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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 THE REPUBLIC OF THE MARSHALL
18 ISLANDS, a non-nuclear-weapon State party to
19 Treaty on the Non Proliferation of Nuclear
20 Weapons,

Plaintiff,

v.

21 THE UNITED STATES OF AMERICA,
22 PRESIDENT BARACK OBAMA, THE
23 PRESIDENT OF THE UNITED STATES OF
24 AMERICA; THE DEPARTMENT OF DEFENSE;
25 SECRETARY CHARLES HAGEL, THE
26 SECRETARY OF DEFENSE; THE
27 DEPARTMENT OF ENERGY; SECRETARY
28 ERNEST MONIZ, THE SECRETARY OF
ENERGY; AND THE NATIONAL NUCLEAR
SECURITY ADMINISTRATION,

Defendants.

No. _____

**COMPLAINT FOR BREACH OF THE
TREATY ON THE NON-
PROLIFERATION OF NUCLEAR
WEAPONS**

Judge:

KELLER ROHRBACK L.L.P.
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I. INTRODUCTION

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3 1. This is an action against the United States of America (or “U.S.”) and certain of its
4 agencies, brought by a sovereign nation who is a party to *The Treaty on the Non-Proliferation of*
5 *Nuclear Weapons*, dated July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161 (hereinafter the “Treaty” or the
6 “NPT”). The underlying claim, described in more detail herein, is that the U.S., including by and
7 through its agencies, breached and continues to breach certain obligations under the Treaty.

8 2. Under the Supremacy Clause of the U.S. Constitution, treaties are part of the “supreme
9 Law of the Land” and the judicial power extends to all cases arising under treaties, and to controversies
10 in which the United States is a party. U.S. Const. art. VI, cl. 2.

11 3. The Republic of the Marshall Islands (“Marshall Islands” or “Plaintiff Nation”) herein
12 asks the Court to interpret the Treaty, determine whether the U.S. is in compliance with it, and order the
13 U.S. to comply with its obligations under it.

14 4. As the Supreme Court confirmed, in *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 353-54
15 (2006): “If treaties are to be given effect as federal law under our legal system, determining their
16 meaning as a matter of federal law ‘is emphatically the province and duty of the judicial department,’
17 headed by the ‘one supreme Court’ established by the Constitution.” *Id.* (quoting *Marbury v. Madison*,
18 5 U.S. (1 Cranch) 137, 177 (1803)).

19 5. While it is novel for a foreign sovereign to consent to the jurisdiction of U.S. federal
20 courts over a treaty dispute, it is in no way novel for the U.S. federal courts to interpret a treaty and/or to
21 find a treaty violation. Indeed, in the first fifty years of U.S. constitutional history, between 1789 and
22 1838, the Supreme Court decided nineteen cases in which the U.S. government was a party, at least one
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1 party raised a claim or defense on the basis of a treaty, and the Court decided the merits of that claim or
2 defense.¹

3 6. Article VI of the Treaty states, in its entirety, as follows:

4 Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on
5 effective measures relating to cessation of the nuclear arms race at an early date and to
6 nuclear disarmament, and on a treaty on general and complete disarmament under strict
and effective international control.²

7 7. The obligation of a party to an agreement to negotiate in good faith is an objective legal
8 obligation, supported by inviolate legal precedent, and is an obligation routinely judged by federal
9 courts. In the context of Article VI of the Treaty, good faith imposes a standard of objective
10 reasonableness.³ Moreover, “[a] significant practical consequence of the ‘good faith’ principle is that a
11 party which committed itself in good faith to a course of conduct . . . would be estopped from acting
12 inconsistently with its commitment. . . .”⁴

13 8. Plaintiff Nation alleges herein that the U.S. is in breach of its obligations under Article VI
14 of the Treaty. As set forth herein, analysts have stated, including in public forums, publications and/or
15 in sworn testimony that the U.S. is in breach of the Article VI obligations. The U.S., on the other hand,
16 regularly alleges in speeches and documents that it is in compliance with the Treaty. The dispute is
17 clear.
18

19 9. In 1996 the International Court of Justice (or, “ICJ”) interpreted the Treaty and held that
20 “[t]here exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to
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24 ¹ David Sloss, *Judicial Deference to Executive Branch Treaty Interpretations: A Historical Perspective*,
62 N.Y.U. ANN. SURV. AM. L. 497-523 (2007) (citations omitted) (The U.S. government won fewer
25 than twenty percent of these cases.).

26 ² Treaty on the Non-Proliferation of Nuclear Weapons art. VI, July 1, 1968, 21 U.S.T. 483, 729
U.N.T.S. 161, available at <http://www.un.org/disarmament/WMD/Nuclear/NPTtext.shtml>.

27 ³ LORI F. DAMROSCH et al., INTERNATIONAL LAW: CASES AND MATERIALS 1195 (4th ed. 2001).

28 ⁴ *Id.* at 157.

1 nuclear disarmament in all its aspects under strict and effective international control.”⁵ The U.S.,
 2 however, does not consent to the compulsory jurisdiction of the ICJ, and does not consider its rulings
 3 binding on the U.S.

4 10. The harm to the Plaintiff Nation caused by the U.S. breach of the Treaty is real. As a
 5 result of the U.S. continuation of the nuclear arms race and breach of its duty to negotiate in good faith
 6 for disarmament, warning times for nuclear strikes have shrunk to virtually zero seconds because the
 7 U.S. keeps approximately 1,000 nuclear weapons on high alert status.

8 11. When the Treaty was opened for signatures in 1968, five countries possessed nuclear
 9 weapons and today, nine countries possess them, as set forth herein. Current studies indicate that even a
 10 regional nuclear war between India and Pakistan, neither of which possessed nuclear weapons when the
 11 Treaty entered into force, would likely result in two billion deaths worldwide as a result of nuclear
 12 famine.

13 12. As summed up by two former presidents, the harm is real and cannot be ignored without
 14 grave consequences:

15 Every man, woman and child lives under a nuclear sword of Damocles, hanging by the
 16 slenderest of threads, capable of being cut at any moment by accident, or miscalculation,
 17 or by madness. The weapons of war must be abolished before they abolish us.

18 President John F. Kennedy, 1961.

19 “A nuclear war cannot be won and must never be fought.”

20 President Ronald Reagan, 1984.

21 **II. PARTIES**

22 13. The Republic of the Marshall Islands is a non-nuclear-weapon state party to the Treaty.
 23 The Marshall Islands acceded to the Treaty as a party on or about January 30, 1995, and has continued
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 28 ⁵ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. Reports*, p. 226,
 105(2)F, at 267 (July 8, 1996).

1 to be a party to it since that time. While cessation of the nuclear arms race and nuclear disarmament are
2 vitally important objectives to the entire international community, the Marshall Islands has a particular
3 awareness of the dire consequences of nuclear weapons. The Marshall Islands was the location of
4 repeated nuclear weapons testing from 1946 to 1958, during the time that the international community
5 had placed it under the trusteeship of the U.S. During those 12 years, approximately 67 nuclear
6 weapons, of varying explosive power, were detonated in the Marshall Islands, at varying distances from
7 human populations. According to the September 3, 2012 Report of Calin Georgescu, a Special
8 Rapporteur to the UN Human Rights Council, the devastating adverse impact on the Marshall Islands of
9 those nuclear substances and wastes continues to this day.⁶ The Special Rapporteur concludes that “the
10 harm suffered by the Marshallese people has resulted in an increased global understanding of the
11 movement of radionuclides through marine and terrestrial environments,” and urges the international
12 community to “learn from the Marshallese experience with nuclear contamination, particularly
13 the...understanding of the relationship between radioiodine and thyroid cancer.” To be clear, this
14 Complaint is *not directed* at compensation for such testing or its continuous effects, nor at the
15 continuing testing in the Marshall Islands by the U.S. of its nuclear weapons delivery systems. This
16 background is provided to explain in part the Marshall Islands’ first-hand experience of the long term
17 lethal effects of nuclear weapons, as well as its interest as a party to the NPT, in enforcement of the
18 obligations under Article VI of the NPT, as set forth more fully herein. The Marshall Islands is
19 thousands of miles from the United States, with limited access to air transportation to the United States.
20 Travel for this case to the west coast of the United States would save the Marshall Islands significant
21 time, energy and money as compared to travel anywhere else in the United States.
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27 ⁶ U.N. Rep. of the Special Rapporteur of the implications for human rights of the environmentally sound
28 management and disposal of hazardous substances and wastes, 21st Sess., Mar. 27-Mar. 30, Apr. 24-
Apr. 27, 2012, U.N. Doc. /HRC/21/48/Add.1; GE.12-16376.

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1 14. Defendant THE UNITED STATES OF AMERICA is a party to the Treaty.

2 15. Defendant BARACK OBAMA is the President of the United States of America, and is
3 named solely in his official capacity.

4 16. Defendant THE DEPARTMENT OF DEFENSE (“DOD” or “DoD”) is an agency of the
5 U.S. and is charged with coordinating and supervising all agencies and functions of the government
6 relating directly to national security and the military. The organization and functions of the DOD are set
7 forth in Title 10 of the United States Code. Part of what the DOD does is maintain an ever more
8 powerful and effective nuclear arsenal and prepare to field U.S. nuclear forces for decades to come.

9 17. Defendant CHARLES HAGEL is the current Secretary of Defense, and is named solely
10 in his official capacity. The Secretary of Defense exercises authority, direction and control over the
11 DOD. The Secretary of Defense is a member of the President’s Cabinet and of the National Security
12 Council. 50 U.S.C. § 3021.

13 18. Defendant THE DEPARTMENT OF ENERGY (“DOE”) is an agency of the U.S. and it
14 maintains and enhances U.S. nuclear weapons capabilities.

15 19. Defendant ERNEST MONIZ is the current Secretary of Energy, and is named solely in
16 his official capacity. The Secretary of Energy is responsible for all matters of direct concern to the
17 DOE, including maintaining, enhancing and building U.S. nuclear weapons. The Secretary of Energy
18 exercises authority, direction and control over the DOE. The Secretary of Energy is a member of the
19 President’s Cabinet and of the National Security Council. 50 U.S.C. § 3021.

20 20. Defendant THE NATIONAL NUCLEAR SECURITY ADMINISTRATION (“NNSA”)
21 is a DOE agency. NNSA is responsible for the management of U.S. nuclear weapons, and part of its
22 mission is to enhance U.S. nuclear weapons and contract for new nuclear production operations and
23 facilities, and newer, stronger and more reliable nuclear weapons of mass destruction, and their delivery
24 systems.

1 the United States, and Treaties made, or which shall be made, under their Authority; . . . [and to]
 2 Controversies to which the United States shall be a Party.” Const. Art. III § 2, cl. 1.

