

## **NGO Statement on Nuclear Weapons United Nations First Committee, 26 October 2007\***

Mr. Chairman, distinguished delegates and colleagues:

On October 19, 2007, Randall Caroline Forsberg passed away. She was director of the Institute for Defense and Disarmament Studies, and a founder of the Nuclear Weapons Freeze Campaign in the United States. Forsberg's 1980 "Call to Halt the Nuclear Arms Race" concluded that a freeze was a "necessary prelude" to conditions under which "the nuclear arsenals on all sides can be drastically reduced or eliminated, making the world truly safe from nuclear destruction." We honor her work and pledge to continue it.

Our theme today is the concept of good faith embedded in NPT Article VI and the universal disarmament obligation unanimously affirmed by the International Court of Justice. For most people who are not lawyers, the term "good faith" may sound rather vague and poetic, though its common sense meaning is clear. But it has a long history and a precise meaning in law.

This has been well explained by Judge Christopher Weeramantry, former Vice-President of the Court, 2007 winner of the Right Livelihood Award, and President of the International Association of Lawyers Against Nuclear Arms. In 2006 remarks marking the tenth anniversary of the ICJ's opinion,<sup>1</sup> Judge Weeramantry explained that the "traditions in relation to good faith are to be found in the ancient system of Roman Law, the system of civil law that has grown up from the Roman Law ... and all the traditional systems of law." Further, the concept of good faith is "amplified" in the laws of the world's major religions, as well as in the laws of indigenous peoples.

Judge Weeramantry identified some of the legal elements of good faith as: correspondence between word and deed; no secret reservations; openness and transparency, with a complete disclosure of material facts; and a readiness to submit one's actions to external scrutiny. In addition, good faith requires that meaningful steps be taken towards the desired goal, with no backtracking, and within a reasonable time span. Importantly: "Everyone must refrain from taking steps that militate against the goal. For example, one cannot say the one's goal is disarmament and then take steps to increase one's armaments in a somewhat subtle but different way."

Judge Weeramantry emphasized that there must be cooperation among the parties, a continuity of efforts, and an actual method worked out, with a readiness by the parties to keep re-examining

their own positions while seriously considering the proposals of others. Referring to the ICJ's affirmation of the disarmament obligation, he said:

“[The] ultimate authority on international law ... has unanimously placed this verdict upon all the nuclear powers of the world and we have to ask whether all these ingredients of good faith are being honored. If not, why are they not being honored and in what way are they failing in their responsibility?”

More than a decade after the ICJ opinion, both NPT and non-NPT nuclear weapon states (NWS) are planning and preparing for maintenance of nuclear forces for decades to come. We agree with the Hans Blix-led WMD Commission that a different sort of planning is necessary:

“All states possessing nuclear weapons should commence planning for security without nuclear weapons. They should start preparing for the outlawing of nuclear weapons through joint practical and incremental measures that include definitions, benchmarks and transparency requirements for nuclear disarmament.”<sup>2</sup>

Yet some NWS continue to oppose and block nuclear disarmament negotiations in any of the key international fora including the Conference on Disarmament, the General Assembly, and the NPT review process. No multilateral, plurilateral, or significant bilateral negotiations on any aspect of nuclear disarmament are now underway.

Contrary to commitments made at the 1995 and 2000 NPT Review Conferences, the CTBT has not been brought into force; over Russian objections, the United States abandoned the Anti-Ballistic Missile Treaty and began deploying elements of a National Missile Defense system; no negotiations have begun on a fissile materials treaty; the principles of verification, transparency, and irreversibility have been abandoned in U.S.-Russian nuclear arms reductions; and large numbers of U.S. and Russian warheads, an estimated 2,654 altogether, remain ready for nearly instantaneous launch.<sup>3</sup> Nor have the NWS reduced the roles of nuclear weapons in their security doctrines as promised in 2000 and in order to reflect the general illegality of the threat or use of nuclear weapons as concluded by the Court in its 1996 opinion. On the contrary, several have expanded the situations in which use of the weapons might be threatened or carried out.

