

agreements shall commence within 180 days from the original entry into force of this Treaty. For states depositing their instruments of ratification or accession after the 180-day period, negotiation of such agreements shall commence not later than the date of such deposit. Such agreements shall enter into force not later than eighteen months after the date of initiation of negotiations.

Article IV

1 Nothing in this Treaty shall be interpreted as affecting the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes without discrimination and in conformity with Articles I and II of this Treaty.

2 All the Parties to the Treaty undertake to facilitate, and have the right to participate in, the fullest possible exchange of equipment, materials and scientific and technological information for the peaceful uses of nuclear energy. Parties to the Treaty in a position to do so shall also co-operate in contributing alone or together with other states or international organisations to the further development of the applications of nuclear energy for peaceful purposes, especially in the territories of non-nuclear-weapon States Party to the Treaty, with due consideration for the needs of the developing areas of the world.

Article V

Each Party to the Treaty undertakes to take appropriate measures to ensure that, in accordance with this Treaty, under appropriate international observation and through appropriate international procedures, potential benefits from any peaceful applications of nuclear explosions will be made available to non-nuclear-weapon States Party to the Treaty on a non-discriminatory basis and that the charge to such Parties for the explosive devices used will be as low as possible and exclude any charge for research and development. Non-nuclear-weapon States Party to the Treaty shall be able to obtain such benefits, pursuant to a special international agreement or agreements, through an appropriate international body with adequate representation of non-nuclear-weapon states. Negotiations on this subject shall commence as soon as possible after the Treaty enters into force. Non-nuclear-weapon States Party to the Treaty so desiring may also obtain such benefits pursuant to bilateral agreements.

Article VI

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

Article VII

Nothing in this Treaty affects the right of any group of states to conclude regional treaties in order to assure the total absence of nuclear weapons in their respective territories.

Article VIII

1 Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depositary Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depositary Governments shall convene a conference, to which they shall invite all the Parties to the Treaty, to consider such an amendment.

2 Any amendment to this Treaty must be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States

Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. The amendment shall enter into force for each Party that deposits its instrument of ratification of the amendment upon the deposit of such instruments of ratification by a majority of all the Parties, including the instruments of ratification of all nuclear-weapon States Party to the Treaty and all other Parties which, on the date the amendment is circulated, are members of the Board of Governors of the International Atomic Energy Agency. Thereafter, it shall enter into force for any other Party upon the deposit of its instrument of ratification of the amendment.

3 Five years after the entry into force of this Treaty, a conference of Parties to the Treaty shall be held in Geneva, Switzerland, in order to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realised. At intervals of five years thereafter, a majority of the Parties to the Treaty may obtain, by submitting a proposal to this effect to the Depositary Governments, the convening of further conferences with the same objective of reviewing the operation of the Treaty.

Article IX

1 This Treaty shall be open to all states for signature. Any state which does not sign the Treaty before its entry into force in accordance with para 3 of this article may accede to it at any time.

2 This Treaty shall be subject to ratification by signatory states. Instruments of ratification and instruments of accession shall be deposited with the governments of the United Kingdom of Great Britain and Northern Ireland, the Union of Soviet Socialist Republics and the United States of America, which are hereby designated the Depositary Governments.

3 This Treaty shall enter into force after its ratification by the states, the governments of which are designated Depositaries of the Treaty, and 40 other states signatory to this Treaty and the deposit of their instruments of ratification. For the purposes of this Treaty, a nuclear-weapon state is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January, 1967.

4 For states whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the date of the deposit of their instruments of ratification or accession.

5 The Depositary Governments shall promptly inform all signatory and acceding states of the date of each signature, the date of deposit of each instrument of ratification or of accession, the date of the entry into force of this Treaty, and the date of receipt of any requests for convening a conference or other notices.

6 This Treaty shall be registered by the Depositary Governments pursuant to Article 102 of the Charter of the United Nations.

