



NUCLEAR WEAPONS: ABOLITION UNDER THE LAW

A Challenge for all Humanity

Several Citizen Groups are working together as the *World Court Project to Abolish Nuclear Weapons*. We are preparing a resolution for the United Nations General Assembly which will ask the International Court of Justice (ICJ), or World Court, the court of the United Nations, for legal advice about nuclear weapons.

Nuclear weapons have not been used in war since 1945. For many years the nuclear-armed states claimed that they were only weapons of last resort against nuclear attack or an overwhelming conventional attack. Yet there was a massive build-up of sea, land and airborne warheads primed for launch at a moment's notice. The enormity of nuclear weapons and human fallibility do not sit well together. Perhaps we avoided a nuclear catastrophe only through good fortune.

We lived in dread for decades. But since the end of the Cold War the public's fear of nuclear weapons has diminished and they only feature on the political agenda sporadically.

But nuclear weapons have not gone away. Arsenals have been slimmed down but they remain an ever-present menace to all our futures. There are still about 26,000 of them, enough to destroy all the cities of the earth many times over.

In many ways the situation has become more dangerous and urgent since the end of the Cold War. This is because:

- ❖ nuclear weapons are no longer a last resort. The nuclear-armed states now see them as a way of responding to and even pre-empting chemical, biological and other vaguely defined threats or attacks.
- ❖ the nuclear club is growing. First there was the U.S. By 1968 Russia, U.K., France and China had joined. Then came Israel, India, Pakistan and North Korea. Now additional states could decide to go nuclear and terrorists groups may well have nuclear ambitions.

These dangers challenge all humanity. It is our common task to confront this self-inflicted threat. The World Court Project believes that no human being, and no state, can be trusted with nuclear weapons. There are no "responsible" nuclear states. Nuclear weapons are immoral and unlawful. The only rational policy is their total abolition under the law.

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International
Association of
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Nuclear Arms

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A Legal Framework for Abolition

We already have a framework for abolition. In 1996 the ICJ provided legal advice on nuclear weapons for the UN General Assembly. This made it quite clear that:

- ❖ the threat or use of nuclear weapons, would, as a general rule, violate International Humanitarian Law – the customs and treaties accepted by states as a way of limiting the suffering of war, especially to civilians. We argue that because of their enormous and unpredictable explosive, heat, and radiation effects no one launching a nuclear strike could reliably foresee whether it would be lawful or not. As the ICJ stated, nuclear weapons cannot be contained in space or time.
- ❖ there is a “Good Faith” obligation to achieve the global abolition of nuclear weapons. The ICJ concluded 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."

This obligation is closely linked with the basic illegality of nuclear weapons and their threat or use. A binding global framework for a nuclear weapon-free world would put nuclear weapons beyond the bounds of legality once and for all.

A Binding Treaty Obligation

Since 1968 nearly every state has signed the Nuclear Non-Proliferation Treaty (NPT). This defined the five states, the U.S. France, China, Russia and the U.K., which had nuclear weapons at that time as the “Nuclear-Weapon States”. Almost all the other states – the Non-Nuclear Weapon States – have also signed up to the Treaty. The only important exceptions are Israel, Pakistan and India which do have nuclear weapons but have not entered the NPT, and North Korea which left the Treaty but may rejoin as a result of current negotiations

The NPT has three equally important aims which reinforce each other.

- ❖ preventing further proliferation of nuclear weapons,
- ❖ controlling the use of materials such as plutonium and uranium for nuclear power to ensure that they are not used for nuclear weapons manufacture,
- ❖ the global abolition of nuclear weapons.

Every five years the NPT states meet in a *Review Conference* to monitor the progress of the NPT. The 1995 Review and Extension Conference adopted the *Statement of Principles and Objectives for Nuclear Nonproliferation and Disarmament* which included the *"determined pursuit by the nuclear-weapon states of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons... ."*

The 2000 Review Conference built on the Principles and Objectives and reinforced the ICJ Opinion. All 187 NPT states agreed on *13 Practical Steps*. These showed how Article VI of the NPT should be interpreted and applied.

