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French Presidential election - Appeal to Constitutional Council

Request to invalidate the candidacies of Nicolas Sarkozy and François Hollande

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The present request was sent on 19 March 2012 to the Constitutional Council, as soon as the list was finalized of the ten candidates accepted to contest France's Presidential Election. The Constitutional Council will examine it in the near future.

Exposé of reasons

I. Constitutional principles of the French Republic underpinning this appeal

1. On the preparation of crimes against humanity

1.1. According to the Constitution of 4 October 1958, currently in force, "the French people solemnly proclaims its attachment to Human Rights and to the principles of national sovereignty as defined by the Declaration of 1789, and confirmed and completed by the preamble of the 1946 Constitution, and also to the rights and duties defined in the 2004 Environment Charter." (Preamble, first paragraph).

1.2. The Declaration of the Rights of Man and Citizen of 1789, considering that "the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments", places an obligation "all the members of the Social body" to bear constantly in mind "the natural, inalienable and sacred rights of Man" and at all moments to compare "the acts of the legislative power, as well as those of the executive power, with the objects and purposes of all political institutions" (Declaration, first paragraph).

1.3. "The aim of all political association is the preservation of the natural and imprescriptible rights of man" (Declaration, article 2). Thus all the members and authorities of the republic must constantly be vigilant for the respect of Human Rights.

1.4. The present appeal responds to this obligation. It represents part of the "appeals of citizens, founded on simple and incontestable principles" which tend "to the maintenance of the Constitution and the happiness of all".

1.5. This obligation is binding on the Head of State. Whoever has held, holds or proposes to hold the highest office must undertake to honour Human Rights and cause them to be honoured.

1.6. Any candidate who plans to maintain and develop weapons for crimes against humanity and declares himself ready to use them, and thus to commit such crimes, cannot accede to the highest office without violating the letter and the spirit of the Constitution.

1.7. Nuclear arms, called "barbarous weapons" by President Mitterrand because they cause thousands or millions of deaths and injuries in a population without distinguishing between civilians and combatants, are weapons for crimes against humanity, even at times of war.

1.8. The UN General Assembly, "considering that the use of nuclear and thermo-nuclear weapons would bring about indiscriminate suffering and destruction to mankind and civilization to an even greater extent than the use of those weapons declared by the aforementioned international declarations and agreements to be contrary to the laws of humanity and a crime under internationtal law" has formally declared that "Any state using nuclear and thermo-nuclear weapons is considered as violating the Charter of the United Nations, as acting contrary to the laws of humanity and as committing a crime against mankind and civilization" (Resolution 1653, XVI of 24 November

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1961)

1.9. President de Gaulle tacitly admitted this as he emerged from the Council of Ministers on 4 May 1962. The government spokesman Alain Peyrefitte, alluding to Hiroshima and Nagasaki, asked him "Hundreds of thousands of deaths, women, children, old people burned up in a split second, hundreds of thousands more dying in the following years after atrocious suffering, isn't that what is called a crime against humanity?" Peyrefitte later recorded the response: "De Gaulle raised his arms in the air. That wasn't his problem." (C'était de Gaulle, 1, p165)

1.10. The matter is now a problem for the Constitutional Council and next President of France: nuclear weapons, tools of crimes against humanity, are contrary to the Constitution; they have no place in the arsenals of France.

1.11. The claim that nuclear weapons have a deterrent function and exist not to be used but only to frighten enemies and to guarantee peace, is a piece of sophistry.

1.12. In fact, nuclear weapons offer no guaranteed deterrence against terrorism, as was proved by 9/11, nor against another state possessing nuclear weapons. President Giscard d'Estaing understood this and wrote: "Concerning mutually assured destruction, whatever happens I will never take the initiative of an act that would lead to the annihilation of France." He added "If an enemy began to destroy her, I would immediately take the necessary decision to avenge her. But otherwise, I wish to leave to her inhabitants the ultimate chance to revive French culture" (Le pouvoir et la vie, 2, 210). Thus, since occupation is preferable to annihilation, nuclear weapons are merely a new Maginot Line. Their use in deterrence would be suicidal. Their use for revenge is too: that would merely extend to the whole country the destruction "begun by the enemy".

1.13. If nuclear weapons do have some deterrent effect, they can have it only if they can really be used. The people who adopt the discourse of "nuclear deterrence" know this; they also know that the deterrent effect is never guaranteed because it depends on the enemy's perceptions, calculations, means of retaliation - and desires. A head of state or presidential candidate who approves of the existence of France's nuclear arsenal and declares himself ready to use it "for deterrence" is therefore declaring himself willing to commit a crime against humanity, doubled with the collective suicide of his own people .... all in the name of defending "our vital interests", and Human Rights, and the values of the French Republic.