Article X

1 Each Party shall in exercising its national sovereignty have the right to withdraw from the Treaty if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardised the supreme interests of its country. It shall give notice of such withdrawal to all other Parties to the Treaty and to the United Nations Security Council three months in advance. Such notice shall include a statement of the extraordinary events it regards as having jeopardised its supreme interests.

2 Twenty-five years after the entry into force of the Treaty, a conference shall be convened to decide whether the Treaty shall continue in force indefinitely, or shall be extended for an additional fixed period or periods. This decision shall be taken by a majority of the Parties to the Treaty.

Article XI

This Treaty, the English, Russian, French, Spanish and Chinese texts of which are equally authentic, shall be deposited in the archives of the Depositary Governments. Duly certified copies of this Treaty shall be transmitted by the Depositary Governments to the governments of the signatory and acceding states.

IN WITNESS WHEREOF the undersigned, duly authorised, have signed this Treaty.

DONE in triplicate, at the cities of London, Moscow and Washington, the first day of July, one thousand nine hundred and sixty-eight.

In addition, there are treaties which prohibit the testing and use of nuclear weapons in particular locations, for example, the Space Treaty 1967 and the Antarctic Treaty 1959.

The use of nuclear weapons, along with the use of all other weapons, is subject to three basic principles: the necessity to use them; the proportionality of their use; and the obligation not to cause unnecessary suffering. Nuclear weapons cause, by their very nature, indiscriminate suffering and destruction and, as such, it could be argued that their use is contrary to the rules of international law. It has also been argued that the use of nuclear weapons would contravene the Genocide Convention and could also contravene the Hague Regulations which prohibit poisonous weapons. Those who argue in favour of a right to use nuclear weapons have suggested that the rules prohibiting indiscriminate suffering relate to conventional weapons only and that the use of nuclear weapons would be permissible in the absence of any positive law to the contrary. What does seem to be accepted is that the first use of nuclear weapons is acceptable although state practice seems to suggest that the possession and production of such weapons is not, providing there is no breach of the Non-Proliferation Treaty, in itself a breach of international law. In 1994 the United Nations General Assembly requested an advisory opinion from the ICJ on the question of the legality of the use by a state of nuclear weapons in armed conflict:

LEGALITY OF THE THREAT OR USE OF NUCLEAR WEAPONS CASE³

20 The Court must next address certain matters arising in relation to the formulation of the question put to it by the General Assembly. The English text asks: 'Is the threat or use of nuclear weapons in any circumstance permitted under international law?' The French text of the question reads as follows: '*Est-il permis en droit international de recourir à la menace ou à l'emploi d'armes nucléaires en*

3 [1996] ICJ Rep at p 90.

toute circonstance?' It was suggested that the Court was being asked by the General Assembly whether it was permitted to have recourse to nuclear weapons in every circumstance, and it was contended that such a question would inevitably invite a simple negative answer.

The Court finds it unnecessary to pronounce on the possible divergences between the English and French texts of the question posed. Its real objective is clear: to determine the legality or illegality of the threat or use of nuclear weapons.

21 The use of the word 'permitted' in the question put by the General Assembly was criticised before the Court by certain states on the ground that this implied that the threat or the use of nuclear weapons would only be permissible if authorisation could be found in a treaty provision or in customary international law. Such a starting point, those states submitted, was incompatible with the very basis of international law, which rests upon the principles of sovereignty and consent; accordingly, and contrary to what was implied by use of the word 'permitted', states are free to threaten or use nuclear weapons unless it can be shown that they are bound not to do so by reference to a prohibition in either treaty law or customary international law. Support for this contention was found in *dicta* of the Permanent Court of International Justice in the *Lotus* case that 'restrictions upon the independence of states cannot ... be presumed' and that international law leaves to states 'a wide measure of discretion which is only limited in certain cases by prohibitive rules' (*PCIJ*, Ser A, No 10, pp 18 and 19). Reliance was also placed on the *dictum* of the present Court in the case concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States of America*) that:

in international law there are no rules, other than such rules as may be accepted by the state concerned, by treaty or otherwise, whereby the level of armaments of a sovereign state can be limited ([1986] *ICJ Rep* at p 135, para 269).

