

## NUCLEAR WEAPONS, HUMAN SECURITY, AND INTERNATIONAL LAW

VED P. NANDA <sup>1</sup>

### I. INTRODUCTION

The end of the Cold War did not remove the threat nuclear weapons pose to human civilization. The danger of mistaken or inadvertent nuclear launching cannot be discounted, nor is there a fail-safe device to ensure that terrorists will not get ahold of nuclear weapons or will not use them if acquired. Numerous experts point to a causal relationship between nuclear weapons and international and national insecurity. A broadened concept of national security includes human security and nuclear weapons are unquestionably a main source of the people's insecurity. The role of international law is to provide a framework for nuclear disarmament, a prerequisite for human security.

President Barack Obama called the future of nuclear weapons in the Twenty-first Century an issue that is “fundamental to the security of our nations and to the peace of the world,” in his remarks at Prague, Czech Republic, on April 5, 2009.<sup>2</sup> Calling nuclear weapons the “most dangerous legacy” of the Cold War, he emphasized the infinite consequences of a nuclear weapons explosion in any major city “for our global safety, our security, our society, our economy, to our ultimate survival,” stating “clearly and with conviction America’s commitment to seek the peace and security of a world without nuclear weapons.”<sup>3</sup> In his words, “as the only nuclear power to have used a nuclear weapon, the United States has a moral responsibility to act.”<sup>4</sup>

A U.S. president’s commitment that America “will take concrete steps towards a world without nuclear weapons . . . [.] will reduce the role of nuclear weapons in our national security strategy, and urge others to do the same[, and] will begin the work of reducing our arsenal”<sup>5</sup> is indeed a promising development. Just a few days before this, on April 1, President Dmitry Medvedev of the Russian

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1. John Evans Professor, University of Denver, Thompson G. Marsh Professor of Law and Director, International Legal Studies at the University’s Sturm College of Law. I am grateful for the summer research grant from the Sturm College of Law which assisted me in part in completing this essay.

2. President Barack Obama, Remarks at Prague, Czech Republic (April 5, 2009) *available at* [http://www.whitehouse.gov/the\\_press\\_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered/](http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered/).

3. *Id.*

4. *Id.*

5. *Id.*

Federation and President Obama discussed nuclear arms control and reduction issues and issued the following joint statement:

As leaders of the two largest nuclear weapons states, we agreed to work together to fulfill our obligations under Article VI of the Treaty on Non-Proliferation of Nuclear Weapons (NPT) and demonstrate leadership in reducing the number of nuclear weapons in the world. We committed our two countries to achieving a nuclear free world, while recognizing that this long-term goal will require a new emphasis on arms control and conflict resolution measures, and their full implementation by all concerned nations. We agreed to pursue new and verifiable reductions in our strategic offensive arsenals in a step-by-step process, beginning by replacing the Strategic Arms Reduction Treaty with a new, equally-binding treaty. We are instructing our negotiators to start talks immediately on this new treaty and to report on results achieved in working out the new agreement by July.<sup>6</sup>

These developments place the issue in the forefront of the international attention.

Thus, I consider it timely to discuss this topic with the next section briefly reviewing the destructive force of nuclear weapons and their utility as instruments of war. This will be followed by a quick look at the new concept of human security. Next, I study the illustrative action the world community—international organizations, especially the United Nations, nongovernmental organizations (NGOs), and individuals—has thus far undertaken to eliminate nuclear weapons. The next section, which precedes the conclusion, discusses the role of international law in the elimination of nuclear weapons.

## II. THE DESTRUCTIVE FORCE OF NUCLEAR WEAPONS AND THEIR MINIMUM UTILITY AS INSTRUMENTS OF WAR

### A. *The Destructive Power of Nuclear Weapons.*

Obviously there is no lack of awareness about the death and destruction nuclear weapons cause. The human misery associated with the dropping of atomic bombs over Hiroshima and Nagasaki in early August 1945 is vividly captured in the accounts of horrific, ghastly scenes witnessed by medical and rescue workers.<sup>7</sup>

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6. Joint Statement by President Dmitriy Medvedev of the Russian Federation and President Barack Obama of the United States of America (April 1, 2009) *available at* [http://www.whitehouse.gov/the\\_press\\_office/Joint-Statement-by-President-Dmitriy-Medvedev-of-the-Russian-Federation-and-President-Barack-Obama-of-the-United-States-of-America/](http://www.whitehouse.gov/the_press_office/Joint-Statement-by-President-Dmitriy-Medvedev-of-the-Russian-Federation-and-President-Barack-Obama-of-the-United-States-of-America/).

7. As one example, a young medical worker's described the scene in the aftermath of the bombing in Hiroshima as follows:

I looked around me. Even though it was morning, the sky was dark as twilight. Then I saw streams of human beings shuffling away from the center of the city. Parts of their bodies were missing. Their eyes had been liquefied. They had blackened skin, and strips of flesh hung like ribbons from their bones. There was an awful stench in the air; the stench of burned flesh. I can't describe that smell, but it was like broiled fish.

VED NANDA & DAVID KRIEGER, NUCLEAR WEAPONS AND THE WORLD COURT 37 (1998) [hereinafter

This was the beginning of the nuclear era.<sup>8</sup> In his testimony before the International Court of Justice, the Mayor of Nagasaki described the bomb's effects on his city:

Nagasaki became a city of death where not even the sounds of insects could be heard. After a while, countless men, women and children began to gather for a drink of water at the banks of nearby Urakami River, their hair and clothing scorched and their burnt skin hanging off in sheets like rags. Begging for help, they died one after another in the water or in heaps on the banks. Then radiation began to take its toll, killing people like a scourge of death expanding in concentric circles from the hypocenter. Four months after the atomic bombing, 74,000 were dead and 75,000 had suffered injuries, that is, two-third[s] of the city population had fallen victim to this calamity that came upon Nagasaki like a preview of the Apocalypse.<sup>9</sup>

In 2005 then Secretary-General Kofi Annan reminded the world of the destruction in Hiroshima and Nagasaki and warned that a nuclear catastrophe in any city would create chaos, as

[t]ens, if not hundreds, of thousands of people would perish in an instant, and many more would die from exposure to radiation. The global impact would also be grave . . . . Hard-won freedoms and human rights could be compromised . . . . And world financial markets, trade and transportation could be hard hit, with major economic consequences. This could drive millions of people in poor countries into deeper deprivation and suffering.<sup>10</sup>

#### *B. The Minimum Utility of Nuclear Weapons as Instruments of War*

Equally important, many security experts have argued that nuclear weapons have minimal utility as instruments of war and that their continued possession has a negative effect on the maintenance of regional and global security.<sup>11</sup> To

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NUCLEAR WEAPONS AND THE WORLD COURT]. A rescue worker described the scene he witnessed:

In corpses near ground zero the eyeballs were blown outside their heads. The skin was a black tinged yellowish brown, and very dry; it was clear that these persons had died in agony. . . . Many corpses were found at places where there was water -- rivers, old wells, cisterns, ponds, and the like. People who did not die instantly had, it appears, exerted themselves to the limit in their search for water.

