



INTERNATIONAL HUMAN
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WORLD COURT OPINION ON NUCLEAR DISARMAMENT NEEDED
UN General Assembly Should Seek Clarity on the Duty to Eliminate Nuclear Weapons

The UN General Assembly should ask the International Court of Justice (ICJ) to clarify the legal obligation to achieve nuclear disarmament, said the International Human Rights Clinic (IHRC) at Harvard Law School and the International Association of Lawyers Against Nuclear Arms (IALANA) today.

IHRC and IALANA call for a new ICJ advisory opinion in a report they have released at a major UN conference taking place in New York this week. *Good Faith Negotiations Leading to the Total Elimination of Nuclear Weapons: Request for an Advisory Opinion from the International Court of Justice* has been presented to governments meeting to prepare for the next five-year review of the Nuclear Non-Proliferation Treaty in 2010.

Article VI of the Nuclear Non-Proliferation Treaty obligates states parties, including the United States, “to pursue negotiations in good faith on effective measures . . . relating to nuclear disarmament.” In a 1996 advisory opinion, the ICJ unanimously declared that this provision requires states to “bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.”

IHRC and IALANA argue that the ICJ should be asked to explain what steps states must take to meet the obligation articulated in Article VI and the 1996 opinion.

“More than a decade has passed since the Court so categorically formulated this obligation, and yet we see a continued readiness to develop nuclear weapons and maintain nuclear arsenals,” Judge Christopher Weeramantry, president of IALANA and former vice-president of the ICJ, wrote in a foreword to the report. “It is vitally important that no uncertainty should exist in regard to the interpretation or application of this pronouncement.”

Good Faith Negotiations Leading to the Total Elimination of Nuclear Weapons examines the Article VI disarmament obligation, the failure to fulfill it to date, and the principle of good faith under international law. It also recommends a set of questions to be asked of the ICJ. They include:

- Does compliance with the disarmament obligation require an immediate start to multilateral negotiations leading to the elimination of nuclear weapons within a set time period?

- Would states show a failure to comply with the obligation through long-term retention, maintenance, and modernization of nuclear warheads, delivery systems, and research and production facilities?

“An ICJ advisory opinion would resolve legal disagreements and promote governments’ compliance with the obligation to disarm,” said editor and author Bonnie Docherty, lecturer on law and clinical instructor at IHRC. “It would also help revitalize the movement for a world free of nuclear weapons.”

Because the ICJ is the highest court of international law in the world, its advisory opinions provide important and influential interpretations of the law. The UN General Assembly can request such an opinion by a simple majority.

The request for an opinion would be timely given recent international discussion about nuclear disarmament.

Editor and author Phon van den Biesen, an Amsterdam-based attorney and a vice-president of IALANA who has handled several cases before the ICJ, said that increased efforts need to be made, beyond U.S.-Russian talks on bilateral reductions, to eliminate nuclear weapons.

“Bringing to a conclusion negotiations leading to the total elimination of nuclear weapons needs to be the explicit focal point of renewed negotiations,” said van den Biesen. “We are convinced that this is not going to happen without further guidance from the Court on the legal requirements of good faith negotiations.”

Another editor and author, John Burroughs, executive director of the New York-based Lawyers Committee on Nuclear Policy, the UN Office of IALANA, praised President Barack Obama’s commitment “to seek the peace and security of a world without nuclear weapons.”

“But we need the Court’s assistance regarding the disarmament enterprise,” Burroughs said. “For example, the United States and other nuclear weapon states are now spending many billions of dollars to implement plans to retain nuclear forces for decades to come. The ICJ should declare whether that is consistent with their legal obligation to eliminate nuclear arsenals through good faith negotiations.”

The report is available online at www.lcnp.org and <http://www.law.harvard.edu/programs/hrp>.

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The International Human Rights Clinic at Harvard Law School (IHRC) is a center for critical thought and active engagement in human rights, working in partnership with dozens of human rights organizations around the globe. For more information on the IHRC, visit <http://www.law.harvard.edu/programs/hrp>.

The International Association of Lawyers Against Nuclear Arms (IALANA) works to prevent nuclear war, abolish nuclear weapons, strengthen international law and encourage the peaceful resolution of international conflicts. For more information, visit <http://www.ialana.net/>.