For other states, the invocation of these *dicta* in the *Lotus* case was inapposite; their status in contemporary international law and applicability in the very different circumstances of the present case were challenged. It was also contended that the above-mentioned *dictum* of the present Court was directed to the possession of armaments and was irrelevant to the threat or use of nuclear weapons.

Finally, it was suggested that, were the Court to answer the question put by the Assembly, the word 'permitted' should be replaced by 'prohibited'.

22 The Court notes that the nuclear-weapon states appearing before it either accepted, or did not dispute, that their independence to act was indeed restricted by the principles and rules of international law, more particularly humanitarian law (see below, para 86), as did the other states which took part in the proceedings.

Hence, the argument concerning the legal conclusions to be drawn from the use of the word 'permitted', and the questions of burden of proof to which it was said to give rise, are without particular significance for the disposition of the issues before the Court.

23 In seeking to answer the question put to it by the General Assembly, the Court must decide, after consideration of the great corpus of international law norms available to it, what might be the relevant applicable law.

24 Some of the proponents of the illegality of the use of nuclear weapons have argued that such use would violate the right to life as guaranteed in Article 6 of

the International Covenant on Civil and Political Rights, as well as in certain regional instruments for the protection of human rights. Article 6, para 1, of the International Covenant provides as follows:

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

In reply, others contended that the International Covenant on Civil and Political Rights made no mention of war or weapons, and it had never been envisaged that the legality of nuclear weapons was regulated by that instrument. It was suggested that the Covenant was directed to the protection of human rights in peacetime, but that questions relating to unlawful loss of life in hostilities were governed by the law applicable in armed conflict.

25 The Court observes that the protection of the International Covenant of Civil and Political Rights does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. Respect for the right to life is not, however, such a provision. In principle, the right not arbitrarily to be deprived of one's life applies also in hostilities. The test of what is an arbitrary deprivation of life, however, then falls to be determined by the applicable *lex specialis*, namely, the law applicable in armed conflict which is designed to regulate the conduct of hostilities. Thus whether a particular loss of life, through the use of a certain weapon in warfare, is to be considered an arbitrary deprivation of life contrary to Article 6 of the Covenant, can only be decided by reference to the law applicable in armed conflict and not deduced from the terms of the Covenant itself.

26 Some states also contended that the prohibition against genocide, contained in the Convention of 9 December 1948 on the Prevention and Punishment of the Crime of Genocide, is a relevant rule of customary international law which the Court must apply. The Court recalls that, in Article II of the Convention genocide is defined as:

... any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) killing members of the group;
- (b) causing serious bodily or mental harm to members of the group;
- (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) imposing measures intended to prevent births within the group;
- (e) forcibly transferring children of the group to another group.

It was maintained before the Court that the number of deaths occasioned by the use of nuclear weapons would be enormous; that the victims could, in certain cases, include persons of a particular national, ethnic, racial or religious group; and that the intention to destroy such groups could be inferred from the fact that the user of the nuclear weapon would have omitted to take account of the well-known effects of the use of such weapons.

The Court would point out in that regard that the prohibition of genocide would be pertinent in this case if the recourse to nuclear weapons did indeed entail the element of intent, towards a group as such, required by the provision quoted above. In the view of the Court, it would only be possible to arrive at such a conclusion after having taken due account of the circumstances specific to each case.

27 In both their written and oral statements, some states furthermore argued that any use of nuclear weapons would be unlawful by reference to existing

norms relating to the safeguarding and protection of the environment, in view of their essential importance.