The Thirteen Steps included verified reductions, further efforts by the Nuclear-Weapon States to reduce their nuclear arsenals unilaterally, removing nuclear weapons from hair-trigger alert, and reducing their importance in security policies. This would minimise the risk that nuclear weapons would ever be used, and prepare the way for their total elimination. These steps must be *irreversible*. There must be no going back on them. Above all, the 13 Practical Steps included an "*unequivocal undertaking*" by the Nuclear-Weapon States "*to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament ...*"

In the years between Review Conferences the NPT states hold three *Preparatory Committees*. The Chair's Paper at the end of the 2007 NPT Preparatory Committee held in Vienna recorded that most states were concerned that thousands of nuclear weapons were still deployed and stockpiled. They called for full implementation of the 13 Practical Steps. Failure to comply with Article VI of the NPT could undermine both non-proliferation and disarmament.

A Failure to Comply

This anxiety about compliance with NPT obligations reflects growing concern over several years. The Nuclear-Weapon States pay lip-service to the NPT but behave otherwise. There have been some positive steps. The U.S. and Russia have agreed to reduce their nuclear arsenals. The U.K. nuclear forces are at a lower level of alert and limited to one system, Trident. It is also carrying out a study on nuclear verification to support a nuclear disarmament process.

However, nuclear strategies remain robust. Far from reducing their importance in security policies the Nuclear-Weapon States are modernising their arsenals and expanding their role. The U.K. decision to replace Trident means that it expects to maintain nuclear weapons for a generation. Research on the *Reliable Replacement Warhead* and ongoing upgrades in the U.S. show continued reliance on nuclear weapons. Only China has pledged not to use nuclear weapons first. NATO maintains a security policy based on the threat of nuclear weapons. Some NATO States host U.S. nuclear weapons and maintain arrangements with the U.S. to take control of these during wartime. India and Pakistan openly tested nuclear weapons in 1998 and declared that they had become nuclear states.

In the 2006 UN General Assembly 168 states voted in support of the ICJ's disarmament obligation. Only three states voted against it, the United States, Russia, and Israel. The five abstainers included France and Britain. The Nuclear-Weapon States have also failed to make progress in the main disarmament forum, the *Conference on Disarmament*. At the moment there are no direct negotiations whatsoever on nuclear disarmament.

An Obligation in Good Faith

The Court's strong statement of the Good Faith obligation is based on NPT 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."

The Nuclear-Weapon States claimed that Article VI was only a vague commitment to negotiation. The ICJ firmly rejected this view. Just negotiating is not enough. There must be a result - global nuclear disarmament. Furthermore, by implication, the obligation applies to all states, not just the NPT ones.

The "Good Faith" obligation is the heart of the matter. In our view this means negotiating sincerely and flexibly to achieve the desired result - global nuclear disarmament. The objective must be pursued consistently with political will. It means considering proposals from the other side, and re-examining one's own position. The conclusion should be reached within a reasonable time-frame and the parties must avoid policies which contradict the very purpose of the negotiations.

Return to the ICJ

Nuclear disarmament "in Good Faith" is a legal obligation and not merely a political one. Therefore, a move to revitalise the legal process could reinforce the political will to achieve the aims expressed in the preamble to the NPT:

"Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war ...".

The ICJ has a reputation for providing valuable legal judgments and opinions. Our request for a new Opinion from the ICJ on the nuclear weapons issue will therefore ask what, in practice, the "obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament" requires; and whether the Nuclear-Weapon States are complying with this Good Faith obligation. This would increase the legal weight against the use of nuclear weapons, and help to achieve a framework for a nuclear weapon-free world. It would challenge the assumption that a world armed with nuclear weapons into the indefinite future is a normal and acceptable state of affairs.

This will be an inspiring project; and a demanding one. It will need the involvement of citizens worldwide to engage civil society, governments, media and the public. The *World Court Project to Abolish Nuclear Weapons* invites states and civil society organisations to support this initiative.