*Id.*

8. Barely three weeks before the U.S. dropped its first atomic bomb on Hiroshima, it had conducted its first ever atomic detonation in the desert a few miles from Los Alamos, New Mexico, at a site called "Trinity" on July 16, 1945. J. Robert Oppenheimer, head of the scientific team for the U.S. atomic bomb program, remarked that at the time of the explosion the following words from the ancient Hindu text, the Bhagavad Gita, flashed through his mind: "I am become Death, the destroyer of worlds." *Id.* at 29.

9. *Id.* at 40.

10. Kofi Annan, Address to the Nuclear Non-Proliferation Treaty Review Conference (May 2, 2005) available at [www.un.org/apps/sg/sgstats.asp?nid=1427](http://www.un.org/apps/sg/sgstats.asp?nid=1427).

11. See generally Marianne Hanson, *Nuclear Weapons as Obstacles to International Security*, 16

illustrate, in a 2005 article,<sup>12</sup> Robert S. McNamara, U.S. Secretary of Defense under Presidents Kennedy and Johnson, recalled that in 1983 he had decided to “go public” with some information that he “felt was needed to inject reality into these increasingly unreal discussions about the ostensible military utility of nuclear weapons.”<sup>13</sup> He was referring to the ongoing discussions in the early 1980s regarding how the U.S. could “fight and win a nuclear war” with the Soviets. The information that Robert McNamara referred to was published in a 1983 article that he had written in *Foreign Affairs*:

Having spent seven years as Secretary of Defense dealing with the problems unleashed by the initial nuclear chain reaction 40 years ago, I do not believe we can avoid serious and unacceptable risk of nuclear war until we recognize—and until we base all our military plans, defense budgets, weapons deployments, and arms negotiations on this recognition—that nuclear weapons serve no military purpose whatsoever.<sup>14</sup>

McNamara then discussed what he called the “unacceptable risk” of accidental or inadvertent use of nuclear weapons as a result of misjudgment or miscalculation in times of crisis. He explained:

Senior Russian military officials have stated that, due to lack of resources, the Russian nuclear arsenal is increasingly at risk of accidents, theft, and serious malfunction in its command and control systems. As for the risk of inadvertent use of the weapons in a crisis, the Cuban Missile Crisis demonstrated that the United States and the Soviet Union—and indeed the rest of the world—came within a hair’s breadth of a nuclear disaster in October 1962 as a result of misinformation and misjudgment.<sup>15</sup>

After analyzing the U.S. policy to sustain and modernize the existing nuclear force, to rely “far into the future” upon the projected deployment of large numbers of strategic nuclear weapons, and to integrate a national ballistic missile defense into its offensive weapons system,<sup>16</sup> McNamara concluded that

we are at a critical moment in human history with respect to offensive nuclear forces. There is a strong temptation to continue the strategies of the past 40 years. Such actions would, in my opinion, be a serious mistake leading to a high risk to all nations across the globe.<sup>17</sup>

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Int’l Relations 361, 361-62 (2002) [hereinafter Hanson].

12. Robert S. McNamara, *The Folly of U.S. and NATO Nuclear Weapons Policies*, 51 Int’l Affairs (Moscow), No. 3, at 104 (June 2005).

13. *Id.* at 108.

14. *Id.* at 108.

15. *Id.* at 109.

16. *Id.* at 114-16.

17. *Id.* at 118. See also Robert S. McNamara, *Apocalypse Soon*, FOREIGN POL’Y, May/June 2005, at 28.

### III. HUMAN SECURITY

A new understanding of the concept of security is emerging in the twenty-first century. The need for a redefinition of the traditional concept of security was eloquently addressed in 2003 by the Commission on Human Security.<sup>18</sup> The Commission, co-chaired by Sadako Ogata, former U.N. High Commissioner for Refugees, and Amartya Sen, Nobel laureate in economics, was launched at the 2000 Millennium Summit convened by then U.N. Secretary-General Kofi Annan and was established at the initiative of the government of Japan.

Contrasted with the traditional focus on state security, the new concept of security is aimed at ensuring protection of the people. As the Commission stated,

the security debate has changed dramatically since the inception of state security advocated in the 17th century. According to that traditional idea, the state would monopolize the rights and means to protect its citizens. But in the 21st century, both the challenges to security and its protectors have become more complex. The state remains the fundamental purveyor. Yet it often fails to fulfill its security obligations—and at times has even become a source of threat to its own people. That is why attention must now shift from the security of the state to the security of the people—to human security.<sup>19</sup>

Thus, according to the Commission, the international community “urgently needs a new paradigm of security.”<sup>20</sup>

Irene Khan, Secretary General of Amnesty International, provides the following grim account as an appropriate context to help us understand why human security needs to supplement the narrow traditional concept of state security. She led an Amnesty delegation to Burundi in September 2002, days after the Burundi army had massacred more than 170 civilians in a remote village, and went to the local hospital to meet the only four survivors. The next day she met the President of Burundi and asked him what action he would take to protect civilians in the internal conflict then raging in his country. He replied: “Madam, you do not understand—we are fighting a war to protect our national security.”<sup>21</sup>

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18. Commission on Human Security, *Human Security Now* (2003) [hereinafter *Human Security Now*].

19. *Id.* at 2. In addition to the authorities on human security cited here, see also John F. Jones, *Human Security and Social Development*, 33 *DENV. J. INT'L L. & POL'Y* 92 (2004); Ved P. Nanda, *Preemptive and Preventive Use of Force, Collective Security, and Human Security*, 2004 *Sutton Colloquium: Foreword*, 33 *DENV. J. INT'L L. & POL'Y* 7 (2004); Priyanka Upadhyaya, *Human Security, Humanitarian Intervention and Third World Concerns*, 33 *DENV. J. INT'L L. & POL'Y* 71 (2004).

20. *Human Security Now*, *supra* note 18, at 2.

21. Irene Khan, *A Human Rights Agenda for Global Security*, in *HUMAN SECURITY FOR ALL: A TRIBUTE TO SERGIO VIEIRA DE MELLO* 17 (Kevin M. Cahill ed., 2004). In its 2001 report, the International Commission on Intervention and State Sovereignty expressed its views on the need to think beyond the traditional narrow concept of security:

The traditional, narrow perception of security leaves out the most elementary and legitimate concerns of ordinary people regarding security in their daily lives. It also diverts enormous amounts of national wealth and human resources into

The Human Security Commission's focus is on the empowerment of people, which can help prepare them against severe present and future threats, both natural and societal. In a nutshell it affirms that the traditional view of state security has expanded in the Twenty-first Century to include human security, as well.<sup>22</sup>

The focus on human security is to ensure that adequate attention is given to addressing the real sources of insecurity from which so many people all over the world suffer. Nuclear weapons constitute a major source of the people's insecurity. And weapons of mass destruction—nuclear, chemical, and biological—are obviously among the main threats to state security. In 2004, the Secretary General's High-level Panel, which was established to examine new global security threats, enumerated six clusters as threats to international security, which include weapons of mass destruction.<sup>23</sup>

The Union of Concerned Scientists has stated that “[n]uclear weapons remain the gravest and most immediate threat to human civilization.”<sup>24</sup> In June 2007, speaking at the Council on Foreign Relations, former Senator and co-chairman of the Nuclear Threat Initiative Sam Nunn listed the greatest threats we currently face from nuclear weapons: “[C]atastrophic terrorism, a rise in the number of nuclear

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armaments and armed forces, while countries fail to protect their citizens from chronic insecurities of hunger, disease, inadequate shelter, crime, unemployment, social conflict and environmental hazard. When rape is used as an instrument of war and ethnic cleansing, when thousands are killed by floods resulting from a ravaged countryside and when citizens are killed by their own security forces, then it is just insufficient to think of security in terms of national territorial security alone. The concept of human security can and does embrace such diverse circumstances.