Specific references were made to various existing international treaties and instruments. These included Additional Protocol I of 1977 to the Geneva Conventions of 1949, Article 35, para 3, of which prohibits the employment of 'methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment'; and the Convention of 18 May 1977 on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, which prohibits the use of weapons which have 'widespread, long-lasting or severe effects' on the environment (Art 1). Also cited were Principle 21 of the Stockholm Declaration of 1972 and Principle 2 of the Rio Declaration of 1992 which express the common conviction of the states concerned that they have a duty 'to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction'. These instruments and other provisions relating to the protection and safeguarding of the environment were said to apply at all times, in war as well as in peace, and it was contended that they would be violated by the use of nuclear weapons whose consequences would be widespread and would have transboundary effects.

28 Other states questioned the binding legal quality of these precepts of environmental law; or, in the context of the Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques, denied that it was concerned at all with the use of nuclear weapons in hostilities; or, in the case of Additional Protocol I, denied that they were generally bound by its terms, or recalled that they had reserved their position in respect of Article 35, para 3, thereof.

It was also argued by some states that the principal purpose of environmental treaties and norms was the protection of the environment in time of peace. It was said that those treaties made no mention of nuclear weapons. It was also pointed out that warfare in general, and nuclear warfare in particular, were not mentioned in their texts and that it would be destabilising to the rule of law and to confidence in international negotiations if those treaties were now interpreted in such a way as to prohibit the use of nuclear weapons.

29 The Court recognises that the environment is under daily threat and that the use of nuclear weapons could constitute a catastrophe for the environment. The Court also recognises that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of states to ensure that activities within their jurisdiction and control respect the environment of other states or of areas beyond national control is now part of the corpus of international law relating to the environment.

30 However, the Court is of the view that the issue is not whether the treaties relating to the protection of the environment are or not applicable during an armed conflict, but rather whether the obligations stemming from these treaties were intended to be obligations of total restraint during military conflict.

The Court does not consider that the treaties in question could have intended to deprive a state of the exercise of its right of self-defence under international law because of its obligations to protect the environment. Nonetheless, states must take environmental considerations into account when assessing what is necessary and proportionate in the pursuit of legitimate military objectives. Respect for the environment is one of the elements that go to assessing whether an action is in conformity with the principles of necessity and proportionality.

This approach is supported, indeed, by the terms of Principle 24 of the Rio Declaration, which provides that:

Warfare is inherently destructive of sustainable development. States shall therefore respect international law providing protection for the environment in times of armed conflict and cooperate in its further development, as necessary.

31 The Court notes furthermore that Articles 35, para 3, and 55 of Additional Protocol I provide additional protection for the environment. Taken together, these provisions embody a general obligation to protect the natural environment against widespread, long-term and severe environmental damage; the prohibition of methods and means of warfare which are intended, or may be expected, to cause such damage; and the prohibition of attacks against the natural environment by way of reprisals.

These are powerful constraints for all the states having subscribed to these provisions.

32 General Assembly Resolution 47/37 of 25 November 1992 on the Protection of the Environment in Times of Armed Conflict, is also of interest in this context. It affirms the general view according to which environmental considerations constitute one of the elements to be taken into account in the implementation of the principles of the law applicable in armed conflict: it states that 'destruction of the environment, not justified by military necessity and carried out wantonly, is clearly contrary to existing international law'. Addressing the reality that certain instruments are not yet binding on all states, the General Assembly in this resolution '[a]ppeals to all states that have not yet done so to consider becoming parties to the relevant international conventions'.

In its recent Order in the Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the *Nuclear Tests (New Zealand v France)* case, the Court stated that its conclusion was 'without prejudice to the obligations of states to respect and protect the natural environment' (Order of 22 September 1995; [1995] *ICJ Rep* at p 306, para 64). Although that statement was made in the context of nuclear testing, it naturally also applies to the actual use of nuclear weapons in armed conflict.

33 The Court thus finds that while the existing international law relating to the protection and safeguarding of the environment does not specifically prohibit the use of nuclear weapons, it indicates important environmental factors that are properly to be taken into account in the context of the implementation of the principles and rules of the law applicable in armed conflict.