The viability of the NPT regime is in jeopardy, in large part due to the lack of good faith evidenced by the NWS regarding compliance with Article VI. During the May 2007 NPT PrepCom in Vienna, NGOs presented a comprehensive dossier of evidence to support this view.<sup>4</sup> United States nuclear weapons policy can be characterized as “fewer but newer.” The U.S. is

modernizing its existing nuclear arsenal and making plans to replace all of its nuclear warheads, upgrade its delivery systems and massively reinvest in its nuclear weapons production complex for the next 25 years, as part of its Global Strike capabilities.<sup>5</sup> Russia, while also reducing the overall size of its nuclear stockpile, is developing new land and sea-based forces. France is continuing to design and develop new nuclear weapons systems for deployment through 2040, and has expanded the role of nuclear weapons in its national security policy. The United Kingdom is moving ahead with plans to replace and extend its Trident system until 2055, and to upgrade its atomic weapons establishment along the way. China, the only NPT NWS to maintain a no first use policy, nevertheless plans to replace its sea-launched ballistic missiles and ICBMs. These are just a few examples.

Another blow to the NPT regime is the proposed U.S.-India deal to provide India, a non-NPT party, with nuclear technology and materials that might enable it to further develop its weapons programs, in violation of commitments made under the treaty to provide such technology and materials only to members of the NPT. Other non-NPT nuclear weapons states, Israel and Pakistan, are reportedly pursuing similar deals.

Indeed, the NWS are making timetables for new nuclear weapons, when good faith requires that they should be making timetables for the elimination of their nuclear arsenals, in compliance with Article VI.

As Judge Weeramantry explained, one of the ingredients of good faith is disclosure of material facts. This ingredient seemed sorely lacking when the United States, in this committee, claimed that “U.S. nuclear forces are not and have never been on ‘hair-trigger alert.’”<sup>6</sup> How can this assertion be reconciled with a statement issued by the U.S. Air Force Flight Test Squadron Commander on June 14, 2006, in connection with the successful test launch of an ICBM from Vandenberg Air Force Base in California? According to the official news release, the primary purpose of the launch was to assess and demonstrate the operational effectiveness of the Minuteman III weapon system. The missile’s three unarmed re-entry vehicles traveled approximately 4,800 miles in about 30 minutes, hitting pre-determined targets at the Kwajelin Missile Range in the Marshall Islands. The news release read:

“While ICBM launches from Vandenberg almost seem routine, each one requires a tremendous amount of effort and absolute attention to detail in order to accurately assess the current performance and capability of the nation's fielded ICBM force that is *always on-alert* in Montana, North Dakota, Wyoming, Colorado and Nebraska.... This specific test will provide key accuracy and reliability data for on-going and future modifications

to the weapon system, which are key to improving the already impressive effectiveness of the Minuteman III force.”<sup>7</sup>

However, one cannot just point the finger at the Nuclear Weapon States. The ICJ affirmed a universal obligation to pursue negotiations for nuclear disarmament, i.e. an obligation which applies to everyone. Then-ICJ President Mohammed Bedjaoui noted that “the goal [of nuclear disarmament] is no longer utopian and that it is the *duty of all* to seek to attain it more actively than ever.”

The non-Nuclear Weapon States thus have an obligation to do everything in their power to advance and support nuclear disarmament negotiations and to desist from activities or policies which hinder this.

We believe that the primary obstacles to nuclear disarmament are political and not technical. What is lacking is good faith on the part of governments. But we are here *in good faith* to encourage and help you. Recent developments indicate that popular opposition to nuclear weapons is finding a voice at last. In Scotland, for example, in the wake of a sustained grassroots campaign at the Faslane Trident submarine base, the nuclear chain is now being broken. In May, Scotland elected a government committed to getting rid of Trident (not just preventing its replacement), and in June the new parliament voted 71 to 16 against Trident. On Friday last week (Oct. 19), the First Minister sent a letter to NPT States Parties informing them of Scotland’s position.