3 26. As the Supreme Court has confirmed, not only do federal courts “have the authority to
 4 construe international treaties and executive agreements,” they “cannot shirk this responsibility merely
 5 because [the] decision may have significant political overtones.” *Japan Whaling Ass’n v. Am. Cetacean*
 6 *Soc’y*, 106 S. Ct. 2860, 2866 (1986). Resolution of the claims in this case “demands careful
 7 examination of the textual, structural, and historical evidence [to be] put forward by the parties

8 This is what courts do,” and they do so even when the claims are against current members of the
 9 Executive. *See Zivotofsky v. Sec’y of State*, 132 S. Ct. 1421, 1430 (2012). In addition, the federal courts
 10 are empowered to determine whether the Executive, or its Administration, is in breach of a treaty. *E.g.*,
 11 *Hamdan v. Rumsfeld*, 126 S. Ct. 2749 (2006). It is the federal courts, and not the Executive, who have
 12 the final authority on both treaty interpretation and whether the U.S. is in breach of its treaty obligations.
 13

14
 15 **B. Venue**

16 27. Venue is proper in this District under 28 U.S.C. § 1391(e)(1), which provides, in
 17 pertinent part, that “[a] civil action in which a defendant is . . . an agency of the United States, or the
 18 United States, may, except as otherwise provided by law, be brought in any judicial district in which . . .
 19 a defendant in the action resides.” Defendant, the United States of America, is deemed to reside in this
 20 district because it is subject to this Court’s personal jurisdiction in this action. 28 U.S.C. § 1391(c)(2).
 21 Likewise, Defendants DOD, DOE and NNSA are deemed to reside in this District because each is
 22 subject to this Court’s personal jurisdiction in this action.
 23

24 28. Venue also is proper in this District under 28 U.S.C. § 1391(e)(1) because a substantial
 25 part of the events or omissions giving rise to the claims occur or occurred in this District.

26 29. Defendant NNSA has eight operational facilities in this Country, three of which are
 27 nuclear weapons labs. Of the three nuclear weapons labs, one is in this District, in Livermore,
 28

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1 California. Work at the Livermore location includes oversight of the NNSA Lawrence Livermore
2 National Weapons Design Lab (the “Livermore Lab”). As set forth below, the U.S. nuclear weapons
3 modernization programs, including the work at the Livermore Lab, constitute a breach of U.S. Treaty
4 obligations.

5
6 30. In addition to nuclear weapons design work, one of the responsibilities of the Livermore
7 Lab is to support the refurbishment of the U.S. nuclear stockpiles, and enhance the reliability of the
8 nuclear explosives package. Upon information and belief, the 2013 budget for the nuclear weapons
9 segment of the work at the Livermore Lab was approximately \$1 billion. Upon information and belief,
10 there is not an NNSA nuclear weapons lab in the District of Columbia.

11 31. The U.S. rejects compulsory jurisdiction of the ICJ, and considers judgments of the ICJ
12 to not be binding on the U.S. Accordingly, if federal court is not the appropriate venue for the Plaintiff
13 Nation to seek resolution of the interpretation of the Treaty, and the United States’ breach of the Treaty,
14 then, according to the U.S., no other legal venue exists for such resolution.

15
16 32. *Intradistrict Assignment.* As explained above, a substantial part of the events or
17 omissions giving rise to the claims occur or occurred at Livermore Labs in Livermore, California.
18 Livermore, California is within Alameda County, making assignment to the San Francisco Division of
19 this United States District Court appropriate and proper. *See* Local Civil Rule 3-2(d)

20
21 **IV. BACKGROUND**

22 **A. The Creation, Testing and Use of Nuclear Weapons before the Treaty**

23 33. The U.S. was the first country in the world to develop and test nuclear weapons, and it
24 conducted the first successful test of a nuclear explosive device on July 16, 1945. It used nuclear
25 weapons in warfare on the Japanese cities of Hiroshima and Nagasaki on August 6, 1945 and August 9,
26 1945, respectively. The United States was the sole possessor of nuclear weapons in the world until the
27 Soviet Union tested its first nuclear weapon on August 29, 1949.

1 34. In 1952, the United Kingdom (or “UK”) tested its first nuclear weapon. In 1960, France
2 tested its first nuclear weapon, and in 1964, China tested its first nuclear weapon.

3 35. On November 1, 1952, the U.S. detonated the world’s first thermonuclear weapon—a
4 hydrogen bomb—on Eniwetok atoll, an atoll in the Marshall Islands.⁷ The blast had an explosive yield
5 of 10.4 megatons, over 400 times the destructive force of the bomb the U.S. dropped on Hiroshima.⁸
6

7 **B. The Treaty and its Obligations**

8 **1. The Grand Bargain**

9 36. In the 1960s, negotiations eventuated in agreement on the Nuclear Non-Proliferation
10 Treaty. The U.S., Russia, the UK, France and China, all Parties to the NPT, are the only States meeting
11 the Treaty’s definition of a “nuclear-weapon State” for “the purposes of this Treaty.”⁹

12 37. The Treaty was opened for signatures on July 1, 1968, and entered into force on March 5,
13 1970. President Lyndon Johnson signed the Treaty on or about July 1, 1968. The Senate voted to
14 consent to ratification by the U.S. on or about March 13, 1969, by a vote of 83 to 15. President Richard
15 Nixon signed the ratification documents for the Treaty on or about November 24, 1969.
16

17 38. The Treaty reflects the grand bargain made by the parties to it: the non-nuclear weapon
18 States agreed not to acquire nuclear weapons and the States possessing nuclear weapons agreed to
19 negotiate their elimination.¹⁰
20

21 _____
22 ⁷ See ‘Mike’ Test, PBS, <http://www.pbs.org/wgbh/amex/bomb/peoplevents/pandeAMEX63.html> (last
23 visited February 19, 2014).

24 ⁸ *The United States’ Nuclear Testing Programme*, CTBTO PREPARATORY COMMISSION,
25 [http://www.ctbto.org/nuclear-testing/the-effects-of-nuclear-testing/the-united-states-nuclear-testing-
26 programme](http://www.ctbto.org/nuclear-testing/the-effects-of-nuclear-testing/the-united-states-nuclear-testing-programme)

27 ⁹ Article IX.3 of the NPT provides: “For the purposes of this Treaty, a nuclear-weapon State is one
28 which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1
January 1967”.

¹⁰ Thomas Graham, Correspondence, *The Origin and Interpretation of Article VI*, Vol.15, No. 1,
NONPROLIFERATION REV. 7, 9 (2008), available at
http://cns.miis.edu/npr/pdfs/151_correspondence.pdf; 2010 Review Conference of the Parties to the

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39. As part of that grand bargain, Article VI of the Treaty states, in its entirety:

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

40. Nowhere in the Treaty are the Article VI obligations of the U.S. conditioned on the discretion or value determinations of U.S. leaders.

41. Moreover, as is clear from the terms of the Treaty, no executing legislation by the U.S. was required for the Treaty obligations to go into effect, and the U.S. has never claimed to the contrary, including in pursuit of enforcement of the non-Article VI obligations of the Treaty.

42. The U.S. President has the obligation to ensure that Article VI of the Treaty be “faithfully executed.” See Restatement (Third) of Foreign Relations Law § 111 cmts. a and c. (1987). As set forth above, under the Supremacy Clause of the Constitution, treaties are part of the supreme law of the land. If the President fails to faithfully execute the terms of the Treaty, then the U.S. is in breach of its Treaty obligations as well as in breach of the supreme law of the U.S.

2. The International Court of Justice Interpretation of the NPT

43. In 1996, the International Court of Justice interpreted the Treaty and issued an Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons. The ICJ declared that Article VI involves “an obligation to achieve a precise result – nuclear disarmament in all its aspects – by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith.”¹¹ The ICJ went on to conclude, *unanimously*, that “[t]here 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

Treaty on the Non-Proliferation of Nuclear Weapons, New York, May 3-12, 2010, *Final Document*, U.N. Doc. NPT/CONF.2010/50 (Vol. 1), pp. 19-20 (2010).

¹¹ *Supra*, n. 5, para. 99.

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1 effective control.”¹² This “recognizes that the provisions of Article VI . . . go beyond mere obligations
2 of conduct—to pursue nuclear disarmament negotiations in good faith—and actually involve an
3 obligation of result, *i.e.*, to conclude those negotiations.”¹³

4 44. The ICJ observed that “fulfilling the obligation expressed in Article VI . . . remains
5 without any doubt an objective of vital importance to the whole of the international community today.”¹⁴
6

7 45. Article VI is the “only treaty provision in which NWS [nuclear-weapon States] have
8 undertaken a legal obligation to negotiate nuclear disarmament agreements”¹⁵ and is considered “the
9 single most important provision of the treaty . . . from the standpoint of long-term success or failure of
10 its goal of proliferation prevention.”¹⁶

11 46. The United States does not recognize judgments of the ICJ as binding domestic law in all
12 circumstances, but does recognize that, even where they are not binding domestic obligations, ICJ
13 judgments constitute international obligations. Moreover, even where an ICJ judgment is not
14 enforceable as domestic law, the underlying treaty may still be enforceable in federal court.
15

16 47. If the U.S. claims that Article VI of the NPT is not a binding domestic obligation, then
17 the non-nuclear-weapon States parties to the Treaty are entitled to know that the U.S. makes such a
18 claim. And, even if the NPT were found not to be a binding domestic obligation, it remains an
19 international obligation and the U.S. is not relieved of the consequences of its violation of its
20 international obligation.
21

22
23 ¹² *Supra*, n. 5, para. 105 (2) F.

24 ¹³ M. Marin Bosch, “*The Non-Proliferation Treaty and its Future*”, in INTERNATIONAL LAW, THE
25 INTERNATIONAL COURT OF JUSTICE AND NUCLEAR WEAPONS 375 (L. Boisson de Chazournes and P.
Sands 1999).

26 ¹⁴ *Supra*, n. 5, para. 103.

27 ¹⁵ *Supra*, n. 13 at 388.

28 ¹⁶ E. Firmage, *The Treaty on the Non-Proliferation of Nuclear Weapons*, 63 AM. J. INT’L L. 711, 732
(1969).

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1 48. Because they are agreements among nations, federal courts interpreting treaties consider
2 post-ratification understandings of the nations that are parties to the treaties. Postratification
3 understandings of the NPT are reflected in part in Final Documents from the Treaty Review
4 Conferences, which occur every five years.