INT'L COMMISSION ON INTERVENTION AND STATE SOVEREIGNTY, THE RESPONSIBILITY TO PROTECT 15 (2001) available at [http://www.idrc.ca/openebooks/960-7/#page\\_15](http://www.idrc.ca/openebooks/960-7/#page_15).

22. Among various definitions of human security, Kofi Annan's encompasses “human rights, good governance, access to education and health care, and [to ensure] that each individual has opportunities and choices to fulfill his or her potential.” Press Release, Secretary General Kofi Annan, *Secretary-General Salutes International Workshop on Human Security in Mongolia*, SG/SM/7382 (May 8-10, 2000) available at [www.un.org/News/Press/docs/2000/20000508.sgsm7382.doc](http://www.un.org/News/Press/docs/2000/20000508.sgsm7382.doc). The Commission on Human Security defines the concept in the following words:

To protect the vital core of all human lives in ways that enhance human freedoms and human fulfillment. Human security means protecting fundamental freedoms . . . . It means protecting people from critical (severe) and pervasive (widespread) threats and situations. It means using processes that build on people's strengths and aspirations. It means creating political, social, environmental, economic, military and cultural systems that together give people the building blocks of survival, livelihood and dignity.

Human Security Now, *supra* note 18, at 4. The emerging common theme is that it enhances human rights and facilitates human development.

23. Secretary-General's High-level Panel on Threats, Challenges and Change, *A More Secure World: Our Shared Responsibility*, 23, U.N. Doc. A/59/565/2004 (2004) available at <http://www.un.org/secureworld/>. The other five clusters listed in the report are: economic and social threats, interstate conflict, internal conflict, terrorism, and transnational organized crime.

24. Union of Concerned Scientists, Nuclear Weapons & Global Security: Nuclear Weapons Overview, [http://www.ucsusa.org/nuclear\\_weapons\\_and\\_global\\_security/nuclear\\_weapons/technical\\_issues/nuclear-weapons-overview.html](http://www.ucsusa.org/nuclear_weapons_and_global_security/nuclear_weapons/technical_issues/nuclear-weapons-overview.html) (last visited May 30, 2009) [hereinafter Nuclear Weapons & Global Security].

weapons states, increasing danger of mistaken, accidental or unauthorized nuclear launch . . . .”<sup>25</sup> He referred to the January 2007 *Wall Street Journal* op-ed piece he had published along with two former Secretaries of State, Henry Kissinger and George Schultz, and former U.S. Secretary of Defense William Perry, in which they had called upon the United States to provide leadership to prevent nuclear weapons’ “proliferation into potentially dangerous hands, and ultimately ending them as a threat to the world.”<sup>26</sup>

Making the point that terrorist groups are “conceptually outside the bounds of a deterrent strategy,” Senator Nunn and his colleagues stated that the United States will find itself in a nuclear era “more precarious, psychologically disorienting, and economically even more costly than was Cold War deterrence.”<sup>27</sup> They also endorsed “setting the goal of a world free of nuclear weapons and working energetically on the actions required to achieve that goal.”<sup>28</sup>

At the height of the Cold War, President John F. Kennedy had stated in his 1961 address to the United Nations General Assembly: “Every man, woman, and child lives under a nuclear sword of Damocles, hanging by the slenderest of threads, capable of being cut at any moment by accident or by miscalculation or by madness. The weapons of war must be abolished before they abolish us.”<sup>29</sup>

#### IV. THE WORLD COMMUNITY’S EFFORTS TO ELIMINATE NUCLEAR WEAPONS

The catastrophic effects of Hiroshima and Nagasaki bombings lead to only one rational solution to nuclear weapons—eliminate them. The move to abolish them began with the very first resolution adopted by the United Nations General Assembly in London in January 1946, entitled “Establishment of a Commission to Deal with the Problems Raised by the Discovery of Atomic Energy.”<sup>30</sup> The Resolution, which was adopted unanimously, charged the Commission, inter alia, to make specific proposals “for the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction.”<sup>31</sup> This goal has been reaffirmed by the General Assembly in hundreds of subsequent resolutions.

In the latest iteration of its reaffirmation of the goal, the 63rd Session of the General Assembly on December 2, 2008, adopted a Resolution entitled “Nuclear Disarmament,”<sup>32</sup> which recognizes in its operative paragraph 1 that “the time is

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25. Sam Nunn, *The Mountaintop: A World Free of Nuclear Weapons*, Council on Foreign Relations, 2-3 (June 14, 2007) [http://www.nti.org/c\\_press/speech\\_samnunn\\_cfr07.pdf](http://www.nti.org/c_press/speech_samnunn_cfr07.pdf).

26. *Id.* at 3.

27. *Id.* On the risk of nuclear terrorism, see Sue Wareham, *It’s Time to Abolish Nuclear Weapons*, 59 *AUST. J. INT’L AFFAIRS* 439, 442 (2005).

28. See Nuclear Weapons & Global Security, *supra* note 24.

29. President John F. Kennedy, Address in New York City before the General Assembly of the United Nations, 1 *Pub. Papers* 618, 620 (September 25, 1961), available at <http://www.jfklibrary.org/Historical+Resources/Archives/Reference+Desk/Speeches/JFK/003POF03UnitedNations09251961.htm>

30. G.A. Res. 1(1), U.N. Doc. A/RES/1(I) (Jan. 24, 1946) available at [http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/1\(I\)](http://www.un.org/Docs/journal/asp/ws.asp?m=A/RES/1(I)).

31. *Id.* ¶ 5(c).

32. G.A. Res. 63/46, U.N. Doc. A/RES/63/46 (Dec. 2, 2008).

now opportune for all the nuclear-weapon States to take effective disarmament measures to achieve the total elimination of these weapons at the earliest possible time.” Among other recommendations for member states, the resolution urges the nuclear-weapon states “to stop immediately the qualitative improvement, development, production and stockpiling of nuclear warheads and their delivery systems,”<sup>33</sup> and, as an interim measure, “to de-alert and deactivate immediately their nuclear weapons.”<sup>34</sup> It calls upon the nuclear-weapon states “to agree on an internationally and legally binding instrument on a joint undertaking not to be the first to use nuclear weapons,” and for all states to give “security assurances of non-use and non-threat of use of nuclear weapons against non-nuclear-weapon States.”<sup>35</sup> It also calls upon the Conference on Disarmament to establish “an ad-hoc committee on nuclear disarmament early in 2009 and to commence negotiations on a phased program of nuclear disarmament leading to the total elimination of nuclear weapons with a specific framework of time”<sup>36</sup> and for negotiations on a verifiable treaty banning the production of fissile material for nuclear weapons.<sup>37</sup>

In the preamble to another Resolution passed on the same day, the General Assembly reaffirmed “the commitment of the international community to the goal of the total elimination of nuclear weapons and the creation of a nuclear-weapon-free world,” while convinced that

the continuing existence of nuclear weapons poses a threat to all humanity and that their use would have catastrophic consequences for all life on Earth, and recognizing that the only defence against a nuclear catastrophe is the total elimination of nuclear weapons and the certainty that they will never be produced again.<sup>38</sup>

The latter Resolution was a follow-up to the 1996 Advisory Opinion of the International Court of Justice on the *Legality of the Threat or Use of Nuclear Weapons*.<sup>39</sup> In the final operative paragraph of its Opinion the Court unanimously stated: “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.”<sup>40</sup>

Several aspects of this paragraph are noteworthy. First, it is an elaboration of certainly one of the most important articles in any arms control measure, article VI

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33. *Id.* ¶ 5.