The rapidly growing Mayors for Peace organization, led by the Mayors of Hiroshima and Nagasaki, with nearly 1,800 members in 122 countries and regions, has issued a *good faith challenge* to governments, calling on them to work together to achieve a nuclear weapon free world and to immediately de-target cities.<sup>8</sup> In the Czech Republic, the newly created League of Mayors is helping to mobilize public opinion against the bilateral agreement between that country and the United States to install so-called missile defense radars in Brdy. In Italy, a massive petition effort, legally requiring the involvement of city officials to verify each signature, is underway to end the stationing of nuclear weapons on Italian territory. The mayors of the cities nearest the nuclear bases are in the lead of this effort.

This year civil society has produced an updated model nuclear weapons convention for your consideration. The Model Nuclear Weapons Convention was first circulated by the United Nations Secretary-General in 1997<sup>9</sup> and an updated version was submitted to the 2007 Preparatory Committee for the 2010 Review Conference of the NPT.<sup>10</sup> The case for the Model

Nuclear Weapons Convention has been published in the book, *Securing Our Survival*, launched by the International Campaign to Abolish Nuclear Weapons (ICAN).<sup>11</sup>

As NGOs acting in good faith, we are also compelled to convey our view that nuclear weapons do not exist in isolation, and that nuclear disarmament must be considered in connection with nuclear energy and militarism. As many of us agreed in the 1995 founding document of the Abolition 2000 Global Network to Eliminate Nuclear Weapons:

“...the inextricable link between the ‘peaceful’ and warlike uses of nuclear technologies and the threat to future generations inherent in creation and use of long-lived radioactive materials must be recognized. We must move toward reliance on clean, safe, renewable forms of energy production that do not provide the materials for weapons of mass destruction and do not poison the environment for thousands of centuries. The true ‘inalienable’ right is not to nuclear energy, but to life, liberty and security of person in a world free of nuclear weapons.”<sup>12</sup>

As questions regarding Iran’s intentions for its nuclear program spark rising international tensions, against the backdrop of the tragic oil-driven war raging in Iraq, we urge you to consider establishing an International Sustainable Energy Agency to promote the development of clean, renewable sources of energy that do not produce byproducts that can be used to create nuclear weapons. Even if not turned into weapons, these materials endanger the health and well-being of all who come into contact with them, especially indigenous peoples who have been disproportionately impacted by the international nuclear weapons and power industry. The agency could be funded by the \$250 billion currently going into subsidies for fossil and nuclear fuels. We have drafted a proposed model statute.<sup>13</sup>

The Comprehensive Test Ban Treaty overrides Article V of the NPT, which guaranteed a right to the benefits of peaceful nuclear explosions. Isn’t it time to set aside Article IV, which can only lead to the further spread of nuclear materials around the planet, and replace it with the promise of clean, safe energy for all?

Three NGOs, the Lawyers’ Committee on Nuclear Policy, Western States Legal Foundation, and the Reaching Critical Will project of Women’s International League for Peace and Freedom, have produced a new book, *Nuclear Disorder or Cooperative Security*, responding to and expanding upon the Weapons of Mass Destruction Commission report. The book documents the NWS lack of good faith, and provides a comprehensive set of recommendations for what could and should be done.<sup>14</sup>

Our overarching conclusion is that

“The concept of security should be reframed at every level of society and government, with a premium on universal human and ecological security, a return to multi-lateralism, and a commitment to cooperative, nonviolent means of conflict resolution.”<sup>15</sup>

The authors of *Securing Our Survival* explain how security dynamics are changing, thus enabling a new security doctrine to arise. The point was also well put by New Zealand Prime Minister Helen Clark. On the eve of the new century, she observed:

“In the 21<sup>st</sup> Century, as the ever-expanding exchange of peoples, cultures and trade across nations helps to ease nationalistic prejudices, and as the shibboleths of the Cold War subside, it is time to abolish nuclear weapons and make the world a safer place for all peoples.”<sup>16</sup>

With regard to nuclear weapons, *Nuclear Disorder or Cooperative Security* recommends:

“Nuclear disarmament should serve as the leading edge of a global trend towards demilitarization and redirection of military expenditures to meet human and environmental needs.”<sup>17</sup>

We have some gifts for you. Copies of *Nuclear Disorder or Cooperative Security*, *Securing Our Survival*, and the Model Sustainable Energy Agency statute are available at the back of the room.

