

Defend the Unequivocal Undertaking to Eliminate Nuclear Arsenals

International Association of Lawyers Against Nuclear Arms

Civil Society Presentation, NPT PrepCom

Delivered by Jacqueline Cabasso, Western States Legal Foundation, Oakland, California

May 3, 2017 Vienna

My task today is to deliver a simple but urgent message from IALANA, the International Association of Lawyers Against Nuclear Arms: Governments and civil society must defend the unequivocal undertaking to eliminate nuclear arsenals.

The unequivocal undertaking was affirmed by the 2000 and 2010 Review Conferences. It is unconditional, as the word “unequivocal” conveys. It is the NPT states parties’ understanding of the essence of the Article VI obligation.

The unequivocal undertaking is now being called into question, if not worse.

A 2017 statement of the G7 posits that “the effectiveness of *any* effort to reduce and *ultimately* eliminate nuclear weapons is dependent upon improvements in the security environment for *all* nations.” It refers, weakly, to the creation of “conditions that *could allow* a world without nuclear weapons”.¹ The G7 includes three NPT nuclear-weapon states: France, the United Kingdom, and the United States.

Russia has repeatedly and emphatically tied nuclear disarmament to maintenance of strategic stability, and has conveyed that in its view such stability is very much at risk.

In the United States, pursuant to presidential directive, the Trump Administration has begun preparation of a new Nuclear Posture Review. Christopher Ford, the National Security Council’s senior director for weapons of mass destruction and counter-proliferation, has stated that the review will include an assessment of “whether or not the goal of a world without nuclear weapons is in fact a realistic objective, especially in the near to medium term, in the light of current trends in the international security environment.”²

IALANA’s first comment with respect to backsliding on the unequivocal undertaking is common sense: We won’t know whether the global elimination of nuclear weapons

¹ G7 Statement on Non-proliferation and Disarmament, Lucca, April 11, 2017, <http://www.g8.utoronto.ca/foreign/170411-nonproliferation.html> (emphasis supplied).

² Carnegie International Nuclear Policy Conference, Morning Keynote, March 21, 2017, <http://carnegieendowment.org/2017/03/21/morning-keynote-with-nsc-senior-director-christopher-ford-pub-68162>.

is a realistic enterprise within the foreseeable future, unless and until nuclear-armed states join in seeking to accomplish it.

Our second comment relates to law.

Without question the objective of global elimination of nuclear weapons is squarely set by the NPT.

That is clear from the preamble and Article VI itself. It is confirmed by review conference outcomes. And it is further confirmed by the unanimous conclusion regarding the disarmament obligation laid down by the International Court of Justice in its 1996 Advisory Opinion.

Clearly, renunciation of the objective of a world without nuclear weapons would constitute a blatant violation of Article VI.

But what about the timeline for its realization? Putting the realization of that goal off until a very distant future is suggested by Ford's comments and generally by positions taken by the Western nuclear powers and Russia.

It is true that no timelines are set by the NPT itself. But some indicia are provided by the 25-year time frame set prior to a decision on extension of the treaty, which was done in 1995, and the NPT conference outcomes since the end of the Cold War.

Moreover, a rejection of any time component for compliance with Article VI would negate the fundamental legal requirement of good faith in implementing treaty obligations, and the specific requirement of good faith in Article VI.

If rejection or conditioning of the disarmament objective becomes entrenched, prospects will worsen for preventing nuclear arms racing and the proliferation of nuclear weapons, and for reducing the risk of use of the weapons. Indeed, the nuclear nonproliferation regime could collapse.

For all these reasons, IALANA strongly urges governments and civil society to communicate in no uncertain terms to the United States and other nuclear powers that the new Nuclear Posture Review and other policy statements must not drop, water down, or condition the goal of achieving a world free of nuclear weapons.

As we are once again beginning to understand, nuclear disarmament itself may well be a precondition for human and ecological survival.