have been easier to say 'these weapons make us a great nation, they make us stronger, we will use them, we will rattle them around as threats', but you made a better choice - to live nuclear free." (Speech to the Academy of Sciences, Minsk. As reported in the Christchurch Press, Aotearoa-New Zealand, 17 January 1994.)

We must heed statements of principle like this one. They do help to form an international opinion on the nature of nuclear weapons.

The necessity argument is even less defensible in light of the development of modern delivery systems the accuracy of which means that military targets can be destroyed without any requirement of weapons of mass destruction, if there ever was such a requirement. The nuclear States are the most advanced in these weapons systems. Thus even military leaders such as Lord Mountbatten, Lord Carver (former United Kingdom Chief of Defence Staff) and Admiral Eugene Carroll (United States Navy ret.) have said that there is no military necessity for nuclear weapons. A United States Air Force General, who was the Head of Air Operations in the Gulf War and the Head of the United States Space Command, said in 1994:

"The nuclear weapon is obsolete; I want to get rid of them all ... Think of the high moral ground we secure by having none. It's kind of hard for us to say to North Korea, 'You are terrible people, you're developing a nuclear weapon', when the United States has thousands of them." (*The Boston Globe*, 16 July 1994.)

It should be noted that even if there was a hypothetical situation in which a military target could not be destroyed except with a nuclear weapon, and the nuclear States have given no proof that there could be such a situation, the use of nuclear weapons would still be illegal. Military necessity does not override humanitarian laws of warfare.

Mr. President, the United Kingdom this morning (and in their written submission as well) stretched the military necessity argument when it claimed that, if a large military *advantage* were at stake, high civilian losses and damages may be justified. The Red Cross letter to the Court previously referred to, regarding the 1977 Geneva Protocol, categorically opposed this argument, stating that:

"This idea is contrary to the fundamental rules of the Protocol; in particular it conflicts with Article 48 (Basic rule) and paragraphs 1 and 2 of the present Article 51. The Protocol does not provide any justification for attacks which cause extensive civilian losses and damages. Incidental losses and damages should never be extensive."

Article 48 referred to by the Red Cross provides:

"In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objects and accordingly shall direct their operations only against military objects."

Paragraph 1 of Article 51 referred to by the Red Cross provides:

"The civilian population and individual civilians shall enjoy general protection against dangers arising from military operations."

Paragraph 2 of Article 51, referred to by the Red Cross, provides:

"Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population are prohibited."

Even before 1977, it was a universally recognized principle of humanitarian law that mass slaughter of civilians is illegal no matter the provocation or military advantage which may be gained.

The United Kingdom, France and the United States have argued that even if they do not use nuclear weapons, the threat of their use is necessary for deterrence. However, Zimbabwe is not alone in its view that threat of use is neither necessary nor legal.

There are, we believe, many better ways to prevent war than threatening to destroy one's potential opponent. The United Nations Charter sets out some of these ways, including recourse to this Court. Subsequent United Nations resolutions on the establishment of international, regional and national conflict resolution mechanisms add to these methods. In addition, the fact that all of the nuclear States have been involved in wars since 1945 indicates that nuclear deterrence has not kept the peace ("Wars and Related War Deaths", *World Military and Social Expenditures*, Ruth Leger Sivard, World Priorities 1993). Zimbabwe supports the arguments made by other States, including Costa Rica, that nuclear weapons do not provide for peace and security, but on the contrary, threaten peace and security.

I would add, Mr. President, with respect to the theories of deterrence and the doctrines derived from them, that it seems to us to be a curious distortion of logic first to create a new level, a new more dangerous level, of armaments raising warfare to new destructively imaginative levels and then to argue that one has kept the peace at a higher and more dangerous level, and to seek to persuade others to accept that for the last 50 or so years this new and more dangerous and potentially genocidal level of armaments should be credited with keeping peace.

Mr. President, while it is true that a minority of States have relied on nuclear deterrence as

part of their security doctrine, that does not prove its necessity or legality. The minority of States which engage in torture, arbitrary detention and other forms of gross human rights violations are in the habit of justifying these practices as necessary for their national security, a proposition that has never been accepted by the vast majority of human-rights-respecting States.

Mr. President, Members of the Court, Zimbabwe has played a key role in the negotiations for an African treaty establishing a nuclear-free zone in our region. Such a treaty is expected to be concluded in the near future. The United Kingdom and the United States have argued that the conclusion of treaties prohibiting the possession, threat or use of nuclear weapons in specific regions suggests that there is therefore no general prohibition against the threat or use of nuclear weapons, and that parties to these regional treaties accept this. Zimbabwe contends that this is manifestly incorrect, and if anything, the opposite is the case, that is, that regional treaties are the gradual codifying, through geographic regions, of a generally accepted prohibition of nuclear weapons. These agreements and arrangements are evidence of emerging legal norms that have a unique opportunity now through global institutions to whom is ascribed the authority and the role to assist in codifying them for those institutions to play their role in the emergence of these legal norms.

Mr. President, distinguished Members of the Court, a number of countries have referred to the importance of the Martens Clause in the Hague and Geneva Conventions. This clause states that in considering new weapons systems or methods of warfare, the principles of customary international law and the dictates of public conscience shall apply. The threat and use of nuclear weapons violate both customary international law and the dictates of public conscience.