34. *Id.* ¶ 6.

35. *Id.* ¶ 8.

36. *Id.* ¶ 20.

37. *Id.* ¶ 14.

38. G.A. Res. 63/49, U.N. Doc. A/RES/63/49 (Dec. 2, 2008).

39. *Legality of the Threat or Use of Nuclear Weapons*, 1996 I.C.J. 226 (July 8) [hereinafter ICJ Advisory Opinion]. See generally NUCLEAR WEAPONS AND THE WORLD COURT, *supra* note 7; JOHN BURROUGHS, THE LEGALITY OF THREAT OR USE OF NUCLEAR WEAPONS: A GUIDE TO THE HISTORIC OPINION OF THE INTERNATIONAL COURT OF JUSTICE (1997); THE CASE AGAINST THE BOMB (Roger S. Clark & Madeleine Sann eds., 1996); INTERNATIONAL LAW, THE INTERNATIONAL COURT OF JUSTICE AND NUCLEAR WEAPONS (Laurence Boisson de Chazourmes & Philippe Sands eds., 1999).

40. ICJ Advisory Opinion, *supra* note 39, para. 2F.



of the Non-Proliferation Treaty (NPT), under which the commitment by non-nuclear weapon states not to possess nuclear weapons is reciprocated by the commitment of five nuclear-weapon states “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.”<sup>41</sup> Second, it calls for nuclear disarmament “in all its aspects,” thus differing from article VI of the NPT as it sets forth an obligation not only to “pursue negotiations in good faith” but in addition an obligation to bring the specified negotiations to a conclusion. Third, the nuclear-weapon states’ obligation to pursue negotiations for nuclear disarmament requires international control of the disarmament process. Finally, this obligation stands alone, unlike the requirement under article VI of the NPT that these states also pursue negotiations “on a treaty on general and complete disarmament.” Thus it affirms that the obligation to eliminate nuclear weapons is unconditional, not requiring concurrent progress on conventional disarmament.

Among many other resolutions it has adopted on the issue of nuclear weapons, the General Assembly reiterated its request to the Conference on Disarmament to commence negotiations on an international convention prohibiting the use or threat of use of nuclear weapons.<sup>42</sup>

At the 1995 Review and Extension Conference of the NPT parties, states parties decided to strengthen the review process for the Treaty and also decided on principles and objectives for nuclear non-proliferation and disarmament.<sup>43</sup> The ICJ’s 1996 Advisory Opinion had an influential impact on states parties as they attended the 2000 Review Conference. The participants did not agree “to commence multilateral negotiations leading to the conclusion of a nuclear weapons convention prohibiting the development, testing, production, stockpiling, transfer, use and threat of use of nuclear weapons and providing for their elimination under strict and effective international control,” as recommended by Malaysia and Costa Rica in the working paper they introduced at the Review Conference.<sup>44</sup> However, they did agree on 13 specific practical steps for progressive and systematic efforts to implement article VI of NPT, that is, to reach the objective of nuclear disarmament leading to the total elimination of nuclear weapons.<sup>45</sup> These include the urgency of signatures and ratifications, to achieve the early entry into force of

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41. Treaty on the Non-Proliferation of Nuclear Weapons, art. VI, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161.

42. G.A. Res. 63/75, U.N. Doc. A/RES/63/75 (Dec. 2, 2008).

43. Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, April 17-May 12, 1995, *1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*, U.N. Doc. NPT/Conf.1995/32 (Part I) & Corr. 2, annex..

44. Working paper submitted by Costa Rica & Malaysia, Follow-Up to the International Court of Justice Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, submitted to the Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, U.N. Doc. NPT/CONF.2000/MC.I/SB.I/WP.4 (May 8, 2000).

45. Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*, April 24-May 19, 2000, U.N. Doc. NPT/CONF.2000/28 (Parts I and II), part I, para. 15.

the Comprehensive Nuclear-Test-Ban Treaty (CTBT), negotiations to conclude a treaty banning the production of fissile material for nuclear weapons, and the necessity of negotiations on nuclear disarmament.<sup>46</sup> The states parties also reaffirmed that the total elimination of nuclear weapons is the only sure guarantee against the use or threat of use of nuclear weapons.<sup>47</sup> However, it is disappointing to note that no progress has been made toward the implementation of these agreed-upon specific steps. And the 2005 Review Conference was a huge disappointment as states parties failed to reach agreement on any substantive issues;<sup>48</sup> it produced no new recommendation for reducing the threat of nuclear proliferation. The then UN Secretary-General Kofi Annan declared that the Conference had “missed a vital opportunity to strengthen our collective security against the many nuclear threats to which all states and all peoples are vulnerable.”<sup>49</sup>

It is also noteworthy that in 1978 at the First Special Session of the General Assembly devoted to disarmament, all member states affirmed by consensus the goal of nuclear disarmament, accorded it their highest priority, and decided on specific concrete steps to achieve that objective.<sup>50</sup> Twenty-two years later, the United Nations again called for elimination of nuclear weapons in its 2000 Millennium Declaration.<sup>51</sup>

Following the 1978 Special Session on Disarmament, the UN established the Conference on Disarmament in 1979, which succeeded the Geneva-based Committee on Disarmament.<sup>52</sup> In his message to the Conference on Disarmament’s plenary meeting in January 2009, UN Director General Sergej

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46. The other steps include a moratorium on nuclear test explosions; the principle of irreversibility to apply to nuclear disarmament; nuclear-weapon-states’ commitment to the total elimination of their nuclear arsenals leading to nuclear disarmament; the early entry into force and full implementation of START II and the conclusion of START III, while preserving and strengthening the ABM treaty; specific enumerated steps by nuclear weapon states leading to nuclear disarmament; arrangements to place excess fissile materials under the control of the International Atomic Energy Agency (IAEA); reaffirmation of the goal of general and complete disarmament; regular reports, within the framework of the NPT strengthened review process; and the further development of the required verification capabilities so as to provide assurance of compliance with nuclear disarmament agreements to achieve a nuclear-weapon-free world. *Id.*

47. *Id.* Vol. I, para. 2. For the final document of the 2000 Review Conference, see Vols. I-III of U.N. Doc. NPT/CONF.2000/28 (Parts I-IV).