5
6 **3. The Treaty Review Conferences**

7 49. In the Final Document of the 2000 Treaty Review Conference, the parties agreed by
8 consensus, *inter alia*, upon, “An unequivocal undertaking by the nuclear-weapon States to accomplish
9 the total elimination of their nuclear arsenals leading to nuclear disarmament to which all States parties
10 are committed under Article VI.”¹⁷ “This provision has considerable legal weight; it represents the
11 practice and agreement of states bearing directly and specifically upon the interpretation of article VI.”¹⁸

12 50. The 2005 Treaty Review Conference failed to reach agreement on a Final Document and
13 was generally considered a failure by the parties to the Treaty.

14 51. In the 2010 Treaty Review Conference Final Document, the parties resolved in Action 1
15 as follows: “All States parties commit to pursue policies that are fully compatible with the Treaty and
16 the objective of achieving a world without nuclear weapons.”¹⁹

17 52. Further, in the 2010 Treaty Review Conference Final Document, the parties resolved in
18 Action 3 as follows: “In implementing the unequivocal undertaking by the nuclear-weapon States to
19 accomplish the total elimination of their nuclear arsenals, the nuclear-weapon States commit to
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24 ¹⁷ 2000 Review Conference of the Parties of the Treaty on the Non-Proliferation of Nuclear Weapons,
25 New York, April 24-May 19, 2000, *Final Document*, U.N. Doc. NPT/CONF.2000/28 (Vol. 1), p. 14
(2000).

26 ¹⁸ John Burroughs, *International Law*, in Ray Acheson, ed., *Assuring Destruction Forever: Nuclear
27 Weapon Modernization Around the World (Reaching Critical Will – a project of the Women’s
International League for Peace and Freedom, 2012)*, p. 119.

28 ¹⁹ See 2010 Review Conference *supra* n. 10 at p. 20.

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1 undertake further efforts to reduce and ultimately eliminate all types of nuclear weapons, deployed and
2 non-deployed, including through unilateral, bilateral, regional and multilateral measures.”²⁰

3 **C. Good Faith is an Objective Legal Duty**

4 53. As set forth above, the U.S. has a legally binding obligation under Article VI of the
5 Treaty to pursue its negotiations “in good faith.”

6 54. Good faith is not some qualitatively subjective standard. It has real meaning. In the
7 context of Article VI of the Treaty, good faith imposes a standard of objective reasonableness.”²¹

8 Moreover, “[a] significant practical consequence of the ‘good faith’ principle is that a party which
9 committed itself in good faith to a course of conduct . . . would be estopped from acting inconsistently
10 with its commitment. . . .”²²

11 55. As set forth in The Restatement of Law of Contracts, promulgated by the American Law
12 Institute:

13
14
15 Good faith performance or enforcement of a contract emphasizes faithfulness to an
16 agreed common purpose and consistency with the justified expectations of the other
17 party; it excludes a variety of types of conduct characterized as involving ‘bad faith’
18 because they violate community standards of decency, fairness or reasonableness. . . . A
19 complete catalogue of types of bad faith is impossible, but the following types are among
20 those which have been recognized in judicial decisions: evasion of the spirit of the
21 bargain, lack of diligence and slacking off, willful rendering of imperfect performance,
22 abuse of a power to specify terms, and interference with or failure to cooperate in the
23 other party’s performance.²³

24 56. Moreover, and significantly, “evasions violate the obligation of good faith in
25 performance even though the actor believes his conduct to be justified.”²⁴ Thus the U.S. may be found
26 to be in violation of the Treaty even if the Executive believes that such violation is justified.

27 ²⁰ *Id.*

28 ²¹ *Supra*, n. 3.

²² *Id.* at p. 157.

²³ RESTATEMENT (SECOND) OF CONTRACTS § 205 cmts. a and d (1981).

²⁴ *Id.* at cmt. d.

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1 57. With respect to Article VI of the Treaty, good faith “requires refraining from actions
2 undermining the achievement of the disarmament objective,”²⁵ such as modernization of nuclear forces
3 and infrastructure to last for the foreseeable future.

4 58. Courts routinely apply the good faith standard and judge the good faith of parties, and the
5 standard of good faith is a judicially manageable standard.

6 59. The Plaintiff Nation is not asking the court to make any initial policy determination
7 reserved to the Executive. The Plaintiff Nation is asking the court to determine whether the actions of
8 the U.S. constitute a breach of the Treaty. Either they do or they do not. Neither answer constitutes a
9 policy determination.
10

11 **V. THE U.S. IS IN CONTINUING BREACH OF THE TREATY**

12 60. This Complaint is supported by the Declaration of Burns H. Weston, attached hereto as
13 Exhibit A, and incorporated herein by this reference.
14

15 **A. The U.S. is in Continuing Breach of its Obligation to Pursue Negotiations in Good Faith on
16 Effective Measures Relating to the Cessation of the Nuclear Arms Race at an Early Date**

17 61. The two atom bombs that the U.S. dropped on Hiroshima and Nagasaki in 1945 were
18 quite small compared to the nuclear weapons the U.S. maintains today.

19 62. As set forth above, under the Treaty the U.S. has a legally binding obligation “to pursue
20 negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early
21 date.”
22
23

24 _____
25 ²⁵ Elizabeth Shafer, *International Humanitarian Law and the Nuclear Disarmament Obligation of NPT*
26 *Article VI: Good Faith as Key in a Concerted Contextual Commitment to Abolition*, PAPER PREPARED
27 FOR THE VANCOUVER CONFERENCE: HUMANITARIAN LAW, HUMAN SECURITY: THE EMERGING
28 PARADIGM FOR NON-USE AND ELIMINATION OF NUCLEAR WEAPONS FEBRUARY 10-11, 2011, 6 (2011),
<http://www.lcnp.org/wcourt/Feb2011VancouverConference/papershafer.pdf> (citing Charles J. Moxley
et al., *Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-
Proliferation Treaty*, 34 FORDHAM INT’L L.J. 595, 693 (2011)).

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1 63. More than 44 years have passed since the entry into force of the Treaty and the U.S. has
2 not pursued negotiations in good faith on effective measures relating to the cessation of the nuclear arms
3 race at an early date. In fact, “an early date” has long since passed. Rather, as detailed herein, the U.S.
4 still continues to modernize and upgrade its nuclear weapons arsenal and to develop programs for
5 extending the life of its nuclear weapons for decades to come, demonstrating that it remains engaged in a
6 nuclear arms race. These modernizations and upgrades, to be sure, include enhancing the “capabilities”
7 of the U.S. nuclear weapons. Such modernizations and upgrades constitute what is known as nuclear
8 “vertical proliferation.”
9

10 64. Although the U.S. negotiated the Comprehensive Nuclear-Test-Ban Treaty (“CTBT”)
11 and signed it in 1996, it failed to ratify the treaty. Instead, after the 2000 Treaty Review Conference and
12 before the 2005 Treaty Review Conference, the U.S. announced it would not seek Senate ratification of
13 the CTBT. During the same time period, the U.S. also withdrew from the 1972 Anti-Ballistic Missile
14 Treaty, paving the way for further testing and deployment of missile defense systems that would help
15 drive the continued nuclear arms race.
16

17 65. Following signing the CTBT, the U.S. conducted subcritical nuclear tests. The first
18 subcritical nuclear experiment was conducted by the U.S. on July 2, 1997. To date, the U.S. has
19 conducted at least 26 subcritical nuclear experiments.
20

21 66. Two ongoing nuclear modernization programs in the U.S., the W78 Life Extension
22 Program (“LEP”) and the B61-12 LEP, demonstrate that the U.S. continues to build nuclear weapons
23 with new military characteristics that are capable of being deployed for an additional thirty years or
24 more. Simultaneous plans by the U.S., including by and through its Nuclear Weapons Agencies, to
25 design, manufacture, and deploy new generations of bombers, submarines, and land-based missiles
26 demonstrate that the U.S. plans to rely on nuclear weapons for decades to come.
27
28

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67. U.S. modernization of its own nuclear forces and deployment of missile defense installations have been significant factors in keeping the nuclear arms race alive and in spurring the modernization of the nuclear forces of other States.

68. On April 5, 2009, President Obama, in a speech in Prague, Czech Republic, said, “So today, I state clearly and with conviction America’s commitment to seek the peace and security of a world without nuclear weapons.” He continued, “This goal will not be reached quickly—perhaps not in my lifetime.”²⁶

69. Based on government documentation, one NGO summarized the modernization programs for the U.S. Department of Defense and the U.S. National Nuclear Security Administration in the following tables.²⁷

US NUCLEAR MODERNIZATION PROGRAMS

Department of Defense Programs				
System	Modernization Plan	Costs	Length of Deployment	Additional Information
Minuteman III ICBM	Modernization and Replacement Program	\$7 billion	through 2030 and possibly longer	Modernizes the propellant, guidance systems, propulsion system, targeting system, reentry vehicles and continues work on the rocket motors
Next ICBM	ICBM follow on study	\$10 billion (FY 2014-2023)		Analysis of Alternatives will be completed in 2014, at which point the Air Force will determine if it will go forward with the program
B-2 Bomber	Modernization Program	\$9.5 billion (FY 2000-2014)	2050s	Improves radar and high frequency satellite communications capabilities for nuclear command and control
B-52H Bomber	On-going modifications		2040s	Incorporates global positioning systems, updates computers and modernizes heavy stores adapter beams, and a full array of advance weapons

²⁶ President Barack Obama, Remarks in Prague, Czech Republic (Apr. 5, 2009), <http://prague.usembassy.gov/obama.html>.

²⁷ Arms Control Association, *US Nuclear Modernization Programs* (Jan. 2014), <http://www.armscontrol.org/factsheets/USNuclearModernization#chart>.

Long Range Strike Bomber	Research and development phase	\$32 billion (FY 2014-2023)		The exact specifications of the new bomber are yet to be determined
Long Range Standoff Cruise Missile	Replacement for the ALCM	\$10-20 billion (estimated)		Air Force is completing the Analysis of Alternatives.
SSBNX	New ballistic missile submarine	\$100 billion (estimated)	2031 - 2080s	Replacement submarine for the existing Ohio-class SSBN
Trident II D5 SLBM LEP	Modernization and life extension		2042	
Department of Energy - NNSA Weapons Activities				
System	Modernization Plan	Costs	Length of Deployment	Additional Information
W76	Life Extension Program	\$4 billion	2040-2050	Scheduled for completion in 2018
B61 - 3/4/7/10	Life Extension Program	\$10 billion	2040s	Scheduled for completion in 2023
W78	Life Extension Program	\$5 billion	2050s	Scheduled for completion in 2025
W88	Life Extension Program			Scheduled to begin in FY 2016 and end in FY 2031

B. The U.S. is in Continuing Breach of its Obligation to Pursue Negotiations in Good Faith on Effective Measures Relating to Nuclear Disarmament

70. One of the reasons why the Marshall Islands became a party to the NPT is that this Treaty is the key instrument of the international community for ridding the world of nuclear weapons.²⁸ The Treaty contains the solemn promise and legal obligation of the parties to Treaty to sit down and

²⁸ Hon. Mr. Phillip Muller, former Minister of Foreign Affairs, Republic of the Marshall Islands, Statement at the U.N. High-Level Meeting on Nuclear Disarmament (Sept. 26, 2013) (Hon. Mr. Phillip Muller stated that the Marshall Island's "deeper purpose" is "that no nation and people should ever have to bear witness to the burden of exposure to the devastating impacts of nuclear weapons."), http://www.un.org/en/ga/68/meetings/nucleardisarmament/pdf/MH_en.pdf.

