

## **The NPT and the law**

**Speaker: Mr. Peter Weiss**

### **International Association of Lawyers Against Nuclear Arms**

Distinguished delegates, I thank you for this opportunity to speak to you.

We lawyers like to impress each other, not to mention ordinary folk, with references to arcane Latin phrases. One of these is “de minimis non curat lex”, which may be freely translated as “the law does not concern itself with trifles.” Applied to the subject of this conference, the opposite sometimes seems to be apposite: “De maximis non curat lex”, “the law has nothing to say about enormous, overwhelming questions.” Questions such as whether ordinarily decent human beings have a right to base a strategy of national security on the most gruesome, brutal weapons ever invented, whether one nation may put the survival of half the world at risk in its own interest, or whether there is any logic in being abstractly against weapons of mass destruction while clinging ferociously to the most massively destructive weapons of all.

But the law does have relevance to such questions, and today more than ever. During the period of the cold war, when the two superpowers threatened each other with total extinction on a daily basis, one might - although one should not have - forgiven their leaders for not wishing to be bothered with legal considerations. But in today’s entirely different context, it is difficult to understand why the rule of law should not be taken seriously, particularly by those countries which never tire of proclaiming it. Let me explain briefly why I say the rule of law is being disregarded by the nuclear weapon states.

The be-all and end-all of the law of treaties is expressed in another Latin phrase, “pacta sunt servanda”, promises must be kept. The Nonproliferation Treaty was a solemn pact between the states possessing nuclear weapons and those which did not. The former said to the latter: “In exchange for your agreeing not to produce or acquire these weapons, we promise to negotiate in good faith to get rid of the ones we have.” Diplomats and lawyers for the nuclear weapon states, as well as Russia and the states members of NATO and those knocking on NATO’s door, do not deny that this promise was made and remains in effect. But when you listen to the military and national security strategists of these same countries, a very different message emerges. It may be summarized as “reduce nuclear weapons, yes; give them up altogether, never.” It is as if a slave owner were to say to an abolitionist: “Slavery is truly an evil institution, therefore I promise to provide better food and housing for my slaves.”

The policy statements of the militaries of the nuclear weapon states and their allies have one common theme: “Nuclear weapons, while playing a less important role than during the period of the cold war, are the backbone of our security strategy and will remain so indefinitely, or for the foreseeable future, or until the world has achieved a stable security system.” When this latter formulation is used, it is important to ask, “When will that be?” A selective compendium of such statements<sup>1</sup> has been made available to delegates which illustrates the complete dichotomy between the professed and the real attitude of the nuclear weapon states toward nuclear disarmament. Let me just add one item to this list: Following the welcome news of the Duma’s ratification of START II, and President Putin’s desire to arrive at a further reduction to 1500 weapons for each side in the context of START III, the Washington

---

<sup>1</sup> Lawyers’ Committee on Nuclear Policy, “Policy Statements Contradicting Article VI of the Nuclear Non-Proliferation Treaty,” April 20, 2000.

**NUCLEAR NON-PROLIFERATION TREATY REVIEW CONFERENCE 2000  
PRESENTATIONS BY NON-GOVERNMENTAL ORGANIZATIONS – 3 MAY 2000**

Post reported that this number was unacceptable to Pentagon planners, who see 2000 to 2500 weapons as the minimum required for credible, global deterrence.

The legal basis for the obligation to embark on negotiations aimed, not at the gradual reduction, but at the complete elimination of nuclear weapons is crystal clear. It has a variety of sources, including, most importantly, the following:

- 1) Article VI of the NPT, as discussed above;
- 2) The mandate of the International Court of Justice to conduct and bring to a conclusion negotiations for nuclear disarmament in all its aspects; and
- 3) The laws of war, or humanitarian law, which predate the Court's opinion and which render it impossible for a nuclear weapon to be used in a legal manner. Here it is important to note that the Court held that humanitarian law is applicable to every use of nuclear weapons, even in the exceptional circumstance of self-defense on which the advocates of nuclear deterrence wrongly rely to justify their disregard of the Court's mandate.

No doubt the commencement of negotiations toward START III will be mentioned as proof that the obligation to achieve nuclear disarmament is being complied with, but that would be a willful misreading of the core content of the obligation. "Reduction" and "elimination" have entirely different meanings, unless "reduction" is defined as "reduction to zero." There is, I submit, not a shred of evidence that such a definition is in the minds of the nuclear weapon states (with the possible exception of China). Indeed, all the evidence points squarely in the opposite direction. That, it seems to me, is the central problem to be addressed by this conference. Civil society fervently hopes that it will be.

One final comment: Both Article VI of the NPT and the holding of the World Court emphasize that negotiations leading to total nuclear disarmament are to be conducted in good faith. In this respect the following comment by Hugo Grotius, the father of modern international law, is worth considering:

Good faith should be preserved ...in order that the hope of peace may not be done away with. ... And this good faith the supreme rulers of men ought so much the more earnestly than others to maintain as they violate it with greater impunity; if good faith shall be done away with, they will be like wild beasts, whose violence all men fear.

Peter Weiss  
President, International Association of Lawyers Against Nuclear Arms