48. See Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Draft final document of the 2005 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*, May 2-27, 2005, U.N. Doc. NPT/CONF.2005/DC/1 (2005).

49. Press Release, Secretary-General, As Review Conference for Non-proliferation Treaty Closes Without Agreement Secretary-General Says Vital Opportunity Missed to Strengthen Security, U.N. Doc. SG/SM/9895 (May 27, 2005) available at <http://www.un.org/News/Press/docs/2005/sgsm9895.doc.htm>.

50. General Assembly, Special Sessions devoted to Disarmament, May 1978, (SSOD-I); see also Conference on Disarmament, India: Working Paper on Nuclear Disarmament, U.N. Doc. CD/1816 (Feb. 20, 2007) [hereinafter India’s Working Paper on Nuclear Disarmament].

51. G.A. Res. 55/2, U.N. Doc. A/RES/55/2 (Sept. 8, 2000).

52. The United Nations Office at Geneva, <http://www.unog.ch> (follow “Disarmament” tab then follow “Conference on Disarmament” hyperlink).

Ordzhonikidze referred to the “five point proposal to revitalize the international disarmament agenda” he had issued in October 2008.<sup>53</sup> In his words,

[i]ncluded in this proposal were several specific contributions that could be made by the Conference on Disarmament with respect to nuclear disarmament and fissile materials. Indeed, this Conference and its predecessors have an impressive record of achievement, including the Nuclear Non-Proliferation Treaty, the Bacteriological and Toxin Weapons Convention, the Chemical Weapons Convention and the Comprehensive Nuclear-Test-Ban Treaty. These instruments demonstrate the potential of the Conference.<sup>54</sup>

In addition to the efforts at the U.N. toward nuclear disarmament, those advocating the elimination of nuclear weapons include non-nuclear-weapon states and non-state actors—scientists, security experts, politicians, decision-makers, and civilian activists. To illustrate, the final document of the 2006 Conference of Heads of State or Government of Non-aligned Countries called upon the Conference on Disarmament to establish as the highest priority and as soon as possible an ad-hoc committee on nuclear disarmament and to begin negotiations on a phased program for the complete elimination of nuclear weapons with a specific time framework.<sup>55</sup>

Reports on nuclear disarmament by non-nuclear states include those by the Canadian House of Commons in 1998, *Canada and the Nuclear Challenge*,<sup>56</sup> the Japanese government-sponsored Tokyo Forum for Nuclear Non-Proliferation and Disarmament in 1999,<sup>57</sup> and the 1996 report of the Canberra Commission on the Elimination of Nuclear Weapons, established by the Australian government and submitted to the Conference on Disarmament in 1997.<sup>58</sup> In July 2008, the Prime Ministers of Australia and Japan established the International Commission on Nuclear Non-proliferation and Disarmament, co-chaired by the former Foreign Minister of Australia, Gareth Evans, and former Japanese Foreign Minister, Yoriko Kawaguchi.<sup>59</sup> The Commission will publish a major report by January 2010, in time for the 2010 NPT Review Conference.<sup>60</sup> Another similar initiative is by the

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53. Secretary-General, Message to the Conference on Disarmament, Geneva (January 20, 2009) [www.unog.ch](http://www.unog.ch) (follow “Disarmament” tab, then follow “Conference on Disarmament” hyperlink, then follow Statements at Plenary Meetings 2009 hyperlink).

54. *Id.*

55. U.N. Doc. A/61/472-S/2006/780, Annex 1.

56. *Canada and the Nuclear Challenge: Reducing the Political Value of Nuclear Weapons for the Twenty First Century*, available at [www.ccnr.org/scfait\\_recs.html](http://www.ccnr.org/scfait_recs.html).

57. The Report of the Tokyo Forum for Nuclear Non-Proliferation and Disarmament, *Part Three: Stopping and Reversing Nuclear Proliferation*, available at [www.mofa.go.jp/policy/un/disarmament/forum/tokyo9907/report-3.html](http://www.mofa.go.jp/policy/un/disarmament/forum/tokyo9907/report-3.html).

58. Australian Government Department of Foreign Affairs and Trade, *Report of the Canberra Commission on the Elimination of Nuclear Weapons*, available at <http://www.dfat.gov.au/cc/index.html>

59. International Commission on Nuclear Non-Proliferation and Disarmament, *About the Commission*, available at [www.icnnd.org/index.html](http://www.icnnd.org/index.html).

60. International Commission on Nuclear Non-Proliferation and Disarmament, *Joint Statement by Gareth Evans and Yoriko Kawaguchi*, New York, Sept. 25, 2008, available at [http://www.icnnd.org/news/releases/080925\\_js\\_evans\\_kawaguchi.html](http://www.icnnd.org/news/releases/080925_js_evans_kawaguchi.html).

New Agenda Coalition, composed of a geographically dispersed group of middle-power countries—Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa, and Sweden.<sup>61</sup>

Numerous elected officials and civil society groups have been actively involved in nuclear disarmament issues. The former include the Parliamentarians for Nuclear Non-proliferation and Disarmament,<sup>62</sup> Mayors for Peace, an international organization which is waging a campaign to ban nuclear weapons by 2020,<sup>63</sup> and the Middle Powers Initiative,<sup>64</sup> which works primarily with middle-power governments on nuclear disarmament issues.

Among influential reports by civil society groups are a 1997 report issued by the Henry L. Stimson Center's 1997 Project on Eliminating Weapons of Mass Destruction, entitled *An American Legacy, Building a Nuclear-Weapon-Free World*,<sup>65</sup> and a 1997 report released by the National Academy of Sciences, entitled *The Future of Nuclear Weapons Policy*.<sup>66</sup> A 2007 policy analysis brief was issued by the Stanley Foundation under the title *Overcoming Nuclear Dangers*.<sup>67</sup>

Among several NGOs which are actively engaged in working on nuclear policy issues are Soka Gakkai International (SGI)<sup>68</sup> and the Nuclear Age Peace Foundation.<sup>69</sup> The president of Soka Gakkai International, Daisaku Ikeda, has called "for the creation of a U.N. Decade of Action by the World's People for Nuclear Abolition and for the early convening of a World Summit for Nuclear Abolition."<sup>70</sup> He considers such steps as both reflecting and supporting an emerging international consensus for disarmament. In his words, "[c]rying out in opposition to war and nuclear weapons is neither emotionalism nor self-pity. It is the highest expression of human reason based on an unflinching perception of the dignity of life."<sup>71</sup>

SGI's anti-nuclear activities include petition drives for abolition of nuclear weapons and public education, including organizing exhibitions, conferences, and publications.<sup>72</sup> In 1997, SGI members collected over 13 million signatures as part

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61. See *New Agenda Coalition General Debate Statement to the 2008 First Committee*, available at <http://www.mfat.govt.nz/downloads/disarmament/2008-nac-general-statement.pdf>.

62. See Parliamentarians for Nuclear Non-proliferation and Disarmament, <http://www.gsintstitute.org/pnnd/about.html>.

63. See Mayors for Peace, [http://www.2020visioncampaign.org/pages/106/About\\_us/](http://www.2020visioncampaign.org/pages/106/About_us/).

