

**SUBMISSION No.84**

**Nuclear Non-proliferation and  
Disarmament**

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BY: JS



preparatory commission for the  
comprehensive nuclear-test-ban  
treaty organization

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Dear Mr. Thomson,

I would like to thank you for your letter of 23 December 2008 regarding the Australian Parliament's Inquiry into Nuclear Non-Proliferation and Disarmament. I am grateful for the opportunity to provide input to the Committee's inquiry and apologize for the belated reply.

In February, I had the opportunity to meet with Gareth Evans and the other members of the International Commission on Nuclear Non-Proliferation and Disarmament (ICNND) in Washington DC. We discussed not only issues specific to the Comprehensive Nuclear-Test-Ban Treaty (CTBT), such as the prospects for its entry into force and the status and capability of the CTBT verification regime. We also touched upon the broader issue of the health of the international non-proliferation and disarmament architecture, in particular in the nuclear field, and the numerous challenges it faces. These challenges are, indeed, daunting and require a renewed consensus and unity of purpose by the international community. The establishment of the ICNND, therefore, could not be more important and timelier.

The nuclear non-proliferation and disarmament regime is being put under duress by a combination of factors. New and serious proliferation challenges have emerged in recent years, such as North Korea and the nature of the Iranian nuclear program or the discovery of the A.Q. Khan-Network. Nuclear terrorism has developed into an imminent threat that had not been in the forefront in previous decades. At the same time, the world is poised for a nuclear renaissance. This could mean much higher quantities of nuclear materials in circulation and handled by many more actors in the future. The need to tighten the respective rules to ensure that this renaissance takes place in a controlled environment is evident. However, the confidence in the effectiveness of the multilateral system has reached a low point in recent years.

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Urgent steps need to be taken to restore this confidence and refocus on an inclusive approach of international cooperation. These steps are clear and have been on the international agenda for some time. Each of them is important and will help to strengthen the non-proliferation and disarmament regime. Each of them will also help to forge the kind of broad international consensus that is needed to reestablish a sense of trust into the effectiveness of the regime. I have outlined some of these thoughts in more detail in a recent speech at a NATO seminar, which I attach for your convenience. The same speech also provides some background on the current developments regarding the CTBT and the central role this Treaty has to play in a comprehensive approach to address the challenges facing the regime. Attached, you will also find the two recent issues of our newsletter SPECTRUM as well as some ideas to promote national implementing legislation for the CTBT.

I would like to address briefly the question on the possible contribution of inter-parliamentary action in strengthening treaty-based aspects of the nuclear non-proliferation and disarmament regime. In this context, we have found the cooperation with the International Parliamentary Union (IPU) to be a very effective avenue. In fact, it was also thanks to Australia that the topic on the entry into force of the CTBT was included on the agenda of the IPU Assembly in 2007. At the recent 119th IPU Assembly in Geneva, I participated in the Panel Discussion on Advancing Nuclear Non-Proliferation and Disarmament, and Securing the Entry into Force of the Comprehensive Nuclear-Test-Ban Treaty: The Role of Parliaments. This topic is to be discussed again by the IPU 120th Assembly in April 2009. It is expected that the Assembly will adopt a resolution that was submitted by Australia as Co-Rapporteur.

Inter-parliamentary cooperation such as through the IPU has a substantial awareness raising value in particular vis-à-vis parliamentarians from countries that still need to ratify key non-proliferation and disarmament treaties. In the case of the CTBT, we hope that the IPU resolution will send a strong signal to the remaining nine countries listed in the Treaty's Annex 2, whose ratification is needed for the entry into force.

In closing, I would like to congratulate you on taking this important initiative, which should really serve as an example for parliaments worldwide. Please do not hesitate to contact me should you require additional information.

Sincerely yours,



Tibor Tóth  
Executive Secretary



### **Proposal on the promotion of national implementing legislation for the CTBT**

The enforceability of the full scope of a treaty such as the CTBT can only be ensured by each State Party through undertaking a review of the laws in force in the subject area and adopting legislation to fill in the gaps. This may include defining new criminal offences, making the legislation applicable to State agents, and taking the administrative measures necessary to implement and monitor compliance. Incomplete national legislation or an inadequate enforcement capacity creates safe havens for perpetrators.

National legislation enables treaty norms to be fully enforced, even in legal systems in which treaties automatically form part of national law. In light of the prospect that one-third of all States are currently contemplating nuclear energy to meet their future energy needs and will consequently become nuclear-capable in the coming decades, commencement of new uranium exploration activities in an increasing number of countries, it seems incorporation into national law has become essential.

Incorporation into international law also contributes to regional and international security. Due to the nature of radioactivity and the difficulty of containing it, only effective national implementation ensures (to the extent possible) that the object and purpose of the treaty like the CTBT will be met. The public availability of national legislation enables peer review and contributes to fostering a culture among the international community of pro-active international cooperation and capacity-building. The vital importance of this in the nuclear field is an underlying element in the increase of resources and emphasis assigned to legal technical assistance in the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO), the International Atomic Energy Agency (IAEA), the United Nations Office on Drugs and Crime (UNODC), the United Nations Security Council's 1540 Committee, the Joint Actions under the European Union's Weapons of Mass Destruction Strategy, and in bilateral assistance programmes pursued by States.

Only a small number of the 180 States Signatories to the CTBT have adopted national implementing legislation for the CTBT. One of those is Australia in its Comprehensive Nuclear Test-Ban Treaty Act 1998. Almost all those States, including Australia, have linked the commencement date of the legislation to entry into force of the CTBT, as is the customary practice. However, for the 80 States which are party to nuclear-weapon-free zone treaties in force, all of which prohibit the nuclear weapons tests, there already exists the legal basis to establish that act as a criminal offence now. Consideration could be given to encouraging its neighbours which are party to the nuclear-weapon-free zone Treaty of Rarotonga and Treaty of Bangkok to criminalise nuclear explosions now. In this way the norm banning nuclear explosions gains true meaning at both the international and national level and preserves that norm to the maximum extent possible, setting an example and a standard for other regions in the world to emulate.