1.14. Preparation for a crime is a crime. The Constitutional Council would make itself an accomplice to crime if it permitting an individual whose intentions it was aware of to gain the powers needed to perpetrate a crime against humanity, and that would be the case if this person became President of the Republic and held the nuclear weapons code.

1.15. "The Constitutional Council must ensure that there is no irregularity in the election of the President. It examines the matters put before it and announces the result of the vote" (Article 58). It must therefore examine the present matter put before it, and the declarations made by the candidates concerning nuclear weapons, as well as their police records, in order to pronounce of the "regularity" of their candidacies and of the election to be held.

2. On the honouring of international treaties

2.1. The Preamble of the Constitution of 27 octobre 1946, which the current Constitution says is still in force, states that « the French Republic, faithful to her traditions, abides by the rules of public international law » (article 14) and that « subject to reciprocity, France consents to the limitations to sovereignty that are needed to organize and defend peace » (article 15).

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2.2. France has ratified the Charter of the United Nations. She has all the rights of members of the UN and is subject to all the duties.

2.3. In 1992 France ratified the Non-Proliferation Treaty (NPT). According to its article VI «Each of the Parties to the Treaty undertakes to pursue negotiations in good faith (...) for a treaty on general and complete disarmament under strict and effective international control ». This undertaking is the counterpart of the undertaking made by non-nuclear states to not obtain these weapons.

2.4. The International Court of Justice, in its advisory opinion of 8 July 1996, point F, confirmed unanimously that: "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".

2.5. The UN Security Council, meeting in New York on 24 September 2009 under the chairmanship of the US President, in the presence of 14 heads of state and government including those of Russia, China, the UK and France, recognized unanimously that all states, whether or not possessing nuclear weapons, have an obligation to move towards "a world without nuclear weapons".

2.6. According to the Constitution of 1958, « treaties or agreements ratified or approved in due ordering have, from their date of publication, a higher authority than laws» (article 55).

2.7. Thus, France's participation in negotiations aimed at abolishing nuclear weapons is one of her imperative international obligations.

2.8. According to the Constitution, « the President of the Republic ensures the respect of the Constitution. He is the guarantor...of the honouring of treaties » (Article 5). He is « the chief of the armed forces » (Article 15). He « negotiates and ratifies treaties». (Article 52)

2.9. All the above evidence points to the conclusion that the President of the Republic is required to involve France in negotiations for the abolition of all nuclear arsenals, including France's own. In the first place, he must make it known that France requests the opening of such negotiations and is committed to pursue them in good faith until their objective is fulfilled.

3. On respect of the Constitution

3.1. « The Republic's motto is 'Liberty, Equality, Fraternity'. Its principle is government of the people, by the people and for the people » (1958 Constitution, Article 2)

3.2. « National sovereignty belongs to the people, who exercise it through their representatives and through referenda. No one section of the people and no one individual can assume the exercise of sovereignty. » (Article 3)

3.3. « The President of the Republic is the guarantor of the independence of the judicial authorities» (Article 64). « Nobody can be condemned to death» (Article 66-1).

3.5. The power to decide, without any legal trial, on the deaths of thousands, hundreds of thsouands or millions of people, and to execute the sentence oneself, without delay or appeal, is an exorbitant power. It tramples underfoot the Republic's motto of 'Liberty, Equality, Fraternity'. It tramples on Human Rights. It flouts all the rules of national

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and international. Law. It abolishes the separation between executive and judicial powers. It appropriates national sovereignty, which belongs only to the people, turning it against the people and against humanity. It instigates a tyranny that is virtually bloody and is truly contrary to the Constitution.

3.6. Any individual claiming to reestablish the death penalty in a collective form and attribute to himself an exorbitant right of decide the life or death of his compatriots or fellow humans makes himself the enemy of the Nation and of Humanity. He must be removed from power or prevented from coming to power.

3.7. According to the 1789 Declaration of the Rights of Man « A society in which the observance of the law is not assured, nor the separation of powers defined, has no constitution at all. » (article 16). Any lapse by the Constitutional Council which would authorize « the forgetting or contempt of Human Rights » would open the way to « public miseries », to « governmental corruption », to the dislocation of Society as a «political institution », and finally to out-and-out war. 3.8. According to the 1958 Constitution, the decisions of the Constitutional Council « are not subject to any appeal » and « are binding on the public powers and on all administrative and judicial authorities » (article 62, para. 3). Thus, the Council is the final institutional recourse against the instigation of a tyranny and a state of barbarism.

II. Declarations of intentions by MM. Nicolas Sarkozy and François Hollande concerning nuclear weapons

4. By M. Nicolas Sarkozy

4.1. In all his declarations, before and after his accession to the Presidency in 2007, M. Nicolas Sarkozy has held that view that « nuclear deterrence » is « the Nation's life-insurance » (Letter to Action des Citoyens pour le Désarmement Nucléaire, 26 March 2007) - and « an absolute imperative » (to Jean-Marie Matagne, 18 April 2007).