64. See Middle Powers Initiative, <http://www.middlepowers.org/about.html>.

65. The Harry L. Stimson Center, Report No. 22 (March 1997) available at <http://www.stimson.org/wmd/pdf/legacy.pdf>.

66. COMMITTEE ON INTERNATIONAL SECURITY AND ARMS CONTROL, NATIONAL ACADEMY OF SCIENCES (National Academy Press 1997) available at [www.nap.edu/readingroom/books/fun](http://www.nap.edu/readingroom/books/fun).

67. DAVID CORTRIGHT, *OVERCOMING NUCLEAR DANGERS* (Stanley Foundation, 2007).

68. See SGI Homepage, <http://sgi.org/>.

69. Nuclear Age Peace Found. Homepage, <http://wagingpeace.org/>.

70. Daisaku Ikeda, *Emerging from the Nuclear Shadow*, NUCLEAR AGE PEACE FOUNDATION, Sept. 14, 2006, at para. 15, available at [http://www.wagingpeace.org/articles/2006/09/14\\_ikeda\\_emerging.htm](http://www.wagingpeace.org/articles/2006/09/14_ikeda_emerging.htm).

71. *Id.* at para. 18.

72. See *SGI's Antinuclear Activities*, SGI, <http://www.sgiquarterly.org/assets/images/Jly2007/activities.pdf>.

of the Abolition 2000 petition drive, which were presented the next year to both then Secretary-General Kofi Annan and the chairperson of the Preparatory Committee of the Treaty on the Non-Proliferation of Nuclear Weapons. The Nuclear Age Peace Foundation is primarily committed to working for a world free of nuclear weapons.

A notable arms expert seeking abolition of nuclear weapons, Ambassador Max M. Kampelman, spoke to the Conference on the Implications of the Reykjavik Summit on its 20th Anniversary in October 2006. In his address Kampelman emphatically declared: "There is today no alternative if we wish to secure the safety of our nation and of our families other than the elimination of all nuclear weapons globally along with all other weapons of mass destruction, including biological and chemical weapons."<sup>73</sup> He concluded the address with the following exhortation:

It is essential that we lead the world into developing a decisive move from the "is"—a world with a risk of increasing catastrophe—and work toward achieving peace and stability, the 'ought.' It was President John Kennedy who said, '. . . the world was not meant to be a prison in which man awaits his execution . . . . The weapons of war must be abolished before they abolish us.' It was President Ronald Reagan who called for the abolition of 'all nuclear weapons,' which he considered to be 'totally irrational, totally inhumane, good for nothing but killing, . . . destructive of life on earth and civilization.'

The world of science knows this. It is time for the political world to learn it. It is time for us to act.<sup>74</sup>

#### V. NUCLEAR-WEAPON STATES' RELIANCE UPON NUCLEAR WEAPONS FOR SECURITY

To reiterate, none of the nuclear-weapon states is willing to relinquish its nuclear weapons; instead, all nuclear-weapon states rely upon nuclear weapons for security. How President Obama's administration will shift its policy on this issue should be known in the near future. However, the prior policy embodied in the United States' 2002 Nuclear Posture Review (NPR)<sup>75</sup> demonstrates clearly that nuclear weapons have been central in U.S. strategic planning. The U.S. is prepared to target non-nuclear weapon states and Iran, Iraq, Syria, North Korea, and Libya are specifically mentioned. It has even indicated the possibility of developing new nuclear weapons.

In its working paper submitted to the Preparatory Committee for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear

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73. Max Kampelman, *Zero Nuclear Weapons: It is Time for Us to Act*, VITAL SPEECHES OF THE DAY, April 2007, at 148, available at [www.vsotd.com](http://www.vsotd.com).

74. *Id.* at 151.

75. The Bush administration's NPR was issued in January 2002 and partially leaked to the press in March 2002. Union of Concerned Scientists, *Global Security: Nuclear Posture Review*, [www.ucsusa.org/global\\_security/nuclear\\_weapons/nuclear-posture-review.html](http://www.ucsusa.org/global_security/nuclear_weapons/nuclear-posture-review.html).

Weapons,<sup>76</sup> the United States pointed to a number of complexities as the NPT parties discuss disarmament issues. It encouraged the parties “to debate how to create an international environment in which it would become possible to achieve” the goal of nuclear disarmament.<sup>77</sup> It noted that “reducing international tension and strengthening trust between States would be” a prerequisite to realizing the goal.<sup>78</sup> It further stated that “until achievement of the changes in the regional and global security environment called for in the NPT’s preamble, the United States nuclear deterrent will continue to make an important contribution to nuclear non-proliferation.”<sup>79</sup> Finally, it outlined a list of the conditions that would be necessary to “achieve, and, significantly, to maintain over time, the goal of a world free of nuclear weapons[.]”<sup>80</sup>

China stated its position in the working paper it submitted to the Preparatory Committee:

Nuclear disarmament should be a just and reasonable process of gradual reduction towards a downward balance. States possessing the largest nuclear arsenals bear special responsibility for nuclear disarmament and should take the lead in drastically reducing their nuclear arsenals in a verifiable, irreversible and legally binding way, so as to create conditions for the realization of the final nuclear disarmament in a comprehensive and thorough manner.<sup>81</sup>

In order “to promote nuclear disarmament, reduce the danger of nuclear war and diminish the role of nuclear weapons in national security policy,” China recommends the following measures:

- (a) Abandoning the policies of nuclear deterrence based on the first use of nuclear weapons and lowering the threshold for using nuclear weapons;
- (b) Honouring their commitment not to target their nuclear weapons against any countries, nor to list any countries as targets of nuclear strikes;
- (c) Undertaking not to be the first to use nuclear weapons at any time or under any circumstances; to refrain unconditionally from using or threatening to use nuclear weapons against non-nuclear-weapon States or nuclear-weapon-free zones; and to conclude relevant international legal instruments thereupon;
- (d) Supporting efforts of relevant countries and regions to establish

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76. United States of America Working Paper, *Achieving and Sustaining Nuclear Weapons Elimination*, Mar. 17, 2007, U.N. Doc. NPT/CONF.2010/PC.I/WP.21 (May 3, 2007).

77. *Id.* ¶ 4.

78. *Id.* ¶ 6.

79. *Id.* ¶ 7.

80. *Id.* ¶ 14.

81. China Working Paper, Preparatory Committee for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Nuclear Disarmament and Reduction of the Danger of Nuclear War*, ¶ 7, U.N. NPT/CONF.2010/PC.I/WP.46 (May 7, 2007).

nuclear-weapon-free zones and other weapons-of-mass-destruction-free zones in accordance with regional conditions on a basis of voluntary consultation and agreement;

(e) Not developing easy-to-use low-yield nuclear weapons;

(f) Withdrawing and repatriating all nuclear weapons deployed outside their own territories;

(g) Abandoning “nuclear umbrella” and “nuclear sharing” policies and practices;

(h) Taking all necessary steps to avoid accidental or unauthorized launches of nuclear weapons.<sup>82</sup>

In its working paper submitted to the Preparatory Committee, the United Kingdom noted its absolute commitment “to the principles and practice of multilateral nuclear disarmament.”<sup>83</sup> As to its nuclear deterrent, it stated:

At the end of last year we published a White Paper explaining the decision of the United Kingdom Government to maintain a nuclear deterrent. In March, the United Kingdom Parliament voted to support this decision. The United Kingdom has decided to begin the concept and design work required to make possible a replacement for our current submarine fleet; and it decided to participate in a programme to extend the life of the Trident D5 missile system.<sup>84</sup>

Russia is equally committed to nuclear weapons’ playing an important role in its military planning, as expressed in its 2000 study, *The Concept of National Security of the Russian Federation*.<sup>85</sup> China continues to modernize its nuclear weapons capability, while Britain and France have given no indication that they might agree to the abolition of nuclear weapons.