34 In the light of the foregoing the Court concludes that the most directly relevant applicable law governing the question of which it was seised, is that relating to the use of force enshrined in the United Nations Charter and the law applicable in armed conflict which regulates the conduct of hostilities, together with any specific treaties on nuclear weapons that the Court might determine to be relevant.

35 In applying this law to the present case, the Court cannot however fail to take into account certain unique characteristics of nuclear weapons.

The Court has noted the definitions of nuclear weapons contained in various treaties and accords. It also notes that nuclear weapons are explosive devices whose energy results from the fusion or fission of the atom. By its very nature, that process, in nuclear weapons as they exist today, releases not only immense quantities of heat and energy, but also powerful and prolonged radiation. According to the material before the Court, the first two causes of damage are

vastly more powerful than the damage caused by other weapons, while the phenomenon of radiation is said to be peculiar to nuclear weapons. These characteristics render the nuclear weapon potentially catastrophic. The destructive power of nuclear weapons cannot be contained in either space or time. They have the potential to destroy all civilisation and the entire ecosystem of the planet.

The radiation released by a nuclear explosion would affect health, agriculture, natural resources and demography over a very wide area. Further, the use of nuclear weapons would be a serious danger to future generations. Ionising radiation has the potential to damage the future environment, food and marine ecosystem, and to cause genetic defects and illness in future generations.

36 In consequence, in order correctly to apply to the present case the Charter law on the use of force and the law applicable in armed conflict, in particular humanitarian law, it is imperative for the Court to take account of the unique characteristics of nuclear weapons, and in particular their destructive capacity, their capacity to cause untold human suffering, and their ability to cause damage to generations to come.

37 The Court will now address the question of the legality or illegality of recourse to nuclear weapons in the light of the provisions of the Charter relating to the threat or use of force.

38 The Charter contains several provisions relating to the threat and use of force. In Article 2, para 4, the threat or use of force against the territorial integrity or political independence of another state or in any other manner inconsistent with the purposes of the United Nations is prohibited. That paragraph provides:

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.

This prohibition of the use of force is to be considered in the light of other relevant provisions of the Charter. In Article 51, the Charter recognises the inherent right of individual or collective self-defence if an armed attack occurs. A further lawful use of force is envisaged in Article 42, whereby the Security Council may take military enforcement measures in conformity with Chapter VII of the Charter.

39 These provisions do not refer to specific weapons. They apply to any use of force, regardless of the weapons employed. The Charter neither expressly prohibits, nor permits, the use of any specific weapon, including nuclear weapons. A weapon that is already unlawful *per se*, whether by treaty or custom, does not become lawful by reason of its being used for a legitimate purpose under the Charter.

40 The entitlement to resort to self-defence under Article 51 is subject to certain constraints. Some of these constraints are inherent in the very concept of self-defence. Other requirements are specified in Article 51.

41 The submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law. As the Court stated in the case concerning Military and Paramilitary Activities in and against Nicaragua (*Nicaragua v United States of America*) ([1986] ICJ Rep at p 94, para 176): 'there is a specific rule whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law'. This dual condition

applies equally to Article 51 of the Charter, whatever the means of force employed.

42 The proportionality principle may thus not in itself exclude the use of nuclear weapons in self-defence in all circumstances. But at the same time, a use of force that is proportionate under the law of self-defence, must, in order to be lawful, also meet the requirements of the law applicable in armed conflict which comprise in particular the principles and rules of humanitarian law.

43 Certain states have in their written and oral pleadings suggested that in the case of nuclear weapons, the condition of proportionality must be evaluated in the light of still further factors. They contend that the very nature of nuclear weapons, and the high probability of an escalation of nuclear exchanges, mean that there is an extremely strong risk of devastation. The risk factor is said to negate the possibility of the condition of proportionality being complied with. The Court does not find it necessary to embark upon the quantification of such risks; nor does it need to enquire into the question whether tactical nuclear weapons exist which are sufficiently precise to limit those risks: it suffices for the Court to note that the very nature of all nuclear weapons and the profound risks associated therewith are further considerations to be borne in mind by states believing they can exercise a nuclear response in self-defence in accordance with the requirements of proportionality.

