

Remarks: Geneva, November 13, 2008:

## National Implementation and Civil Society Verification of a Nuclear Weapons Convention

Ed Aguilar

Thank you, Madame Ambassador, Mr. President Judge, Alyn Ware, and all the distinguished panelists and delegates. I want to say that recent days and months have seen great strides in our movement, and as we now say in the States—yes we *can*—we can accomplish a Nuclear Weapons Convention, and in our lifetimes. And when we do, we must succeed! So the preparation is critical. Fortunately, we have much good work that precedes us. My discussion is on some legal aspects of national implementation and criminalization of Convention violations.

To begin with, in the current IAEA regime, national implementation and collaboration is governed by Articles XI and XII of the Statute. In particular, Article XII provides assistance by the Agency, and allows for mandatory investigations by international inspectors, as needed “to account for special fissionable materials and fissionable products, and... whether there is compliance” regarding use “in furtherance of any military purpose” listed in the Statute.

Now the IAEA has done a tremendous job, often in difficult conditions. The cases of Iraq, South Africa, and North Korea, in the 1990’s, and later Iran, showed however that we have sometimes been at greater risk than was at first evident. It should not surprise us that there are times when a secretive regime will not be forthcoming. It should not surprise us that sometimes, as in the early 1990’s, the inspection regime had to be strengthened and special measures developed, to deal with special situations. We can talk about these cases, as we discuss the history.

What we need to have in place in the next regime needs to have these characteristics. It needs to be clear; to be consistent; and to put all players on a level playing field. After all, once we have all undertaken to eliminate nuclear weapons, the situation will be much more analogous to totally prohibitory regimes.

One such regime is the Chemical Weapons Convention. There are historic and legal reasons for this. As early as 1899 in Europe, nations came together to outlaw some forms of chemical weapons. After the horrible use of mustard gas in World War I, the 1925 Geneva Convention outlawed asphyxiating gases. And of course, the use in World War II of Zyklon B gas to commit genocide against millions of innocents horrified the world further, and led to the 1947 Geneva Protocols on Treatment of Non-Combatants, and other provisions. Nonetheless, only in 1993 did nations begin to sign a comprehensive treaty, the Chemical Weapons Convention, which came into force in 1997. I review this, because the hard-won nature of these conventions, after many episodes, I think made States-Parties highly resolute to have effective enforcement.

The *most* effective enforcement, it turns out, happened when the CWC didn't just have outside inspectors from abroad. Rather, as Lisa Tabassi, of the OPCW Technical Secretariat, which enforces the treaty, has written, Article VII of the Convention is written in mandatory terms. That is, the general obligations clause provides: "Each State *shall adopt*—not may or should—the necessary measures to implement" the Treaty in its domestic law. The OPCW was not content with that prescription. This was also followed up with not one but two Legislative Inquiries, in 2000-2002, with very specific questions—Have you criminalized possession of chemical weapons, or precursors? How do you prosecute these crimes? Do they include your citizens acting abroad? And so on. They remind each State of the urgency of such legislation, and States have indeed complied with the Article. Politically, it has worked because the OPCW has done this with *all* States-Parties, not dividing Parties into Class A and Class B States.

In an excellent book, which I commend to you, Lisa Tabassi and Rodrigo Yepes-Enriquez, of the OPCW, go into great detail about how this process has worked. (1) Treaty Enforcement and International Cooperation in Criminal Matters, edited for the Organisation for Prohibition of Chemical Weapons, T.M.C. Asser Press, The Hague.

What about the NWC?

We need above all two things, fairness, and a pro-active regime. On fairness, the process must be equal among all states. On pro-active measures, that means prevention, not waiting but being ready. If we look at Article VI, we have followed the same path as that of the successful Chemical Convention. Under Legislative Implementation, each State-Party "*shall*" a., Extend its penal legislation to provide... for the trial, extradition, and punishment of persons who commit crimes under Article I, Section B," that is, the Responsibility of Persons under the treaty. Then, it continues, *all Parties shall*, b., "Provide all necessary protection for persons who report violations of this Convention." This is precise and needed language for an effective Treaty.

We may be justly skeptical that whistleblowing can work, especially with certain regimes. But Dieter Diseroth notes for example, the use by Amnesty International of citizen reports in "strengthening compliance with international agreements, even in non-democratic states, especially on human rights and the environment." He also notes that in areas like biology, it is hard to draw the line between legitimate research and weapon-izable research, and describes how a defector Ken Alibek (Kanatan Alibekov) helped expose a network of clandestine bioweapons research centers, called Bio-Preparat, in the Russian Federation. Ralf Trapp, in reviewing the upcoming April, 2009 Second Review Conference of the Chemical Weapons Convention, notes we're in a "revolution in the life sciences," and the same issue could arise in the CWC, so stronger inspection measures, and I would add, stronger whistle-blower protections, are needed. Some are noted in Dieter's pamphlet on Societal Verification.

Article VII of the Model Convention states that "persons shall report" any violation of this Convention to the Convention Agency...." And this duty to report known violations takes

precedence over any obligations not to disclose, under an employment contract or confidentiality clause. This was an important provision to add protections to the Convention, and to its own protection of world security.

The challenge for both nuclear and chemical weapons is to find the right balance, while “enhancing national implementation, developing self-governing mechanisms, and involving all stake-holders.” The latter is crucial. Civil society members are stake-holders—after all, it is our civil society we are helping to protect. Government and business are stake-holders. They are the ones who will be credited if successful or blamed, if something goes wrong, so it is best to take preventive measures, and of course, they also want the efforts to succeed.

My own modest recommendation is that it may be time for the UN CD or its most appropriate body, to form a Task Force on Verification and National Compliance measures for a Nuclear Weapons Convention. In particular, with nuclear energy coming back to greater prominence, with a so-called Nuclear Renaissance being trumpeted as a solution to carbon fuels, we need to examine all the possible ways to limit the risk of dual-use materials being weaponized, even if in small quantities in a laboratory. Please remember, the physical amount of uranium needed for a Hiroshima-sized bomb is about the size of a tennis ball, since uranium isotope is one of the densest and therefore most compact substances known to humankind.

Finally, a personal note. I was there with some of you in New York at UN HQ in October, when Secretary-General Ban Ki-moon, Henry Kissinger and others, came out in clear support of work toward a Nuclear Weapons Convention; the S-G has mentioned our draft favorably. I was not totally surprised, but I was certainly delighted, that after many years of work on the part of so many people, I think the time for major change in these areas so critical for world survival is finally nearly at hand.

So, on behalf of the Project for Nuclear Awareness, which is working with forums in the US Congress on the NWC, and building much support among US and North American youth, I thank you very much for inviting me, and I look forward to your questions and comments.

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The PNA was also co-founded by John C. Haas, Frederick Heldring, and a distinguished Board of Advisors which includes ambassadors Bob Grey and Thomas Graham, and is chaired by Craig Eisendrath, PhD, co-author of War in Heaven—Preventing an Arms Race in Outer Space, with Australian physician-activist, Helen Caldicott.

Ed and Craig are writing a book for 2009 publication: A New Deal for the 21<sup>st</sup> Century: Toward a New Global Partnership.