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1 negotiate towards total nuclear disarmament. The United States has broken that promise and failed to
2 meet its obligations under the Treaty.

3 71. The 2010 Nuclear Posture Review Report carried forward longstanding US policy. It
4 states that the “fundamental role of U.S. nuclear weapons . . . is to deter nuclear attack on the United
5 States, our allies, and partners.”²⁹ However, with respect to “states that possess nuclear weapons and
6 states not in compliance with their nuclear non-proliferation obligations[,] there remains a narrow range
7 of contingencies in which U.S. nuclear weapons may still play a role in deterring a conventional or
8 CBW [chemical or biological weapon] attack against the United States or its allies and partners.”³⁰ The
9 Report adds that the “United States wishes to stress that it would only consider the use of nuclear
10 weapons in extreme circumstances to defend the vital interests of the United States or its allies and
11 partners.”³¹

12
13
14 72. As set forth above, under the Treaty the U.S. has a legally binding and unconditional
15 obligation “to pursue negotiations in good faith on effective measures relating to . . . nuclear
16 disarmament.” Despite this, as set forth below, the U.S. has attempted to condition its Article VI
17 obligations on, *inter alia*, improved results in non-proliferation.

18 73. The U.S. has always voted “NO” on the UN General Assembly’s Resolution on “Follow-
19 up to the advisory opinion of the International Court of Justice on the legality of the threat or use of
20

21
22
23 ²⁹ U.S. DEPARTMENT OF DEFENSE, NUCLEAR POSTURE REVIEW REPORT, p. 15 (Apr. 2010),
<http://www.defense.gov/npr/docs/2010%20nuclear%20posture%20review%20report.pdf>.

24 ³⁰ *Id.* at 16.

25 ³¹ *Id.*; U.S. DEPARTMENT OF DEFENSE, REPORT ON NUCLEAR EMPLOYMENT STRATEGY OF THE UNITED
26 STATES SPECIFIED IN SECTION 491 OF 10 U.S.C. (June 12, 2013),
27 http://www.defense.gov/pubs/ReporttoCongressonUSNuclearEmploymentStrategy_Section491.pdf (A
28 2013 presidential nuclear weapons employment guidance); *See also* HANS M. KRISTENSEN AND
ROBERT S. NORRIS, BULLETIN OF THE ATOMIC SCIENTISTS: U.S. NUCLEAR FORCES, 2014 (Sage
Publications, Jan. 6, 2014), <http://bos.sagepub.com/cgi/reprint/70/1/85>.

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1 nuclear weapons.” The Resolution, adopted every year since 1996,³² underlines the ICJ’s unanimous
2 conclusion that there is an obligation to pursue negotiations leading to nuclear disarmament and calls on
3 States to immediately fulfill that obligation by commencing multilateral negotiations leading to the early
4 conclusion of a Nuclear Weapons Convention.

5
6 74. On April 27, 2004, John Bolton testified on behalf of the Bush Administration with
7 respect to the nonproliferation obligations under the Treaty (not the disarmament obligations). Mr.
8 Bolton confirmed the obvious, that nuclear weapons are weapons of mass destruction, by stating, in
9 pertinent part:

10 We cannot hope the problem will go away. We cannot leave it to “the other guy” to carry
11 the full measure of the challenge of demanding full compliance. We cannot divert
12 attention from the violations we face If a party cares about the NPT, then there is a
13 corresponding requirement to care about violations and enforcement. . . . [T]he time for
14 business as usual is over. An irresponsible handful of nations not living up to their Treaty
15 commitments are undermining the NPT’s mission. . . . After all, the Treaty can only be as
16 strong as our will to insist that states comply with it.³³

17 75. The Plaintiff Nation cares deeply about the NPT, and about violations of the NPT by the
18 U.S., and enforcement of the NPT with respect to the U.S.

19 76. In 2006, at the 60th anniversary of the first meeting of the U.N. General Assembly,
20 former Secretary General of the United Nations Kofi Annan directly linked the nuclear weapon
21 countries’ failure to disarm with other countries’ increased efforts at nuclear proliferation, stating as
22 follows: “the more that those states that already have [nuclear weapons] increase their arsenals, or insist
23
24

25 ³² G.A. Res. 68/42, U.N. Doc. A/RES/68/42 (Most recently on Dec. 5, 2013).

26 ³³ John R. Bolton, Under Secretary for Arms Control and International Security, Statement to the Third
27 Session of the Preparatory Committee for the 2005 Review Conference of the Treaty on the Non-
28 Proliferation of Nuclear Weapons in New York City: The N.P.T.: A Crises of Non-Compliance, (April
27, 2004), <http://2001-2009.state.gov/t/us/rm/31848.htm>.

1 that such weapons are essential to their national security, the more other states feel that they too must
2 have them for their security.”³⁴

3 77. In 2010, Ellen Tauscher, then (and now former) U.S. Under-Secretary for Arms Control
4 and International Security, stated as follows:

5 Nuclear disarmament is not the Holy Grail. It’s only worth pursuing in so far as it
6 increases our national security. I believe that the journey on the road to zero is perhaps
7 more important than the goal itself. It’s those concrete steps that we take that will
8 enhance the national security of the United States and make the world a more stable
9 place.³⁵

10 Treaties do not work that way—a party may not legally choose to satisfy its treaty obligations *only when*
11 *and if* they happen to coincide with its other national interests.

12 78. On December 3, 2012, the UN General Assembly decided to establish an Open-Ended
13 Working Group (“OEWG”) to develop proposals to take forward multilateral nuclear disarmament
14 negotiations for the achievement and maintenance of a world without nuclear weapons.³⁶ However, the
15 U.S. voted against the resolution³⁷ and did not attend any of the OEWG’s meetings. Instead, in a joint
16 2013 statement, the U.S. declared that it was “unable to support this resolution, the establishment of the
17 OEWG and any outcome it may produce.”³⁸

18
19 ³⁴ Kofi Annan, Former Secretary General of the United Nations, Remarks at the U.N. 60th Anniversary
20 Event in London, United Kingdom (Jan. 2006).

21 ³⁵ Ellen Tauscher, Former Under Sec’y for Arms Control & Int’l Sec., U.S. Dep’t of State, Remarks at
22 the Global Zero Summit in Paris, France (Feb. 3, 2010), <http://www.state.gov/t/us/136425.htm>
23 (emphasis added); *see also* Peter Weiss, *Taking the Law Seriously: The Imperative Need for a Nuclear*
24 *Weapons Convention*, in NUCLEAR WEAPONS AND COMPLIANCE WITH INTERNATIONAL LAW AND THE
25 NUCLEAR NON-PROLIFERATION TREATY, 34 FORDHAM INT’L L.J., 776, 782-83 (2011), citing same.

26 ³⁶ G.A. Res. 67/56, U.N. Doc. A/RES/67/56 (Jan. 4, 2013) (“Taking forward multilateral nuclear
27 disarmament negotiations for the achievement and maintenance of a world without nuclear weapons”).

28 ³⁷ U.N. GAOR, 67th Sess., 48th plen. Mtg. at 20, U.N. Doc A/67/PV.48 (Dec. 3, 2012) (Along with
France, the Russian Federation and the UK).

³⁸ Guy Pollard, Deputy Permanent Representative of the United Kingdom of Great Britain and Northern
Ireland to the Conference on Disarmament, Explanation of vote on taking forward multilateral nuclear
disarmament negotiations on behalf of France, the United Kingdom and the United States at the 67th
session of the United Nations General Assembly First Committee (Nov. 6,

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1 79. Paradoxically, “states considered at risk of violating the nonproliferation provisions of
2 the NPT are subject to great criticism while those in blatant violation of the disarmament article—
3 currently all five of the nuclear-weapon states parties—are criticized only mildly.”³⁹

4 80. While it has pursued negotiations on strategic arms reductions and has reached
5 agreements with the Soviet Union (and then with its successor State, Russia) to reduce the number of
6 nuclear warheads that are deployed, and delivery systems in their respective arsenals, the U.S. has not
7 engaged in good faith negotiations on effective measures for nuclear disarmament, that is, to disarm its
8 nuclear arsenal. Such negotiations would have the goal of a new treaty, a Nuclear Weapons Convention,
9 for the prohibition and complete elimination of nuclear arms. The U.S. has not engaged in such
10 negotiations in a sustained manner indicative of good faith.

11 81. At a speech at Monterey Institute of International Studies on January 18, 2013, United
12 Nations Secretary General Ban Ki-moon stated as follows:

13 “[N]uclear disarmament progress is off track. Delay comes with a high price tag. The
14 longer we procrastinate, the greater the risk that these weapons will be used, will
15 proliferate or be acquired by terrorists. But our aim must be more than keeping the
16 deadliest of weapons from ‘falling into the wrong hands’. There are no right hands for
17 wrong weapons.”⁴⁰

18 82. During his confirmation hearings, on or about January 24, 2013, John Kerry, now the
19 U.S. Secretary of State, in sworn testimony stated that nuclear disarmament is only “a goal. It’s an
20 aspiration. And we should always be aspirational. . . . But *it’s not something that could happen in*
21

22
23
24 _____
25 2012), [http://www.reachingcriticalwill.org/images/documents/Disarmament-
27 fora/1com/1com12/eov/L46_France-UK-US.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-
26 fora/1com/1com12/eov/L46_France-UK-US.pdf).

28 ³⁹ Tim Wright, *Negotiations for a Nuclear Weapons Convention: Distant Dream or Present Possibility?*
10 MELB. J. INT’L L. 217, 230 (2009) (emphasis added).

⁴⁰ Ban Ki-moon, United Nations Secretary General, Statement at Monterey Institute of International
Studies in Monterey, California: Advancing the Disarmament and Non-proliferation Agenda: Seeking
Peace in an Over-armed World (Jan. 18, 2013), <http://www.un.org/sg/statements/index.asp?nid=6557>.