India, a non-signatory to NPT and now a nuclear-weapon state, has in its February 2007 working paper submitted to the Conference on Disarmament, urged “the international community to intensify dialogue so as to build a consensus that strengthens the ability of the international community to initiate concrete steps towards achieving the goal of nuclear disarmament.”<sup>86</sup> It suggested specific steps, including reduction of the salience of nuclear weapons in the security doctrines; measures by nuclear weapon states to reduce nuclear danger, including de-alerting of nuclear weapons; a global agreement on “no-first-use” of nuclear weapons;

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82. *Id.* ¶ 12.

83. United Kingdom of Great Britain and Northern Ireland Working Paper, Preparatory Committee for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Working Paper on Disarmament Submitted by The United Kingdom of Great Britain and Northern Ireland*, ¶ 1, U.N. NPT/CONF.2010/PC.I/WP.59 (May 9, 2007).

84. *Id.* ¶ 3.

85. See, e.g., Daniel Sumner, *Russian Perceptions of Nuclear Weapons*, 44 DISARMAMENT DIPL. 16, 16-21 (2000) available at <http://www.acronym.org.uk/dd/dd44/index.htm>.

86. India Working Paper, Disarmament Commission, *Recommendations for Achieving the Objective of Nuclear Disarmament and Non-Proliferation of Nuclear Weapons*, ¶ 17, U.N. A/CN.10/2007/WG.I/WP.1 (April 9, 2007).

negotiation of a universal, binding agreement on non-use of nuclear weapons against non-nuclear weapon states; negotiation of a convention on the complete prohibition of the use or threat of use of nuclear weapons; and “[n]egotiation of a nuclear weapons convention prohibiting the development, production, stockpiling and use of nuclear weapons and on their destruction, leading to the global, nondiscriminatory and verifiable elimination of nuclear weapons with a specified time frame.”<sup>87</sup>

As already mentioned, there is no practical utility of nuclear weapons as tools of war, although many states still consider them to be a necessary deterrent against nuclear attack by others. But such reliance on deterrence entails serious risks and dangers; there is no consensus that the deterrent qualities of nuclear weapons kept the peace during the Cold War; and miscalculations or misperceptions can certainly lead to deadly nuclear exchanges.<sup>88</sup> Non-nuclear-weapon states consider it hypocrisy and a double standard on the part of nuclear-weapon states insofar as they have not shown any inclination to implement in good faith the obligation they undertook under article VI of the NPT.<sup>89</sup>

Director-General of the International Atomic Energy Agency, Mohamed El Baradei, has aptly stated: “The very existence of nuclear weapons gives rise to the pursuit of them. They are seen as a source of global influence, and are valued for their perceived deterrent effect. And as long as some countries possess them (or are protected by them in alliance) and others do not, this asymmetry breeds chronic global insecurity.”<sup>90</sup> Non-nuclear-weapon states equate the existing situation to “nuclear apartheid.” Hence, several of them would like to join the nuclear club, with the result that non-proliferation as a goal remains illusory so long as nuclear-weapon states are unwilling to commit themselves to the goal of nuclear disarmament.

#### VI. THE UNFINISHED AGENDA

What, then, is the answer? Undoubtedly the only answer lies in nuclear-weapon states’ setting a firm timeframe for the elimination of nuclear weapons and agreeing on specific, concrete steps toward that goal, and to implement them. The Indian workpaper on Nuclear Disarmament outlining such steps provides a good model for consideration.<sup>91</sup> In their working paper presented to the Preparatory Committee, the members of the Group of Non-Aligned States Parties to the NPT stated:

The Group of Non-Aligned States parties to the Treaty reiterates its call for a full implementation of the unequivocal undertaking given by the nuclear-weapon States at the 2000 Review Conference of the Parties to

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87. *Id.*

88. *See, e.g.*, Hanson, *supra* note 11, at 371-72.

89. *See, e.g.*, Hugh Gusterson, *A Double Standard on Nuclear Weapons?*, Audit of the Conventional Wisdom (MIT Center for International Studies), April 2006, available at [http://web.mit.edu/CIS/pdf/gusterson\\_audit.pdf](http://web.mit.edu/CIS/pdf/gusterson_audit.pdf).

90. Mohamed ElBaradei, *Towards a Safer World*, *ECONOMIST*, October 18, 2003, at 51.

91. Working Paper Submitted by India, *supra* note 86.



the Treaty on the Non-Proliferation of Nuclear Weapons to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament. That undertaking should be demonstrated without delay through an accelerated process of negotiations and through the full implementation of the 13 practical steps to advance systematically and progressively towards a nuclear-weapon-free world as agreed to at the 2000 Review Conference.<sup>92</sup>

The Group further stated that it

remains deeply concerned by the lack of progress towards achieving the total elimination of nuclear weapons despite some reports of bilateral and unilateral reductions. The Group is also concerned by the existence and continued deployment of tens of thousands of such weapons, whose exact number remains unconfirmed, owing to the lack of transparency in various nuclear weapons programmes. While noting the signing of the Treaty between the United States of America and the Russian Federation on Strategic Offensive Reduction on 24 May 2002, the Group stresses that reductions in deployments and in operational status cannot take the place of irreversible cuts in, and the total elimination of, nuclear weapons. The non-entry into force of START II is a setback to the 13 practical steps in the field of nuclear disarmament adopted at the 2000 Review Conference. In that regard, the Group calls for the application of the principles of irreversibility and increased transparency by the nuclear-weapon States regarding nuclear disarmament and nuclear and other related arms control and reduction measures.<sup>93</sup>

The Group also called for the establishment of a subsidiary body on nuclear disarmament to focus on the issue of fulfillment of the nuclear-weapon States' obligations under article VI of NPT, to pursue in good faith negotiations leading to nuclear disarmament.<sup>94</sup>

A Nuclear Weapons Convention is needed to supplement the NPT, which, as the 2005 Review Conference evidences, has fallen short of achieving its objective of nuclear disarmament, as nuclear-weapon states seem to be unwilling to fulfill their commitment under article VI of the NPT. As far back as in April 1997, the Lawyers' Committee on Nuclear Policy, the U.S. branch of the International Association of Lawyers Against Nuclear Arms, prepared a draft Model Nuclear Weapons Convention.<sup>95</sup> The Model Convention proposed an international structure for inspection and control paralleling that in the Chemical Weapons

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92. Preparatory Committee for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Working Paper Presented by the Members of the Group of Non-Aligned States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*, ¶ 3, U.N. NPT/CONF.2010/PC.I/WP.8 (April 27, 2007).