In 1625, the Dutch international lawyer Hugo Grotius wrote:

“good faith should be preserved ... in order that the hope of peace may not be done away with .... Rightly [Cicero] says that ‘it is an impious act to destroy the good faith which holds life together.’ To use Seneca’s phrase, it is ‘the most exalted good of the human heart.’”<sup>18</sup>

Now more than ever, the world is desperately in need of good faith.

## END NOTES

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Cities are not Targets! Report of a seminar organised by Mayors for Peace in the Peace Palace and City Hall in The Hague, Netherlands, 4 - 5 July 2006, pp. 11 - 12, <http://www.antenna.nl/nvmp/Verslag%20Akiba.pdf>

<sup>2</sup> *Id.*, Recommendation 30, p. 109

<sup>3</sup> "A Rebuttal of the U.S. Statement on the Alert Status of U.S. Nuclear Forces"  
Bruce G. Blair, President, World Security Institute, October 13, 2007, <http://www.lcnp.org/disarmament/opstatus-blair.htm>

<sup>4</sup> NGO Statements to the States Party to the Preparatory Committee of the 2010 Review Conference of the NPT, May 2, 2007, <http://www.reachingcriticalwill.org/legal/npt/prepcom07/NGOpres.html>

<sup>5</sup> "A Rebuttal of the U.S. Statement on Nuclear Weapons Alert, Dismantlements and Reductions," Hans M. Kristensen, Director, Nuclear Information Project, Federation of American Scientists, October 19, 2007, [http://www.lcnp.org/disarmament/kristensen-rebuttal\\_oct07.pdf](http://www.lcnp.org/disarmament/kristensen-rebuttal_oct07.pdf)

<sup>6</sup> Statement by Christina Rocca, Permanent Representative of the United States to the Conference on Disarmament in General Debate of the First Committee, October 9, 2007, <http://reachingcriticalwill.org/political/1com/1com07/statements/9octusa.pdf>

<sup>7</sup> "Minuteman III ICBM launch successful," 30th Space Wing Public Affairs, June 16, 2006, at <http://www.missilenews.com/space-command-news/minuteman-iii-icbm-launch.shtml>  
See also Blair, *supra*.

<sup>8</sup> <http://www.mayorsforpeace.org/english/campaign/2020vision.htm>

<sup>9</sup> A/C.1/52/7

<sup>10</sup> NPT/CONF.2010/PC.I/WP.17, <http://www.reachingcriticalwill.org/legal/npt/prepcom07/workingpapers/17.pdf>

<sup>11</sup> <http://www.icanw.org/securing-our-survival>

<sup>12</sup> [http://www.abolition2000.org/site/c.cdJIKKNpFqG/b.1316387/k.8918/The\\_Abolition\\_2000\\_Founding\\_Statement.htm](http://www.abolition2000.org/site/c.cdJIKKNpFqG/b.1316387/k.8918/The_Abolition_2000_Founding_Statement.htm)

<sup>13</sup> International Sustainable Energy Agency, Proposed Model Statute, <http://www.abolition2000.org/atf/cf/%7B23F7F2AE-CC10-4D6F-9BF8-09CF86F1AB46%7D/ISEA.PDF>

<sup>14</sup> *Nuclear Disorder or Cooperative Security? U.S. Weapons of Terror, the Global Proliferation Crisis, and Paths to Peace*, An Assessment of the Final Report of the WMD Commission and its Implications for U.S. Policy, Lawyers' Committee on Nuclear Policy, Western States Legal Foundation, Reaching Critical Will of the Women's International League for Peace and Freedom, 2007, <http://www.wmdreport.org>

<sup>15</sup> *Id.*, p. 196

<sup>16</sup> Rt. Hon Helen Clark, Foreword to *The Naked Nuclear Emperor: Debunking Nuclear Deterrence*, Robert Green, The Raven Press, Disarmament and Security Centre, Christchurch, New Zealand, 2000.

<sup>17</sup> *Id.*, p. 196

<sup>18</sup> Hugo Grotius, *De Jure Belli ac Pacis* [The Law of War and Peace], 1625, Chapter XXV.