With respect to the dictates of public conscience, Zimbabwe draws the Court's attention to the 3 million declarations of public conscience that were presented to the Court on 31 October. Some of these declarations were from citizens from Zimbabwe. It should be noted that many of these declarations were from citizens from nuclear countries as well as from non-nuclear countries.

In addition, there are many prominent citizens in nuclear countries, including church leaders, military people, members of parliament, and parliamentary initiatives supporting this initiative and

the elimination of nuclear weapons. Zimbabwe would like to mention one in particular, the Nuclear Disarmament and Economic Conversion Bill introduced into the 104th United States Congress as a result of a citizens' initiated referendum. United States Congress member and introducer of the Bill, Eleanor Holmes Norton, sent a letter to this Court on 3 November 1995, describing the Bill and urging this Court to "consider the legacy it will pass on to our children, and to issue a strong opinion in favour of nuclear disarmament".

Mr. President, distinguished Members of the Court, Zimbabwe supports the positive role this Court can play in the settling of legal disputes and in answering legal questions of importance to States and to humankind.

International law, and the adherence to it, is the foundation from which a just international order can be built. International law is based on the premise that States are equivalent in rights and responsibilities, regardless of size, military power, race, economic power and other forms of discriminatory influence.

Following the catastrophes of the two world wars, it became imperative that a new world order based upon the force of law rather than the law of force be constructed. The emergence of the United Nations arose from the desire of the peoples of the world for an end to the scourge of war and the desire for democratic international institutions to ensure that justice and equality eventuated.

Zimbabwe has faith in the independence and integrity of this Court. In that respect, Zimbabwe, as Chair of the Non-Aligned Movement, introduced a resolution to the United Nations General Assembly in 1989, calling for a United Nations Decade of International Law, with a primary aim of increasing reference to and acceptance of the International Court of Justice. This resolution was adopted by consensus.

Mr. President, distinguished Members of the Court, we are now half way through the United Nations Decade of International Law. While there has been an increase in cases referred to the Court, there is still a long way to go to reach universal acceptance of the Court's jurisdiction. The outcome of the present case could have some influence in this regard. The Court has been made

evidently aware that the majority of States are of the opinion that the Court should consider both questions put to it, and that the threat or use of nuclear weapons in any circumstance is not permitted - is not permitted and is not permissible - under existing international law.

The large number of countries participating in the current proceedings and the large citizen and academic support indicate the importance of this case.

Mr. President, distinguished Members of the Court, the imperative of the well-being and survival of whole nations, indeed of the entire globe, places on all of us the duty to work towards the creation of an international system based on morality and law. Zimbabwe believes that our global institutions must play a key role in this enterprise. In this instance, this venerable Court must play its proper role and render an advisory opinion that will help rid our world of these infernal weapons of mass destruction. Earlier today, Mr. President, we heard references to phantom legal instruments. I believe that the greatest danger that is facing humankind today is that of having a shell of the world left, inhabited by phantoms.

I thank you, Mr. President and Members of the Court, for this opportunity to present the views of Zimbabwe.

The PRESIDENT: Thank you very much, Your Excellency, for your statement. That concludes the oral argument by Zimbabwe.

Ainsi s'achève la procédure orale relative à la demande d'avis consultatif présentée par l'Organisation mondiale de la Santé au sujet de la *Licéité de l'utilisation des armes nucléaires par un Etat dans un conflit armé*, ainsi que la procédure orale relative à la demande d'avis consultatif présentée par l'Assemblée générale des Nations Unies au sujet de la *Licéité de la menace ou de l'emploi d'armes nucléaires en toute circonstance*.

A l'issue de ces procédures, mes plus vifs remerciements vont aux délégations qui se sont succédé à cette barre pendant plus de deux semaines, presque trois semaines, et qui, par leur grand professionnalisme, ont non seulement apporté à la Cour une aide précieuse dans l'exercice de la tâche

difficile qui est aujourd'hui la sienne, mais ont également contribué de façon exemplaire au bon déroulement des audiences. La Cour a été très sensible à l'intérêt peut-être sans précédent dont la communauté internationale a témoigné pour ses travaux et qui s'est traduit par l'éminente participation d'une organisation internationale et de plusieurs dizaines d'Etats aux deux procédures consultatives, qu'il s'agisse de leur phase écrite ou orale. Au-delà des divergences de vues - parfois profondes - qui peuvent opposer ces Etats sur le fond des questions posées et sur le traitement qui devrait leur être réservé, je retiendrai surtout l'esprit de coopération exceptionnel qui a prévalu tant entre eux que dans les relations entre ces Etats et la Cour pour permettre à celle-ci de remplir au mieux sa délicate mission. Cela méritait, je crois, d'être souligné.

La Cour va à présent se retirer pour délibérer. Je vous rappelle que des arrangements particuliers ont été pris pour permettre aux participants à la procédure orale de répondre par écrit aux questions qui leur ont été posées par des membres de la Cour. Je prierai par ailleurs le conseiller juridique de l'OMS ainsi que les représentants de tous les Etats concernés de bien vouloir se tenir à la disposition de la Cour pour le cas où celle-ci aurait besoin d'autres informations ou explications de leur part.

Conformément à l'article 108 du Règlement, le Greffier avertira en temps utile les Etats et organisations intéressés des date et heure auxquelles la Cour se prononcera.

Je vous remercie. L'audience publique est levée.

L'audience est levée à 16 h 05.