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1 *today's world. . . .*⁴¹ This calls into question the very Article VI bargain of the NPT. Moreover, “any
2 argument by the United States that the existing treaty really only required that it generally work towards
3 some extremely far off objective of eventual disarmament rings hollow.”⁴²

4 83. At the High-Level Meeting of the U.N. General Assembly on Nuclear Disarmament on
5 September 26, 2013, the Vatican Secretary for Relations with States, Archbishop Dominique Mamberti,
6 stated as follows: “Under the terms of the Non-Proliferation Treaty, states are enjoined to make ‘good
7 faith’ efforts to negotiate the elimination of nuclear weapons. Can we say there is ‘good faith’ when
8 modernization programs of the nuclear weapons states continue despite their affirmations of eventual
9 nuclear disarmament?”⁴³

10 84. Also on September 26, 2013, the U.S. made a joint statement with France and the UK,
11 through UK Minister Alistair Burt, providing that a precondition to effective disarmament negotiations
12 pursuant to Article VI is now a strong and effective non-proliferation regime, including with respect to
13 nonparties to the Treaty.⁴⁴ *This precondition is nowhere contained in the Treaty.* The U.S. position on
14 this issue, moreover, creates a paradox whereby (i) U.S. continued reliance on nuclear weapons (and
15 opposition to the initiation of negotiations for complete disarmament) leads to proliferation, including by
16 nonparties to the Treaty, while (ii) the U.S. insists that effective nonproliferation with respect to
17 nonparties to the Treaty is now a precondition to effective disarmament negotiations under the Treaty.
18
19
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21

22 ⁴¹ Available at <http://www.cnn.com/2013/01/24/politics/kerry-nomination/> (emphasis added).

23 ⁴² Ronald J. Sievert, *Working Toward a Legally Enforceable Nuclear Non-Proliferation Regime*, 34
24 *FORDHAM INT’L L.J.* 93, 95 (2010).

25 ⁴³ Thomas C. Fox, *Vatican Challenges Nuclear Powers’ Disarmament Efforts*, NATIONAL CATHOLIC
26 *REPORTER*, Sept. 27, 2013, [http://ncronline.org/blogs/ncr-today/vatican-challenges-nuclear-powers-](http://ncronline.org/blogs/ncr-today/vatican-challenges-nuclear-powers-disarmament-efforts)
27 [disarmament-efforts.](http://ncronline.org/blogs/ncr-today/vatican-challenges-nuclear-powers-disarmament-efforts)

28 ⁴⁴ Alistair Burt, Minister, Parliamentary Under Secretary of State United Kingdom of Great Britain and
Northern Ireland, Statement to the United Nations General Assembly High Level Meeting on Nuclear
Disarmament on behalf of France, the United Kingdom and the United States (Sept. 26, 2013),
http://www.un.org/en/ga/68/meetings/nucleardisarmament/pdf/GB_en.pdf.

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1 85. Angela Kane, the U.N. High Representative for Disarmament Affairs, speaking to civil
2 society groups about nuclear disarmament on October 28, 2013, stated as follows: “Even today, some
3 17,000 of these weapons still remain, with thousands of them on high-alert status or subject to ‘first use’
4 nuclear doctrines. These weapons are still deployed abroad in countries that are officially called non-
5 nuclear-weapon States. We also have the Nuclear Non-Proliferation Treaty, which has a provision
6 requiring all its parties to undertake negotiations in good faith on nuclear disarmament—but those
7 negotiations have never taken place in the 43-year history of that treaty.”⁴⁵

9 86. As Nobel Laureate and Professor Sir Joseph Rotblat has emphasized: “If some nations –
10 including the most powerful militarily – say that they need nuclear weapons for their security, then such
11 security cannot be denied to other countries which really feel insecure. Proliferation of nuclear weapons
12 is the logical consequence of this nuclear policy.”⁴⁶

14 87. As the ICJ unanimously concluded in 1996, “[t]here exists an obligation to pursue in
15 good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under
16 strict and effective international control.”⁴⁷ The U.S. has not brought to conclusion negotiations for
17 “nuclear disarmament in all its aspects,” as required by Article VI of the Treaty and as defined by the
18 ICJ. In fact, the U.S. has never once, during the 44 year history of the Treaty, convened, or even called
19 for, such negotiations to begin.

24 ⁴⁵ Angela Kane, High Representative for Disarmament Affairs, United Nations Office for Disarmament
25 Affairs, Keynote Address at the Meeting of United Nations Luncheon in New York: Nuclear Weapons:
26 Threats and Solutions (Oct. 28, 2013), https://unoda-web.s3.amazonaws.com/wp-content/uploads/2013/10/HR_GSI_event.pdf.

27 ⁴⁶ JOSEPH ROTBLAT, SCIENCE AND NUCLEAR WEAPONS: WHERE DO WE GO FROM HERE? THE
BLACKABY PAPERS 7 (2004).

28 ⁴⁷ *Supra*, n. 5.

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1 **C. The U.S. Breach of the Treaty Deprives the Plaintiff Nation of the Benefit of Its Bargain**

2 88. The U.S. breach of the Treaty causes increased proliferation of nuclear weapons and
3 measurable increased risks associated with such proliferation.

4 89. The fact that increased risks caused by the U.S. breaches of the Treaty are real and put
5 the peoples of the Marshall Islands, and others, in unacceptably grave danger, is not a partisan issue. In
6 a January 15, 2008 Article written by George P. Shultz, William J. Perry, Henry A. Kissinger and Sam
7 Nunn, the authors jointly note the following:

8
9 In some respects, the goal of a world free of nuclear weapons is like the top of a very tall
10 mountain. From the vantage point of our troubled world today, we can't even see the top
11 of the mountain, and it is tempting and easy to say we can't get there from here. But the
12 risks from continuing to go down the mountain or standing pat *are too real to ignore*. We
13 must chart a course to higher ground where the mountaintop becomes more visible.⁴⁸

14 90. Former Defense Secretary Robert McNamara stated in 2005: "I would characterize
15 current U.S. nuclear weapons policy as immoral, illegal, militarily unnecessary and dreadfully
16 dangerous."⁴⁹

17 91. Also in 2005, former President Jimmy Carter stated in an Op-Ed to the Washington Post:
18 "While claiming to be protecting the world from proliferation threats in Iraq, Libya, Iran and North
19 Korea, American leaders not only have abandoned existing treaty restraints but also have asserted plans
20 to test and develop new weapons."⁵⁰

21 92. The failure by the U.S. to honor its Article VI obligations to pursue negotiations in good
22 faith toward disarmament denies Plaintiff Nation of a substantial portion of the benefit to which it is
23 entitled as non-nuclear-weapon State party to the Treaty. Plaintiff Nation has assiduously honored their

24
25 ⁴⁸ George P. Shultz et al., *Toward a Nuclear-Free World*, THE WALL STREET JOURNAL, Jan. 15, 2008,
<http://online.wsj.com/news/articles/SB120036422673589947> (emphasis added).

26 ⁴⁹ Robert S. McNamara, *Apocalypse Soon*, FOREIGN POLICY, May 5, 2005,
http://www.foreignpolicy.com/articles/2005/05/05/apocalypse_soon.

27 ⁵⁰ Jimmy Carter, *Saving Nonproliferation*, THE WASHINGTON POST, Mar.28, 2005,
28 <http://www.washingtonpost.com/wp-dyn/articles/A5754-2005Mar27.html>.

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1 obligations under the Treaty so as to promote non-proliferation. It has done so in the belief and
2 expectation that the U.S. would honor its Treaty commitment with respect to disarmament. The
3 continuing failure by the U.S. to honor its Article VI commitments, and the U.S.'s apparent effort to
4 impose conditions on those commitments, including but not limited to conditions that specifically
5 involve nonparties to the Treaty, leaves Plaintiff Nation exposed to the dangers of existing nuclear
6 arsenals and the real probability that additional States will develop nuclear arms, as they have in the
7 past. As a party to the Treaty who has unquestionably honored its non-proliferation obligations,
8 Plaintiff Nation is entitled to the benefit of its Treaty bargain: Negotiations in good faith by the U.S. on
9 effective measures relating to nuclear disarmament.
10

11 93. The declaratory relief sought herein by Plaintiff Nation will redress the harm that it is
12 suffering because it will constitute a binding domestic judicial determination of the obligations of the
13 U.S. set forth in Article VI. Plaintiff Nation believes that with such a determination in place, it may best
14 determine its next steps in pursuit of the grand bargain represented by the Treaty. Moreover, should the
15 U.S., following declaratory and/or injunctive relief by the Court, conform its conduct to that required by
16 Article VI, it would provide for Plaintiff Nation a measure, currently lacking, of that conduct for which
17 it contracted under the Treaty.
18

19 **VI. CAUSES OF ACTION**

20 **COUNT I: DECLARATORY JUDGMENT**

21 94. Plaintiff Nation repeats and re-alleges each and every allegation contained above as if
22 fully set forth herein.
23

24 95. Article VI of the NPT creates obligations on the part of all parties to the NPT, including
25 specifically those parties possessing nuclear weapons, such as the U.S.

26 96. The legal interpretation of the NPT is not a policy determination to be made or changed
27 each term by the elected United States Executive. On the contrary, it is a legal interpretation that is
28

1 “emphatically the province and duty of the judicial department” of this Nation. *Marbury v. Madison*, 5
2 U.S. (Cranch 1) 137, 177 (1803).

3 97. Plaintiff Nation, who is a party to the NPT, ask this Court to determine specifically under
4 U.S. law the legal meaning of the obligations of the U.S. under Article VI of the NPT, and to declare the
5 meaning to be as set forth below in the Prayer for Relief.
6

7 **COUNT II: DECLARATORY JUDGMENT**

8 98. Plaintiff Nation repeats and re-alleges each and every allegation contained above as if
9 fully set forth herein.

10 99. Article VI of the NPT creates obligations on the part of all parties to the NPT, including
11 specifically those parties possessing nuclear weapons, such as the U.S.

12 100. Whether the conduct of the U.S. satisfies the legal obligations of Article VI of the NPT is
13 not a policy determination to be made or changed each term by the elected United States Executive. On
14 the contrary, it is a legal determination within with the specific province of the judiciary. It requires
15 “careful examination of the textual, structural, and historical evidence [that will be] put forward by the
16 parties. . . . This is what courts do.” *Zivotofsky v. Secretary of State*, 132 S. Ct. 1421, 1430 (2012).

