

# **ANNEX V:**

## **Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons (July 1996)**

The Court handed down its Advisory Opinion on the request made by the General Assembly of the United Nations on the question concerning the Legality of the Threat or Use of Nuclear Weapons. The final paragraph of the Opinion reads as follows:

“For these reasons,

THE COURT

By thirteen votes to one,

*Decides* to comply with the request for an advisory opinion;

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: *Judge* Oda.

(2) *Replies* in the following manner to the question put by the General Assembly:

### **A. Unanimously,**

There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons;

### **B. By eleven votes to three,**

There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such;

IN FAVOUR: *President* Bedjaoui; *Vice-President* Schwebel; *Judges* Oda, Guillaume, Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo, Higgins;

AGAINST: *Judges* Shahabuddeen, Weeramantry, Koroma.

**C. Unanimously,**

A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful;

**D. Unanimously,**

A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons;

**E. By seven votes to seven, by the President's casting vote,**

It follows from the above-mentioned requirements that the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake;

IN FAVOUR: *President* Bedjaoui; *Judges* Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo;

AGAINST: *Vice-President* Schwebel; *Judges* Oda, Guillaume, Shahabuddeen, Weeramantry, Koroma, Higgins.

**F. Unanimously,**

There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control”.

The Court was composed as follows: *President* Bedjaoui, *Vice-President* Schwebel; *Judges* Oda, Guillaume, Shahabuddeen, Weeramantry, Ranjeva, Herczegh, Shi, Fleischhauer, Koroma, Vereshchetin, Ferrari Bravo, Higgins; *Registrar* Valencia-Ospina.

*President* Bedjaoui, *Judges* Herczegh, Shi, Vereshchetin and Ferrari Bravo appended declarations to the Advisory Opinion of the Court; *Judges* Guillaume, Ranjeva and Fleischhauer appended separate opinions; *Vice-President* Schwebel, *Judges* Oda Shahabuddeen, Weeramantry, Koroma and Higgins appended dissenting opinions.