93. *Id.* ¶ 6.

94. *Id.* ¶ 10.

95. See IALANA, *Securing our Survival: The Case for a Nuclear Weapons Conventions* § 2. (1997), available at <http://icanw.org/securing-our-survival>.

Convention. In November 1997, Costa Rica presented the Draft Model Nuclear Weapons Convention at the United Nations General Assembly.<sup>96</sup>

In April 2007, Costa Rica submitted to the 2007 Preparatory Committee for the 2010 NPT Review Conference an updated Model Nuclear Weapons Convention.<sup>97</sup> Subsequently, on December 17, 2007, Costa Rica and Malaysia wrote to the UN Secretary-General requesting him to circulate the Model Convention as a UN document of the 62nd Session of the General Assembly, which he did.<sup>98</sup>

The Model Convention prohibits the development, testing, production, stockpiling, transfer, use and threat of use of nuclear weapons and mandates their elimination.<sup>99</sup> States parties to this Model Convention are obligated to destroy all their nuclear arsenals according to a series of phases. The Model Convention also prohibits the production of weapons usable fissile material and requires delivery vehicles to be destroyed or converted to make sure that they are non-nuclear capable.<sup>100</sup> States parties to the Model Convention would be required to declare all nuclear weapons, all nuclear material, all nuclear facilities, all nuclear weapons delivery vehicles they possess or control, and the locations of these vehicles.<sup>101</sup>

The Model Convention provides for a series of five phases for the elimination of nuclear weapons. These begin with taking nuclear weapons off alert, removing nuclear weapons from deployment, removing all nuclear warheads from their delivery vehicles, disabling the nuclear warheads, removing and disfiguring the "pits" and placing the fissile material under international control. The United States and Russia would be required to make the deepest cuts in their nuclear arsenals, limiting their stockpiles to 1,000 warheads each.<sup>102</sup>

The Model Convention has extensive provisions regarding verification, which include reports and declarations from states, routine and challenge inspections, on-site sensors, satellite photography, and radionuclide sampling and other remote sensors. It also includes information sharing with other organizations and citizen reporting. The Model Convention provides protection to those reporting suspected violations, which includes the right of asylum. It also establishes an International

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96. Draft Nuclear Weapons Convention Circulated by Costa Rica, U.N. Doc. A/C.1/52/7 (November 17, 1997).

97. Costa Rica Working Paper, Preparatory Committee for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Model Nuclear Weapons Convention*, U.N. Doc. NPT/CONF.2010/PC.1/WP.17 (May 1, 2007).

98. Permanent Representatives of Costa Rica and Malaysia, Letter dated December 17, 2007, to the Secretary-General, U.N. Doc. A/62/650 (January 18, 2008) [hereinafter Costa Rica and Malaysia's Letter to the Secretary-General].

99. *Model Nuclear Weapons Convention -- Convention on the Prohibition of the Development, Testing, Production, Stockpiling, Transfer, Use and Threat of Use of Nuclear Weapons and on their Elimination* (updated from the Model Nuclear Weapons Convention circulated in November 1997 as U.N. Doc. A/C.1/52/7), April 2007, attachment to Costa Rica and Malaysia's Letter to the Secretary-General, U.N. Doc. A/62/650, Annex (hereinafter Model Convention).

100. Model Convention, *supra* note 99, at 8.

101. *Id.* at 25-27.

102. *Id.* at 28-31.

Monitoring System to gather information, and such information is to be available through a registry. Information related to commercial secrets or national security is to be kept confidential.<sup>103</sup> National implementation measures to fulfill states' obligations under the Model Convention include the prosecution of persons committing crimes and protection for those reporting violations.<sup>104</sup>

The Model Convention provides for the establishment of an Agency for its implementation.<sup>105</sup> Such Agency is to be responsible for ensuring compliance, verification and decision making, and it is to comprise a Conference of States Parties, an Executive Council, and a Technical Secretariat. The necessary powers and functions and privileges and immunities, and provides for an international monitoring system are also enumerated.

The production of any fissionable or fusionable material which can be used directly to make a nuclear weapon is prohibited under the Model Convention. This includes highly enriched uranium and plutonium other than that in spent fuel. For nuclear energy purposes, low enriched uranium would be permitted.<sup>106</sup> The Model Convention includes detailed provisions for consultation, cooperation, and fact-finding to clarify and resolve issues of interpretation regarding compliance and other matters.<sup>107</sup> States parties by mutual consent may refer a legal dispute to the International Court of Justice. The Agency is also authorized to recommend to the U.N. General Assembly that the Assembly request an advisory opinion from the ICJ on a legal dispute. Eventually, under the Model Convention, there are provisions for sanctions or recourse to the U.N. General Assembly and Security Council for action.

As to financing, nuclear-weapon states are to meet the costs of destruction of their nuclear arsenals. They are also to meet the costs of verification of nuclear facilities under their authority. However, a voluntary international fund is to be established to assist states that may have financial difficulties in meeting their obligations.<sup>108</sup>

The Model Convention provides for an optional protocol concerning energy assistance. It does not prohibit the use of nuclear energy for peaceful purposes, but the optional protocol would establish a program of energy assistance for states parties that choose not to develop nuclear energy or to phase out existing nuclear energy programs.<sup>109</sup> It also provides for an optional protocol concerning the compulsory settlement of disputes.<sup>110</sup>

As a promising development, several nuclear-weapon-free zones have been established under international agreements. As the U.N. General Assembly noted

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103. *Id.* at 32-35.

104. *Id.* at 36-37.

105. *Id.* at 40-51.

106. *Id.* at 9.

107. *Id.* at 60-66.

108. *Id.* at 67.

109. *Id.* at 72.

110. *Id.*

in a resolution it adopted in a December 2008 resolution, “the Antarctic Treaty and the treaties of Tlatelolco, Rarotonga, Bangkok, Pelindaba, and Semipalatinsk, as well as Mongolia’s nuclear-weapon-free status, are gradually freeing the entire southern hemisphere and adjacent areas covered by those treaties from nuclear weapons.”<sup>111</sup>

#### VII. CONCLUSION

During the 1990s significant progress was made in arms control under the leadership of the United States and Russia. Several important initiatives have been undertaken and several important treaties have been negotiated with the objective of building confidence and reducing nuclear armaments. The Conference on Disarmament and the International Atomic Energy Agency has played a vital role in accomplishing these objectives.

These initiatives and treaties notwithstanding, the menace of nuclear weapons continues to threaten national and global security. The only meaningful response will be a nuclear weapons convention, and the General Assembly has called once again upon “all States immediately to fulfill [their obligation under NPT article VI] by commencing multilateral negotiations leading to an early conclusion of a nuclear weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination.”<sup>112</sup>

The 2007 Model Nuclear Weapons Convention proposed by Costa Rica and Malaysia for the 2010 NPT Review Conference is an appropriate starting point. The United States and Russia, as the major nuclear powers, must take the lead to make nuclear weapons history.

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111. Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons, G.A. Res. 63/49, preambular ¶, U.N. Doc. A/RES/63/49 (Dec. 2, 2008).

112. *Id.* ¶ 2.