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REFERENCE:

SUBMISSION No.81**Nuclear Non-proliferation and
Disarmament**

Dear Mr. Thomson,

Thank you very much for your letter of 23 December 2008, inviting me to present a written submission on nuclear disarmament and non-proliferation issues to the Joint Standing Committee on Treaties. I understand that the Prime Minister of Australia, the Hon Kevin Rudd MP, has asked the Joint Committee to contribute to the work of the International Commission on Nuclear Non-Proliferation and Disarmament, by examining in particular how the relevant treaties can be made more comprehensive or effective.

I am very pleased to respond. I welcome the establishment of the Commission and hope that its deliberations will produce some recommendations on ways and means to achieve a world free of nuclear weapons. I also welcome the interest of the Joint Committee in this work and have long believed that parliaments have a vital role to play in advancing the rule of law in disarmament—a role shaped largely, though not exclusively, by the process of treaty ratification. In addition, I am grateful that the focus of your inquiry will specifically be on disarmament and non-proliferation issues, for progress in both areas will be vital for international peace and security.

There are five points I wish to make in my submission, which I will supplement with some Exhibits that focus largely upon the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and on global nuclear disarmament. These include two major addresses by Secretary-General Ban Ki-moon on nuclear disarmament [Exhibits 1 and 2], 23 official statements that I have made as the High Representative for Disarmament Affairs on treaty-related issues [Exhibits 3-25], four speeches by former UN Under-Secretary-General for Disarmament Affairs Jayantha Dhanapala on disarmament and the rule of law [Exhibits 26], and two background papers authored by a member of my staff that I hope will be useful to your inquiry [Exhibit 27].

The points that I wish to make are as follows:

1. The goal of global nuclear disarmament is among the most durable multilateral legal norms in the field of international peace and security. Disarmament and the “regulation of armaments” are goals that appear in the UN Charter (Articles 11 and 47). The elimination of all “weapons adaptable to mass destruction” (WMD, or nuclear, biological, and chemical arms) was a goal included in the first resolution adopted by the General Assembly on 24 January 1946 (Resolution I(I)). Fifty-four years ago, Dag Hammarskjöld referred to nuclear disarmament as a “hardy perennial” at the United Nations (Press Conference, 15 May 1955). In 1978, the General Assembly convened its first Special Session on disarmament; its Final Document described “general and complete disarmament under effective international control”—i.e., the elimination of WMD and the limitation of conventional armaments—as the UN’s “ultimate objective,” a goal that has also been incorporated into a dozen international conventions, including the NPT (Article VI). On 8 July 1996, the International Court of Justice issued its Advisory Opinion on the threat or use of nuclear weapons, which interpreted the obligation in Article VI as extending beyond the mere the conduct of negotiations: “There exists an obligation to pursue in good faith

and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.” The GCD goal has also been repeatedly affirmed by the states parties of the NPT (notably at the 1995 NPT Review and Extension Conference and the 2000 NPT Review Conference) and by numerous annual disarmament resolutions of the General Assembly. In short, all UN member states support the goal of global nuclear disarmament.

2. The future of the multilateral legal norm of nuclear disarmament is facing many serious challenges. First, there is a widely-held perception in the international community of what might be called an “implementation gap” between official words and deeds in this field. While there has been some progress in nuclear arms control—e.g., reduced deployments, voluntary moratoria on testing and the unilateral closing of some test sites, the withdrawal of some tactical nuclear weapons, budgetary or policy restraints by some states in the development of new weapons, the decision by some states to halt the production of nuclear materials for weapons, the limitation in numbers and roles of certain delivery vehicles, et al.—no state has declared that such steps are in fulfilment of any international legal commitment relating to disarmament. There is also little evidence that states possessing nuclear weapons are constructing domestic infrastructures needed to implement nuclear disarmament—including, for example, budget authority, the establishment of disarmament agencies, and relevant domestic laws and policy directives. Second, such progress has not satisfied any of the disarmament criteria that have been widely endorsed in multilateral arenas, including NPT review conferences and General Assembly resolutions; these criteria include transparency, irreversibility, verification, and bindingness. This progress has instead been declaratory, unilateral, reversible, without verification, and voluntary. Third, and contrary to Article VI of the NPT, there are no international negotiations underway relating to nuclear disarmament. Several if not all states possessing such weapons have opposed any such negotiations, as seen, for example, in the chronic deadlock at the Conference on Disarmament in Geneva on this issue, and in the deeply divided votes on the annual General Assembly resolutions calling upon states to commence multilateral negotiations on a nuclear-weapons convention. On 2 December 2008, the General Assembly adopted Resolution 63/49, which as in previous years called upon states to commence “multilateral negotiations leading to an early conclusion of a nuclear weapons convention”; the resolution was adopted by a vote of 127-30-23 (with Australia abstaining). Fourth, virtually all states that possess nuclear weapons (Israel has not acknowledged possession) continue to claim that such weapons are essential for defence purposes and are needed for nuclear deterrence. This stance contrasts with disarmament commitments and signals the military utility of such weapons, hence providing a rationale for proliferation, while undermining the integrity of the “grand bargain” and the basic fairness of the global nuclear non-proliferation regime. This problem is further aggravated by alliance relationships—often termed the “nuclear umbrella”—that integrate nuclear weapons into the defence postures of additional states.