44 Beyond the conditions of necessity and proportionality, Article 51 specifically requires that measures taken by states in the exercise of the right of self-defence shall be immediately reported to the Security Council; this article further provides that these measures shall not in any way affect the authority and responsibility of the Security Council under the Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security. These requirements of Article 51 apply whatever the means of force used in self-defence.

45 The Court notes that the Security Council adopted on 11 April 1995, in the context of the extension of the Treaty on the Non-Proliferation of Nuclear Weapons, Resolution 984 (1995) by the terms of which, on the one hand, it:

... [t]akes note with appreciation of the statements made by each of the nuclear-weapon states (S/1995/261, S/1995/262, S/1995/263, S/1995/264, S/1995/265), in which they give security assurances against the use of nuclear weapons to non-nuclear-weapon states that are Parties to the Treaty on the Non-Proliferation of Nuclear Weapons,

and, on the other hand, it:

... [w]elcomes the intention expressed by certain states that they will provide or support immediate assistance, in accordance with the Charter, to any non-nuclear-weapon State Party to the Treaty on the Non-Proliferation of Nuclear Weapons that is a victim of an act of, or an object of a threat of, aggression in which nuclear weapons are used.

46 Certain states asserted that the use of nuclear weapons in the conduct of reprisals would be lawful. The Court does not have to examine, in this context, the question of armed reprisals in time of peace, which are considered to be unlawful. Nor does it have to pronounce on the question of belligerent reprisals save to observe that in any case any right of recourse to such reprisals would, like self-defence, be governed *inter alia* by the principle of proportionality.

47 In order to lessen or eliminate the risk of unlawful attack, states sometimes signal that they possess certain weapons to use in self-defence against any state violating their territorial integrity or political independence. Whether a signalled

intention to use force if certain events occur is or is not a 'threat' within Article 2, para 4, of the Charter depends upon various factors. If the envisaged use of force is itself unlawful, the stated readiness to use it would be a threat prohibited under Article 2, para 4. Thus it would be illegal for a state to threaten force to secure territory from another state, or to cause it to follow or not follow certain political or economic paths. The notions of 'threat' and 'use' of force under Article 2, para 4, of the Charter stand together in the sense that if the use of force itself in a given case is illegal – for whatever reason – the threat to use such force will likewise be illegal. In short, if it is to be lawful, the declared readiness of a state to use force must be a use of force that is in conformity with the Charter. For the rest, no state – whether or not it defended the policy of deterrence – suggested to the Court that it would be lawful to threaten to use force if the use of force contemplated would be illegal.

48 Some states put forward the argument that possession of nuclear weapons is itself an unlawful threat to use force. Possession of nuclear weapons may indeed justify an inference of preparedness to use them. In order to be effective, the policy of deterrence, by which those states possessing or under the umbrella of nuclear weapons seek to discourage military aggression by demonstrating that it will serve no purpose, necessitates that the intention to use nuclear weapons be credible. Whether this is a 'threat' contrary to Article 2, para 4, depends upon whether the particular use of force envisaged would be directed against the territorial integrity or political independence of a state, or against the Purposes of the United Nations or whether, in the event that it were intended as a means of defence, it would necessarily violate the principles of necessity and proportionality. In any of these circumstances the use of force, and the threat to use it, would be unlawful under the law of the Charter.

49 Moreover, the Security Council may take enforcement measures under Chapter VII of the Charter. From the statements presented to it the Court does not consider it necessary to address questions which might, in a given case, arise from the application of Chapter VII.

