# Informal Meeting of the General Assembly to mark the Observance of the International Day Against Nuclear Tests

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**Remarks of John Burroughs (panelist), Executive Director, Lawyers Committee on Nuclear Policy**

I appreciate the opportunity to speak today. My introduction to global nuclear politics came when I attended a conference on the Comprehensive Test Ban Treaty in Kazakhstan in 1990, co-sponsored by the Kazakh group, the Nevada-Semipalatinsk Movement, and the International Physicians for the Prevention of Nuclear War. I’ll never forget visiting the Soviet test site in Semipalatinsk, where I met directly affected victims of nuclear testing, as I’ll never forget participating in protests at the US Nevada Test Site in the 1980s.

I want to touch on two important topics today: first the role of law, and second the need for a comprehensive approach to nuclear disarmament and non-proliferation.

In the debate about nuclear weapons, the tide has turned toward disarmament. Some, however, still argue that nuclear weapons on balance should be retained because they allegedly provide security and international stability.

Here I want to underline an observation made by Peter Weiss, the president of my organization, who is in the audience today. The policy debate can be endless, but the law – which all states are committed to uphold – is already clear. It is now beyond dispute that there is a legal obligation to negotiate and achieve nuclear disarmament and that nuclear weapons, like all weapons, are subject to rules governing the conduct of warfare, now often referred to as international humanitarian law, or IHL.

At both popular and diplomatic levels, there is a deepening awareness of the inherent incompatibility of reliance on nuclear weapons with states’ responsibilities to protect their populations against atrocities and to comply with IHL, the Rome Statute of the International Criminal Court, and human rights law. If states have a responsibility to protect their own populations from atrocities, why should they be able to commit or threaten to commit atrocities against the populations of other states? The Red Cross has played an important recent role in focusing normative attention on nuclear weapons.

The critique has now penetrated the NPT review process. The 2010 Conference for the first time acknowledged the humanitarian catastrophe of use of nuclear weapons and the obligation of all states at all times to comply with international law, including IHL.

The NPT declaration reflects the increasing solidification of IHL at both the national and international levels. The Nuremberg International Military Tribunal famously observed that "the very essence of the [Nuremberg] Charter is that individuals have international duties which transcend the national obligations of obedience imposed by the individual state." The principle of individual responsibility has now been definitively embedded in international law by the Rome Statute. IHL is also becoming more and more integrated into military operations and training, in the United States and elsewhere, as is made clear in the report available in the back on an April 20 American Bar Association event we organized with the Global Security Institute.

The 2011 Vancouver Declaration articulates the current application of IHL to nuclear weapons. Initiated by the International Association of Lawyers Against Nuclear Arms and The Simons Foundation, it was endorsed by many eminent international lawyers as well as leading former diplomats and officials. The declaration holds that due to their *uncontrollable* effects nuclear weapons cannot be used in compliance with rules protecting civilians, neutral states, and the environment against the effects of warfare. Regarding reprisals, a central element of so-called nuclear deterrence, it makes the judgment that law can now join with conscience to condemn them, stating:

Use of nuclear weapons in response to a prior nuclear attack cannot be justified as a reprisal. The immunity of non-combatants to attack in all circumstances is codified in widely ratified Geneva treaty law and in the Rome Statute, which provides inter alia that an attack directed against a civilian population is a crime against humanity.

IHL is rooted in what the International Court of Justice called “elementary considerations of humanity,” and its rules apply to all states. It therefore is a solid foundation for the norm of non-use of nuclear weapons, a norm explicitly recognized by President Obama and Prime Minister Singh in November 2010. It also is a solid foundation for building a legal framework of a nuclear weapons-free world that is universal in its approach.

Let me briefly turn to questions of policy. A step-by-step approach is favored by the NPT nuclear weapon states, and has been clearly articulated by the United States. The 2010 US Nuclear Posture Review states that post-New START negotiations will be pursued with Russia, this time encompassing all US and Russian nuclear weapons, deployed and non-deployed, strategic and non-strategic. Once there have been “substantial” further U.S.-Russian reductions, the Review envisages that the United States would “engage other states possessing nuclear weapons, over time, in a multilateral effort to limit, reduce, and eventually eliminate all nuclear weapons worldwide.” The US view is that an FMCT must be negotiated prior to consideration of any other global agreement on nuclear non-proliferation and disarmament.

As is well known, the step-by-step approach is encountering serious difficulties. In good part due to concerns about missile defenses and other strategic systems, Russia appears resistant to the bilateral negotiations on comprehensive reductions envisaged by the United States. Pakistan is blocking negotiations on an FMCT in the Conference on Disarmament. A positive development is that the NPT nuclear weapon states are engaged in discussions on transparency and other matters.

Meanwhile, however, those states along with India, Pakistan, and Israel are proceeding with modernization of warheads, delivery systems, and infrastructure, with planning horizons on the order of several decades. This is well documented by the Reaching Critical Will book released earlier this year, *Assuring Destruction Forever: Nuclear Weapon Modernization Around the World.* Moreover, with its indefinite and contingent timeline, the step-by-step approach is vulnerable to geopolitical tensions and disruptive events like wars and further proliferation.

My organization, together with civil society groups around the world, believes that a comprehensive approach is imperative. It would involve preparations, deliberations, and negotiations on the establishment of a convention or framework for the verified and irreversible global elimination of nuclear weapons. A comprehensive approach should be pursued in parallel with work on measures now on the agenda and would stimulate and reinforce progress on those measures. In fact, measures like the CTBT and FMCT now apparently within reach may remain unattainable while any uncertainty remains as to the fundamental goal being sought, a nuclear weapon-free world.

A comprehensive approach has the merit of addressing *now*, not at some uncertain future date, the logical – and lawful - solution to the problem of nuclear weapons, achieving and maintaining zero. And it is far, far more capable than the step-by-step approach of attracting and engaging global public opinion – a crucial dimension to successful disarmament. The Abolition 2000 Global Network to Eliminate Nuclear Weapons, the International Campaign to Abolish Nuclear Weapons, Mayors for Peace, Global Zero and others are working hard to arouse the public, but it is hard going absent any concrete process in motion.

How should a comprehensive approach be undertaken? I appreciate and support the Kazakh proposal made this morning for a universal declaration on a nuclear weapons-free world followed by negotiations on a convention. Of course, a way can be found if the political will exists. But let me mention some options:

* all involved states could agree to a program at the Conference on Disarmament which includes serious work on complete nuclear disarmament
* the General Assembly, in a regular or special session, could seize control of and revitalize multilateral disarmament machinery; this possibly could be done in conjunction with the Security Council
* the 2015 NPT Review Conference, where a plan or process could be adopted; however, there is the complication of involving non-NPT nuclear weapon possessor states
* the Nuclear Security Summit process could be broadened, or a like process for nuclear disarmament established, or perhaps the current P5 consultative process could be greatly expanded

In 1990, the Nevada-Semipalatinsk Movement called for a peaceful migration into a nuclear free 21st century. Let us chart a path for a successful migration! Thank you.