17 101. Defendant the United States, including through its Nuclear Weapons Agencies, has a
18 plain and clear duty under the NPT to “pursue negotiations in good faith on effective measures relating
19 to cessation of the nuclear arms race at an early date and to nuclear disarmament. . . .”⁵¹
20

21 102. Defendant the United States, including by and through its Nuclear Weapons Agencies, is
22 in breach of the duties under Article VI of the NPT for, *inter alia*, failing to pursue negotiations in good
23 faith on effective measures relating to (i) cessation of the nuclear arms race at an early date; and (ii)
24 nuclear disarmament. The U.S. actions, including but not limited to (i) continued arms racing, including
25
26

27 _____
28 ⁵¹ *Supra*, n. 2.

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1 through its actions undertaken at the Livermore Lab in this District; (ii) stated policy regarding nuclear
2 disarmament; (iii) creation of new preconditions to nuclear disarmament negotiations, such as a
3 stronger worldwide nonproliferation regime; (iv) positions in multilateral forums, including on the U.N.
4 Open-Ended Working Group, and the U.N. General Assembly’s Resolution on “Follow-up to the
5 advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear
6 Weapons;” and (v) opposition to negotiation of a Nuclear Weapons Convention, are all evidence of the
7 U.S. breach of its Article VI obligations.
8

9 **COUNT III: INJUNCTIVE RELIEF**

10 103. Plaintiff Nation requests an injunction against the U.S. requiring it to comply with its
11 obligations under Article VI of the NPT, as specified in the Prayer for Relief, below, which is
12 incorporated herewith as if fully set forth. To be clear, Plaintiff Nation is not requesting that the U.S. be
13 compelled toward unilateral disarmament.
14

15 **VII. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff Nation respectfully requests that this Court enter a judgment against
17 Defendants and in favor of Plaintiff Nation, and grant the following relief:

18 A. As to Count I, a Declaratory Judgment as follows:

19 1. That the U.S. obligations under Article VI to pursue negotiations in good faith on
20 effective measures relating to cessation of the nuclear arms race at an early date and to nuclear
21 disarmament are not conditional, and are specifically not conditioned on improvements or milestones in
22 the worldwide nonproliferation regime for nonparties to the Treaty.
23

24 2. That under Article VI of the Treaty, the U.S. has an obligation to adopt a particular
25 course of conduct, namely, the pursuit of negotiations for nuclear disarmament in good faith.
26
27
28

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1 3. That under Article VI of the Treaty, the U.S. has an obligation to pursue in good faith and
2 bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and
3 effective control;

4 4. That under Article VI of the Treaty, the U.S. has an obligation to pursue negotiations in
5 good faith on effective measures relating to cessation of the nuclear arms race at an early date.
6

7 B. As to Count II, A Declaratory Judgment as follows:

8 1. That the U.S., including by and through its Nuclear Weapons Agencies, is in
9 continuing breach of the obligations under Article VI of the Treaty to pursue negotiations in good faith
10 on effective measures relating to nuclear disarmament in all its aspects under strict and effective control;
11 and

12 2. That the U.S., including by and through its Nuclear Weapons Agencies, is in continuing
13 breach of the obligations under Article VI of the Treaty to pursue negotiations in good faith on effective
14 measures relating to cessation of the nuclear arms race at an early date.
15

16 C. As to Count III, Injunctive Relief as follows:

17 1. That the U.S. take all steps necessary to comply with its obligations under Article VI of
18 the Treaty, as provided in the foregoing Declaratory Judgment, within one year of the date of this
19 Judgment, including by *calling for and convening* negotiations for nuclear disarmament in all its
20 aspects; or
21

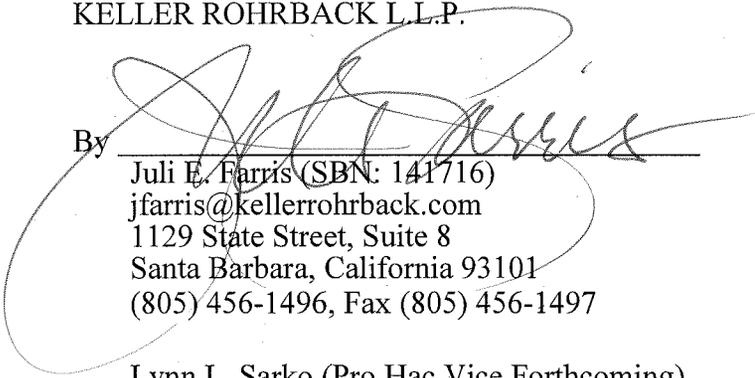
22 2. If said negotiations, which have never taken place to date, have been convened by the
23 date of this Judgment, that the U.S. participate in such negotiations as required and within the construct
24 contained in the foregoing Declaratory Judgment.

25 D. On all claims for relief, grant Plaintiff Nation’s reasonable attorneys’ fees and costs
26 incurred herein pursuant to 28 U.S.C. § 2412 and any other applicable law;
27
28

1 E. Grant Plaintiff Nation such other, further, and different relief as the nature of the case
2 may require or as may be determined to be just, equitable, and proper by this Court.

3
4 DATED this 24th day of April, 2014.

5 KELLER ROHRBACK L.L.P.

6
7 By 

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DECLARATION

Pursuant to 28 U.S.C. §1746, I, Burns H. Weston, upon information and belief, declare as follows:

Qualifications

1 I am the Bessie Dutton Murray Distinguished Professor of Law Emeritus and Senior Scholar of the UI Center for Human Rights at The University of Iowa College of Law.

2 I have a BA in History, Oberlin College (1956), an LL.B., specializing in International Law, Yale Law School (1961), and a J.S.D., specializing in International Law (Yale Law School (1970). I have also two honorary degrees: Doctor of Laws *Honoris CaU.S.* (LL.D.), Vermont Law School, 2009; and Doctorate of Humane Letters *Honoris CaU.S.* (D.H.L.), Marycrest International University, 1998.

3 I have taught the following Courses (alphabetical order): American Exceptionalism and International Law Research Seminar; Arms Control, Disarmament and the Law (Seminar); Conflict of Laws; Conflict Resolution; Dynamics of International and Comparative Human Rights (inter-disciplinary University-wide Seminar); Foreign Relations and the Constitution; Foundations of Public International Law; Global Corruption and the Law (Seminar); Global Interdependence and Human Survival: An Introduction to World Order Studies (an undergraduate course taught in 1975-76 as part of The University of Iowa's World Order Studies Program); Human Rights in the World Community; Human Rights Law and Policy Research Seminar; International Law; Intergenerational Rights and Climate Change Research Seminar; Legal Regulation of International Intervention (Seminar); Policy-Oriented Jurisprudence (Seminar); Problems in International Law and Policy Research Seminar; Transnational Law; Torts; World Organization and World Public Order; and World Politics and International Law (Seminar).

4 My curriculum vitae is attached hereto.

Background on the Non-Proliferation Treaty (NPT)

5 The United States of America (U.S.) was the first country in the world to develop and test nuclear weapons. The U.S. conducted the first successful test of a nuclear explosive device on July 16, 1945, and used nuclear weapons in warfare on the Japanese cities of Hiroshima and Nagasaki on August 6, 1945 and August 9, 1945 respectively.

6 In the 1960s, the U.S. negotiated with other countries to reach agreement on a new treaty to prevent the further proliferation of nuclear weapons and to achieve complete nuclear disarmament. The formal name of this treaty is the 1968 Treaty on the Non-Proliferation

of Nuclear Weapons (“NPT” or the “Treaty”).¹ The NPT was opened for signatures on July 1, 1968 and entered into force on March 5, 1970.

NPT Article VI Obligations

7 Article VI of the NPT states, in its entirety, as follows: “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.”²

8 The U.S. is a party to the NPT, having signed the Treaty on July 1, 1968 and deposited its ratification of it on March 5, 1970. It is thereby bound by its provisions in accord with Article VI, Section 2 of the Constitution of the U.S., which states as follows:

This constitution, and the laws of the United States which shall be made in pursuance thereof; *and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land;* and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.³

The U.S. is obligated to fulfill the requirements of Article VI of the NPT.

The President’s Obligation that Treaties “Be Faithfully Executed”

9 The President of the U.S. “has the obligation and necessary authority to take care that [the treaties of the U.S.] be faithfully executed.”⁴ It follows from this that the President “has the obligation and necessary authority” to assure that Article VI of the NPT “be faithfully executed.”⁵ Further, the U.S. “is in breach of its international obligations if the President fails to enforce the terms of a treaty”⁶ It follows from this that if the President “fails to enforce the terms of” Article VI of the NPT, the U.S. would be “in breach of its international obligations.”

“Good Faith” Has an Objective Legal Meaning

10 As set forth above, the U.S. has a legally binding obligation under Article VI of the NPT to pursue its negotiations “*in good faith.*” The International Court of Justice (ICJ) in its 1996 Advisory Opinion on *Legality of the Threat or Use of Nuclear Weapons* draws attention to the ICJ opinion in its case on *Nuclear Tests between Australia and France*,⁷ in which the Court

¹ See <http://www.un.org/disarmament/WMD/Nuclear/NPTtext.shtml>.

² *Id.*

³ U.S. Const. art. VI, § 2 (emphasis added), *available at* http://www.archives.gov/exhibits/charters/constitution_transcript.html.

⁴ Restatement (Third) of Foreign Relations Law § 111 cmt. c. (1987).

⁵ *Id.*

⁶ Brooke L. Meyers, *Treaties and Federal Question Jurisdiction: Enforcing Treaty-Based Rights in Federal Court*, 40 Loy. L.A. L. Rev. 1449, 1458 (2007), *citing* Restatement (Third) of Foreign Relations Law § 111 cmt. a. (1987).

⁷ *Nuclear Tests (Australia v. France)*, *Judgment*, *I.C.J. Reports 1974*, p. 268, para. 46.

states, “One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith. Trust and confidence are inherent in international co-operation, in particular in an age when this co-operation in many fields is becoming increasingly essential.”⁸

11 In other words, good faith is not some qualitatively subjective standard. It has real meaning. In the context of Article VI of the NPT, good faith is subject to objective standards of reasonableness.⁹ Consequences arise from the failure to uphold a standard of “objective reasonableness” when it comes to good faith. One consequence of the ‘good faith’ principle is that when a party commits to conduct itself in good faith, it is estopped from acting in ways that are contrary to its commitment.”¹⁰

12 With respect to Article VI of the NPT, good faith “requires refraining from actions undermining the achievement of the disarmament objective,”¹¹ such as vertical proliferation, including modernization of nuclear forces and infrastructure.