50 The terms of the question put to the Court by the General Assembly in Resolution 49/75K could in principle also cover a threat or use of nuclear weapons by a state within its own boundaries. However, this particular aspect has not been dealt with by any of the states which addressed the Court orally or in writing in these proceedings. The Court finds that it is not called upon to deal with an internal use of nuclear weapons.

51 Having dealt with the Charter provisions relating to the threat or use of force, the Court will now turn to the law applicable in situations of armed conflict. It will first address the question whether there are specific rules in international law regulating the legality or illegality of recourse to nuclear weapons *per se*; it will then examine the question put to it in the light of the law applicable in armed conflict proper, ie the principles and rules of humanitarian law applicable in armed conflict, and the law of neutrality.

52 The Court notes by way of introduction that international customary and treaty law does not contain any specific prescription authorising the threat or use of nuclear weapons or any other weapon in general or in certain circumstances, in particular those of the exercise of legitimate self-defence. Nor, however, is there any principle or rule of international law which would make the legality of the threat or use of nuclear weapons or of any other weapons dependent on a specific authorisation. State practice shows that the illegality of the use of certain weapons as such does not result from an absence of authorisation but, on the contrary, is formulated in terms of prohibition.

53 The Court must therefore now examine whether there is any prohibition of recourse to nuclear weapons as such; it will first ascertain whether there is a conventional prescription to this effect.

54 In this regard, the argument has been advanced that nuclear weapons should be treated in the same way as poisoned weapons. In that case, they would be prohibited under:

- (a) the Second Hague Declaration of 29 July 1899, which prohibits 'the use of projectiles the object of which is the diffusion of asphyxiating or deleterious gases';
- (b) Article 23(a) of the Regulations respecting the laws and customs of war on land annexed to the Hague Convention IV of 18 October 1907, whereby 'it is especially forbidden ... to employ poison or poisoned weapons'; and
- (c) the Geneva Protocol of 17 June 1925 which prohibits 'the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices'.

55 The Court will observe that the Regulations annexed to the Hague Convention IV do not define what is to be understood by 'poison or poisoned weapons' and that different interpretations exist on the issue. Nor does the 1925 Protocol specify the meaning to be given to the term 'analogous materials or devices'. The terms have been understood, in the practice of states, in their ordinary sense as covering weapons whose prime, or even exclusive, effect is to poison or asphyxiate. This practice is clear, and the parties to those instruments have not treated them as referring to nuclear weapons.

56 In view of this, it does not seem to the Court that the use of nuclear weapons can be regarded as specifically prohibited on the basis of the above-mentioned provisions of the Second Hague Declaration of 1899, the Regulations annexed to the Hague Convention IV of 1907 or the 1925 Protocol (see para 54 above).

57 The pattern until now has been for weapons of mass destruction to be declared illegal by specific instruments. The most recent such instruments are the Convention of 10 April 1972 on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their destruction – which prohibits the possession of bacteriological and toxic weapons and reinforces the prohibition of their use – and the Convention of 13 January 1993 on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction – which prohibits all use of chemical weapons and requires the destruction of existing stocks. Each of these instruments has been negotiated and adopted in its own context and for its own reasons. The Court does not find any specific prohibition of recourse to nuclear weapons in treaties expressly prohibiting the use of certain weapons of mass destruction.

58 In the last two decades, a great many negotiations have been conducted regarding nuclear weapons; they have not resulted in a treaty of general prohibition of the same kind as for bacteriological and chemical weapons. However, a number of specific treaties have been concluded in order to limit:

- (a) the acquisition, manufacture and possession of nuclear weapons (Peace Treaties of 10 February 1947; State Treaty for the Re-establishment of an Independent and Democratic Austria of 15 May 1955; Treaty of Tlatelolco of 14 February 1967 for the Prohibition of Nuclear Weapons in Latin America, and its Additional Protocols; Treaty of 1 July 1968 on the Non-Proliferation of Nuclear Weapons; Treaty of Rarotonga of 6 August 1985 on the Nuclear-