3. The “rule of law” in disarmament has undergone uneven development. The “rule of law” has been most elaborated with respect to chemical weapons, given that the Chemical Weapons Convention has set forth legal prohibitions on both the possession and proliferation of such weapons, and has established the Organisation for the Prohibition of Chemical Weapons to oversee its implementation and verification. The Biological Weapons Convention has established similar legal taboos, but without the international institutional infrastructure to verify its implementation. The NPT has established a prohibition on proliferation and obligated all its states parties to pursue negotiations in good faith on nuclear disarmament. It has not, however, obviated the need for a nuclear-weapons convention, or a framework of related agreements,

outlawing the production or possession of nuclear weapons. In January 2008, at the request of Malaysia and Costa Rica, Secretary-General Ban Ki-moon circulated to all UN member states the text of a draft nuclear-weapon convention (General Assembly document A/62/650, 18 January 2008). On 24 October 2008, the Secretary-General urged all NPT states parties, in particular the nuclear-weapon states, to fulfil their obligation under the treaty to undertake negotiations on effective measures leading to nuclear disarmament; he added that they could pursue this goal by agreement on a framework of separate, mutually reinforcing instruments, or by considering the negotiation of a nuclear-weapons convention [Exhibit 1]. Speaking at Harvard University on 21 October, he noted that while the UN has long stood for the rule of law and disarmament, it also stands for the rule of law in disarmament, recalling its role in promoting key treaties, including the Comprehensive Nuclear-Test-Ban Treaty, the Chemical and Biological Weapons Conventions, and the NPT [Exhibit 2]. He observed that some treaties establishing regional nuclear-weapon-free zones have yet to enter into force, and that some nuclear-weapon states had not yet adhered to the various Protocols to those treaties. In that speech, he also applauded the establishment of the Australia/Japan International Commission on Nuclear Non-Proliferation and Disarmament.

4. Parliaments have vital roles to play in advancing the goal of global nuclear disarmament. Parliaments have a crucial role in the ratification of treaties, as well as in providing funds and in enacting domestic legislation needed to ensure their full implementation. [Exhibits 5, 24, and 26 (3 July 2000)] They provide a forum for the debate of the issues that are the subject of treaties and for the representation of the views of constituents on these issues. And they provide a means for overseeing the implementation of treaty commitments and ensuring accountability. In recent years, various forms of cooperation and information exchanges have occurred among parliaments on disarmament issues, often through such organizations as the Inter-Parliamentary Union, Parliamentarians for Global Action, and Parliamentarians for Nuclear Non-proliferation and Disarmament (PNND), a global network of over 500 parliamentarians from more than 70 countries working to prevent nuclear proliferation and to achieve nuclear disarmament. On 30 August-1 September, the United Nations and the Inter-Parliamentary Union hosted a "Conference of Presiding Officers of National Parliaments," which adopted by consensus a Declaration stating, "We reiterate our commitment to general and complete disarmament under effective international control, in particular nuclear disarmament and the elimination of weapons of mass destruction, including chemical and biological weapons...". I hope to see more of such cooperation among parliamentarians in the field of disarmament in the years to come.

5. The achievement of global nuclear disarmament is not a utopian goal. Virtually all critics of global nuclear disarmament invoke the dictum that this goal is "utopian." Such critics often stress that real security is to be achieved through other more practical means, including nuclear deterrence or various forms of defensive measures, including missile defence. Some stress that non-proliferation measures—including export controls and sanctions—will suffice to ensure against the expansion of the group of states that possess such weapons. These critics typically overstate the dangers of disarmament, and underestimate the risks, dangers, and limitations of these alternative measures. They neglect, for example, the dynamic relationship between missile defence and missile proliferation, the "demonstration effect" of existing nuclear arsenals in encouraging other states to acquire them, and the inherent unsustainability of global have/have-not regimes. In terms of utopias and fantasies, nothing is more illusory than the vision of a global "pax atomica."

I hope that these comments are useful for your work in the Joint Committee. I would welcome the opportunity to any answer any follow-up questions that your committee may wish to pose, or to meet with any member of your committee to discuss this issue.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Duarte', with a long horizontal flourish extending to the right.

Sergio Duarte
High Representative for Disarmament Affairs
3 February 2009