4.2. President Sarkozy permitted a delegation from ACDN to be received on 29 June 2007 at the Section for Disarmament and Nuclear Non-Proliferation of the Ministry of Foreign Affairs. However, he has not followed up a written request to organize « a national debate of a loyal and adversarial kind, first in Parliament and then among the population, be means of a referendum on the imnplementation of total and comprehensive nuclear disarmament as required by Article 6 of the NPT ». He has failed to reply to many letters from French and international personalities, during his term of office, which made similar requests.

4.3. Along with the risks of proliferation which the existence of nuclear weapons increases, the international context has placed nuclear abolition at the centre of topical issues : there was the election of Barack Obama, who had made it an objective in his 2008 electoral campaign; his speech in Prague (5 avril 2009) ; the Security Council meeting of 24 September 2009 ; the signing and entry into force (Februaru 2011) of the new START Treaty between Russia and the USA for the reduction of strategic nuclear weapons; and recently there has been consideration, by the Obama administration, of new US reductions which could reduce the number of strategic nuclear warheads to 300, around the level of France's arsenal.

4.4. Despite this favourable context, President Sarkozy has not at any moment proposed to involve France in negotiations aimed at eliminating the nuclear arsenals. On the contrary, he has pursued the modernization of France's arsenal. His 2012 presidential project is unchanged in this respect.

4.5. « Deterrence remains for France an absolute imperative; nuclear deterrence is for us the Nation's life-insurance » (speech of President Sarkozy aboard the aircraft-carrier "Charles de Gaulle", 10 June 2010).

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5. By M. François Hollande

5.1. According to M. Hollande, « nuclear deterrence remains today the fundamental guarantee of our security... Even though France must never cease to adapt, I will be the guarantor of her nuclear deterrence capability. That is a specific prerogative of the President of the Republic : I seek it and I will assume it fully ». ("Nuclear deterrence: I will maintain it ", le Nouvel Observateur, 22.12.2011). Thus, like Sarkozy, M. Hollande is resolved to claim and to exercise the exorbitant « prerogative » of committing a crime against humanity in the name of French and the French people, if he deems it necessary in his soul and conscience.

5.2. Despite this, he declares: « I want to help ensure that law and treaties and the decisions of the Security Council are fully respected ». But the decisions alluded to there are solely those concerning Iran and North Korea (as they were for Sarkozy on 24 September 2009). As for the law and treaties that require France to negotiate along with the other nuclear powers the abolition of her arsenal, M. Hollande totally ignores them.

5.3. According to M. Hollande, « a political leader cannot be unaware that history is tragic ». But that is not a reason for ignoring the fact that there are several ways of preventing tragedy and that preparing a tragedy is only one approach.

Conclusion

General Lee Butler, former head of Strategic Air Command, who as such would have had to operate the nuclear arms attacks during the Cold War if the US President had given the order, declared in 1996: "Nuclear weapons are fundamentally dangerous, extraordinarily expensive, militarily ineffective and morally indefensible". In addition, they are judicially unacceptable and are directly contrary to the French Constitution. They must be abolished, and France is required to participate actively in negotiations and in a convention leading to their abolition. If that fails, she should eliminate them unilaterally.

Nicolas Sarkozy et François Hollande deny that France has any obligation in this matter, unlike some other candidates. They intend to pursue policies that flout international law and the Constitution of France. Their candidacies for the Presidency must therefore be declared invalid, along with hthose of any other candidates sharing their positions on nuclear weapons.

In view of this, only those candidates whose programme includes France's participation in the abolition of nuclear arms, whether as a political measure they would take directly as representatives of the French people, or as a particular political question that would put to the French people by referendum, can be considered to be in conformity with the rules of the current Constitution. May the Constitutional Council see fit to accede to the present appeal.

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NOTE.

In 2002 the President of ACDN, then a declared candidate for the Presidency on a platform of phasing out nuclear

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weapons and nuclear power, presented a claim against the candidacies of Jacques Chirac et Lionel Jospin, on grounds similar to those above: infringement of the Non-Proliferation treaty, non-respect of the Constitution, and illicit agreements to exclude questions of defense from the electoral debate.

At the time the Constitutional Council declared itself incompetent to rule on the matter. Cf. Décision Matagne du 07 avril 2002

Will it do the same this time, now that it seems to be demonstrated that it is "final institutional recourse against the instigation of a tyranny and a state of barbarism", and that the persistant gap between the words and actions of certain political leaders has been producing a deleterious effect, a disaffection, and increasingly antisocial behaviours in society as a whole?

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