NPT Review Conferences

13 In 1995, at the NPT Review and Extension Conference, the NPT was extended indefinitely. On that occasion, the parties to the treaty affirmed as follows:

“Nuclear disarmament is substantially facilitated by the easing of international tension and the strengthening of trust between States which have prevailed following the end of the cold war. *The undertakings with regard to nuclear disarmament as set out in the Treaty on the Non-Proliferation of Nuclear Weapons should thus be fulfilled with determination. In this regard, the nuclear-weapon States reaffirm their commitment, as stated in article VI, to pursue in good faith negotiations on effective measures relating to nuclear disarmament.*”¹²

14 Further, at the 1995 NPT Review and Extension Conference, the parties agreed, inter alia, upon “[t]he determined pursuit by the nuclear-weapon States of systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons...”¹³ This indicates that for the parties to the NPT there was a clear expectation that special actions were required of the nuclear weapon states parties to the treaty. Those

⁸ *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, para. 102. This ICJ Advisory Opinion, along with the declarations, separate opinions and dissenting opinions of the judges in the case, is available at <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=e1&p3=4&case=95>.

⁹ Lori F. Damrosch *et al.*, *International Law: Cases and Materials* 1195 (4th ed. 2001).

¹⁰ *Id.* at 157.

¹¹ Elizabeth Shafer, *International Humanitarian Law and the Nuclear Disarmament Obligation of NPT Article VI: Good Faith as Key in a Concerted Contextual Commitment to Abolition* (2011), <http://www.lcnp.org/wcourt/Feb2011VancouverConference/papershafer.pdf>, citing Charles J. Moxley *et al.*, *Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty*, 34 *Fordham Int'l L.J.* 595, 693 (2011).

¹² NPT/CONF.1995/32 (Part I), Annex, at 2 (emphasis added), http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/pdf/NPT_CONF199501.pdf.

¹³ *Id.* (emphasis added).

special efforts included “systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons.”

15 In the Final Document of the 2000 NPT Review Conference, the parties agreed by consensus, *inter alia*, upon, “An unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament to which all States parties are committed under Article VI.”¹⁴

16 I agree with John Burroughs, the Executive Director of the Lawyers’ Committee on Nuclear Policy, who states about the above *unequivocal undertaking*: “This provision has considerable legal weight; it represents the practice and agreement of states bearing directly and specifically upon the interpretation of article VI.”¹⁵

17 In the 2010 NPT Review Conference Final Document, the parties resolved in Action 1: “All states parties commit to pursue policies that are fully compatible with the Treaty and the objectives of achieving a world without nuclear weapons.”¹⁶

18 Further, in the 2010 NPT Review Conference Final Document, the parties resolved in Action 3: “In implementing the unequivocal undertaking by the nuclear-weapon States to accomplish the total elimination of their nuclear arsenals, the nuclear-weapon States commit to undertake further efforts to reduce and ultimately eliminate all types of nuclear weapons, deployed and non-deployed, including through unilateral, bilateral, regional and multilateral measures.”¹⁷

The NPT and the U.S. Breaches

19 As set forth above, under the NPT the U.S. has a legally binding obligation “to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date.” More than 44 years have passed since the entry into force of the NPT and the U.S. has not pursued negotiations in good faith on effective measures relating to the cessation of the nuclear arms race *at an early date*. In fact, “an early date” has long since passed. Rather, the U.S. continues to modernize and enhance its nuclear weapons arsenal and to develop programs for extending the life of its nuclear weapons, demonstrating that it remains engaged in a nuclear arms race.

20 Two ongoing nuclear modernization programs in the U.S., the W78 Life Extension Program (LEP) and the B61-12 LEP, demonstrate that the U.S. continues to build nuclear weapons with new military characteristics that are capable of being deployed for an

¹⁴ NPT/CONF.2000/28 (Parts I and II) (emphasis added), <http://www.un.org/disarmament/WMD/Nuclear/pdf/finaldocs/2000%20-%20NY%20-%20NPT%20Review%20Conference%20-%20Final%20Document%20Parts%20I%20and%20II.pdf>.

¹⁵ John Burroughs, *International Law, in Assuring Destruction Forever* 115 (Ray Acheson ed. 2012), <http://www.reachingcriticalwill.org/images/documents/Publications/modernization/assuring-destruction-forever.pdf>.

¹⁶ NPT/CONF.2010/50 (Vol. I), at 20, http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50 (VOL.I).

¹⁷ *Id.*

additional thirty years or more.¹⁸ Simultaneous plans by the U.S. to design, manufacture and deploy new generations of bombers, submarines and land-based missiles demonstrate that the U.S. plans to rely on nuclear weapons for decades to come.¹⁹

21 Under the NPT the U.S. has a legally binding obligation “to pursue negotiations in good faith on effective measures relating to ... nuclear disarmament.”

22 Tim Wright has pointed out that, paradoxically, “[S]tates considered at risk of violating the nonproliferation provisions of the *NPT* are subject to great criticism while those *in blatant violation* of the disarmament article -- currently all five of the nuclear-weapon states parties -- are criticized only mildly.”²⁰

23 On April 5, 2009, President Obama, in a speech in Prague, Czech Republic, said, “So today, I state clearly and with conviction America’s commitment to seek the peace and security of a world without nuclear weapons.” He continued, “I’m not naive. *This goal will not be reached quickly -- perhaps not in my lifetime.*”²¹ Negotiations in good faith, however, require a different mindset and level of commitment than “not in my lifetime.”

24 I would underline my agreement with Ronald Sievert, when he states, “[A]ny argument by the U.S. that the existing [NPT] treaty really only required that it generally work towards some extremely far off objective of eventual disarmament rings hollow.”²²

25 While the U.S. has pursued negotiations on strategic arms reductions and has reached agreements with the Soviet Union (and then with its successor State, Russia) to reduce the number of nuclear warheads and delivery systems in their respective arsenals, the U.S. has not engaged in good faith negotiations on effective measures for nuclear *disarmament*, that is, to disarm its nuclear arsenal. Such negotiations would have the goal of a new treaty, a Nuclear Weapons Convention, for the complete elimination of nuclear arms. The U.S. has never engaged in such negotiations in a sustained manner indicative of good faith.

26 In 2010, Ellen Tauscher, the U.S. Under-Secretary for Arms Control and International Security, stated:

¹⁸ *Life Extension Programs*, National Nuclear Security Administration, <http://nnsa.energy.gov/ourmission/managingthestockpile/lifeextensionprograms>. On U.S. nuclear modernization programs, see *U.S. Nuclear Modernization Programs*, Arms Control Association (Aug. 2012), <http://www.armscontrol.org/factsheets/USNuclearModernization>.

¹⁹ On submarines, see Ronald O’Rourke, Cong. Research Serv., R41129, *Navy SSBN(X) Ballistic Missile Submarine Program: Background and Issues for Congress* (2011), http://assets.opencrs.com/rpts/R41129_20110422.pdf. On ICBMs and bombers, see *November 2010 Update to the National Defense Authorization Act of FY2010 Section 1251 Report*, http://www.lasg.org/CMRR/Sect1251_update_17Nov2010.pdf.

²⁰ Tim Wright, *Negotiations for a Nuclear Weapons Convention: Distant Dream or Present Possibility?* 10 *Melb. J. Int’l L.* 217, 230 (2009) (emphasis added).

²¹ President Barack Obama, Remarks in Prague, Czech Republic (Apr. 5, 2009), <http://prague.usembassy.gov/obama.html> (emphasis added).

²² Ronald J. Sievert, *Working Toward a Legally Enforceable Nuclear Non-Proliferation Regime*, 34 *Fordham Int’l L.J.* 93, 95 (2010).

*Nuclear disarmament is not the Holy Grail. It's only worth pursuing in so far as it increases our national security. I believe that the journey on the road to zero is perhaps more important than the goal itself. It's those concrete steps that we take that will enhance the national security of the United States and make the world a more stable place.*²³

Treaties don't work that way—a party may not legally choose to satisfy its treaty obligations *only when and if* they happen to coincide with all of its other national interests.

27 During his confirmation hearings, on or about January 24, 2013, John Kerry, now the Secretary of State, in sworn testimony stated that nuclear disarmament is only “a goal. It's an aspiration. And we should always be aspirational But *it's not something that could happen* in today's world”²⁴ This calls into question the very Article VI bargain of the NPT.

28 As Professor Ved Nanda concludes, and with which I agree, “nuclear-weapon states seem to be unwilling to fulfill their commitment [for nuclear disarmament] under article VI of the NPT.”²⁵ In addition, and not surprisingly, “[n]on-nuclear-weapon states consider it hypocrisy and a double standard on the part of nuclear-weapon states insofar as they have not shown any inclination to implement in good faith the obligation they undertook under article VI of the NPT.”²⁶

29 In interpreting Article VI of the NPT, the International Court of Justice in its Advisory Opinion in *Legality of the Threat or Use of Nuclear Weapons*, stated:

The legal import of that obligation goes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result – nuclear disarmament in all its aspects – by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith.²⁷

30 The ICJ further stated:

The importance of fulfilling the obligation expressed in Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons was also reaffirmed in the final document of the Review and Extension Conference of the parties to the Treaty on the Non-Proliferation of Nuclear weapons, held from 17 April to 12 May 1995.

²³ Ellen Tauscher, Under Sec'y for Arms Control & Int'l Sec., U.S. Dep't of State, Remarks at the Global Zero Summit (Feb. 3, 2010), <http://www.state.gov/t/us/136425.htm> (emphasis added); see also Peter Weiss, *Taking the Law Seriously: The Imperative Need for a Nuclear Weapons Convention*, 34 Fordham Int'l L.J. 776, 782-83 (2011), *citing same*.

²⁴ Available at <http://www.cnn.com/2013/01/24/politics/kerry-nomination/>.

²⁵ Ved P. Nanda, *Nuclear Weapons, Human Security, and International Law*, 37 Denv. J. Int'l L. & Pol'y 331, 347 (2009).

²⁶ *Id.*, *citing, e.g.*, Hugh Gusterson, *A Double Standard on Nuclear Weapons? Audit of the Conventional Wisdom* (MIT Center for International Studies), April 2006, *available at* http://web.mit.edu/CIS/pdf/gusterson_audit.pdf.

²⁷ *Supra*, n. 8 at para. 99 (emphasis added).

In the view of the Court, *it remains without any doubt an objective of vital importance to the whole of the international community today.*²⁸

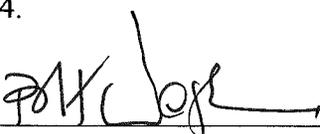
31 Finally, the ICJ unanimously concluded, “There exists an obligation to pursue in good faith and *bring to a conclusion negotiations leading to nuclear disarmament in all its aspects* under strict and effective international control.”²⁹

Conclusion

32 The U.S. is in breach of its obligations under Article VI of the NPT.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

EXECUTED this 3 day of APRIL, 2014.



Burns H. Weston

²⁸ *Supra*, n. 8 at para. 103 (emphasis added).

²⁹ *Supra*, n. 8 at para. 105(2)F (emphasis added).



Curriculum Vitae

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[University of Iowa Committees and Affiliations](#)

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Courses Taught or Teaching

Travel

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Shaker Heights High School (1949-52)

Oberlin Conservatory of Music (1952-53)

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B.A., 1956 (History Major; International Relations Minor)

Western Reserve University (Summer 1954)

University of Edinburgh, Scotland (1954-55)

Yale Law School (1958-61) (Sterling & Rockefeller Foundation Graduate Fellow, 1964-66)

LL.B., 1961 (specializing in International Law)

J.S.D., 1970 (specializing in International Law)

Honorary Degrees

Marycrest International University

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LL.D., 2009 (Doctor of Laws *Honoris Causa*)

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Iowa Bar (ret.)

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- 2013 (Spring) Bessie Dutton Murray Distinguished Professor of Law Emeritus, The University of Iowa; Senior Scholar, The University of Iowa Center for Human Rights (UICHR); Co-Director, Commons Law Project (an externally funded project of The University of Iowa College of Law and the UICHR)
- 2012 (Spring) Bessie Dutton Murray Distinguished Professor of Law Emeritus, The University of Iowa; Senior Scholar, The University of Iowa Center for Human Rights (UICHR); Co-Director, Commons Law Project (an externally funded project of The University of Iowa College of Law and the UICHR)
- 2011 (Spring) Bessie Dutton Murray Distinguished Professor of Law Emeritus, The University of Iowa; Senior Scholar, The University of Iowa Center for Human Rights (UICHR); Co-Director, Commons Law Project (an externally funded project of The University of Iowa College of Law and the UICHR)
- 2010 (Spring) Bessie Dutton Murray Distinguished Professor of Law Emeritus, The University of Iowa; Senior Scholar, The University of Iowa Center for Human Rights (UICHR); Director, Climate Legacy Initiative (an externally funded joint project of Vermont Law School Environmental Law Center and the UICHR and Co-Director, Commons Law Project (an externally funded project of The University of Iowa College of Law and the UICHR)
- 2009 (Spring) Bessie Dutton Murray Distinguished Professor of Law Emeritus, The University of Iowa; Senior Scholar, The University of Iowa Center for Human Rights (UICHR); Director, Climate Legacy Initiative (an externally funded joint project of Vermont Law School Environmental Law Center and the UICHR)
- 2008 (Autumn) Vermont Law School Visiting Distinguished Professor of International Law and Policy; Bessie Dutton Murray Distinguished Professor of Law Emeritus, The University of Iowa; Senior Scholar, The University of Iowa Center for Human Rights (UICHR); Director, Climate Legacy Initiative (an externally funded joint project of the Vermont Law School Environmental Law Center and the UICHR)
- 2008 (Spring) Bessie Dutton Murray Distinguished Professor of Law Emeritus, The University of Iowa; Senior Scholar, The University of Iowa Center for Human Rights (UICHR); Vermont Law School Visiting Distinguished Professor of International Law and Policy; Director, Climate Legacy Initiative (an externally funded joint project of Vermont Law School Environmental Law Center and the UICHR)
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- 2004 (Spring) Bessie Dutton Murray Distinguished Professor of Law Emeritus and Adjunct Professor of Law, The University of Iowa; Director, The University of Iowa Center for Human Rights (UICHR)
- 2003 (Autumn) The Freeman Foundation Senior Professor of Law, Hopkins-Nanjing Center, Paul H. Nitze School of Advanced International Studies (SAIS), Johns Hopkins University; Bessie Dutton Murray Distinguished Professor of Law Emeritus, The University of Iowa; Director, The University of Iowa Center for Human Rights (UICHR)

2003 (Spring)	Bessie Dutton Murray Distinguished Professor of Law Emeritus and Adjunct Professor of Law, The University of Iowa; Director, The University of Iowa Center for Human Rights (UICHR)
2002 (Spring)	Bessie Dutton Murray Distinguished Professor of Law Emeritus and Adjunct Professor of Law, The University of Iowa; Director, The University of Iowa Center for Human Rights (UICHR)
2001 (Spring)	Tobias Simon Eminent Scholar and Visiting Professor of Law, Florida State University; Bessie Dutton Murray Distinguished Professor of Law Emeritus, The University of Iowa; Director, The University of Iowa Center for Human Rights (UICHR)
2000 (Spring)	Bessie Dutton Murray Distinguished Professor of Law Emeritus, The University of Iowa; Director, The University of Iowa Center for Human Rights (UICHR)
1999-	Bessie Dutton Murray Distinguished Professor of Law Emeritus, The University of Iowa; Director, The University of Iowa Center for Human Rights (UICHR)
1993-99	Bessie Dutton Murray Distinguished Professor of Law, Associate Dean for International and Comparative Legal Studies, and Chair of the Graduate Program in International and Comparative Law, The University of Iowa
1993 (Summer)	Bessie Dutton Murray Distinguished Professor of Law, University of Iowa College of Law Summer Program, in association with the University of Bordeaux, Arcachon, France
1992-93	Bessie Dutton Murray Distinguished Professor of Law, Director of International and Comparative Legal Studies, and Chair of the Graduate Program in International and Comparative Law, The University of Iowa
1991-92	Bessie Dutton Murray Distinguished Professor of Law, Chair of the International and Comparative Law Program, and Chair of the Graduate Program in International and Comparative Law, The University of Iowa
1991 (Summer)	Visiting Professor of Law, Louisiana State University Summer Program, Centre de Droits Compar , Faculte de Droits et des Science Politiques, Universite d'Aix-Marseille III, Aix-en-Provence, France
1989-91	Bessie Dutton Murray Distinguished Professor of Law and Chair of the International and Comparative Law Program, The University of Iowa
1983-89	Bessie Dutton Murray Distinguished Professor of Law, The University of Iowa
1981-83	Professor of Law, The University of Iowa
1981 (Spring)	Visiting Professor of Law, University of California, Los Angeles
1978-80	Professor of Law, The University of Iowa
1976-78	Senior Fellow and Director, Transnational Academic Program, Institute for World Order, New York City
1974 (Spring)	Visiting Lecturer with the Rank of Professor, Grinnell College, Grinnell, Iowa
1972-76	Professor of Law and Founding Director of the Center for World Order Studies, The University of Iowa and The Stanley Foundation (Muscatine, Iowa)
1969-72	Professor of Law, The University of Iowa
1967-69	Associate Professor of Law, The University of Iowa
1966-67	Assistant Professor of Law, The University of Iowa
1961-64	Associate Attorney at Paul, Weiss, Rifkind, Wharton & Garrison, New York City
1960 (Summer)	Law Clerk at Paul, Weiss, Rifkind, Wharton and Garrison, New York City
1959-60	Part time Legal Assistant to Deputy Director and General Counsel of New Haven Redevelopment Agency, New Haven, Connecticut
1959 (Summer)	Legal Assistant to Deputy Director and General Counsel of New Haven Redevelopment Agency, New Haven, Connecticut

Honors, Awards, Fellowships, Grants (reverse chronology)

2012	Courage of Conviction Award, The University of Iowa Center for Human Rights (30 October 2012)
2009	Doctor of Laws <i>Honoris Causa</i> (LL.D.), Vermont Law School
1999	CIVIC (Council for International Visitors to Iowa City) 1999 International Citizen Award for Promotion of International Understanding (24 Oct 1999)
1999	State of Iowa Board of Regents Award for Faculty Excellence (15 Sep 1999)
1999	<i>Iowa City Press Citizen</i> "Person of the Year" Award/Runner-up (1 Jan 1999)
1998	Human Rights Hero Award of the Midwest Coalition for Human Rights (MCHR) on behalf of <i>Global Focus: Human Rights '98</i> ("For outstanding contributions to the promotion and protection of human rights through local, national, or international action and a demonstrated commitment to the principles enshrined in the Universal Declaration of Human

- Rights"), Northwestern University School of Law, Chicago, IL (5 Dec 1998)
- 1998 International Human Rights Award ("For Outstanding Contributions to the Worldwide Community in the Area of Human Rights"), Iowa City Human Rights Commission (22 Oct 1998)
- 1998 Honorary Doctorate of Humane Letters *Honoris Causa* (D.H.L.), Marycrest International University
- 1998 Grant from the United States Institute of Peace (Washington, D.C.) for support of *Global Focus: Human Rights '98* commemoration of the 50th anniversary of the Universal Declaration of Human Rights
- 1998 Grant from The University of Iowa Office of International Programs for support of *Global Focus: Human Rights '98* commemoration of the 50th anniversary of the Universal Declaration of Human Rights
- 1994-95 Phi Beta Kappa Visiting Scholar
- 1992 Grant from The University of Iowa Center for Global and Regional Environmental Research (CGRER) and the Iowa Department of Commerce to study the capacity of the United Nations system to cope with 21st century global environmental and related threats
- 1992 Award of "Outstanding Academic Book of 1990-1991" by *Choice* magazine award for *Human Rights in the World Community: Issues and Action* (University of Pennsylvania Press, 1989) (with Professor Richard P. Claude)
- 1991 Scroll of Honor Award for outstanding service to the goals of the United Nations and the promotion of the United Nations Association-USA (the highest honor available to an individual of the Iowa Division of the UNA-USA)
- 1982 Fellow, World Academy of Art and Science
- 1982 "Award for a Work Exhibiting High Technical Craftsmanship and Utility for 1981" by the American Society of International Law for *International Law and World Order: A Problem-Oriented Coursebook* (West Publishing Company, 1980) (with Professors Richard A. Falk and Anthony A. D'Amato)
- 1980 World Order Teaching Fellowship (1980-83)
- 1978 "Special Commendation" by the American Society of International Law 1978 for *International Claims: Their Settlement by Lump Sum Agreements* (University Press of Virginia, 1975) (with Professor Richard B. Lillich)
- 1968 The Order of the Coif (elected)
- 1967-74 Research Fellow, Procedural Aspects of International Law Institute
- 1964-66 Rockefeller Foundation Fellow and Sterling Fellow, Yale Law School

Professional Activities and Affiliations

Editorial Boards (alphabetical order)

- Aletheia Press (Northampton, MA)
Member, Editorial Advisory Board (1990-97)
- American Journal of International Law* (Washington, DC)
Honorary Editor, Board of Editors (1999--)
Editor, Board of Editors (1974-1986; 1987-1999)
Chair, Deak Award Committee (1985-86; 1996-97)
- Bulletin of Peace Proposals* (Oslo, Norway)
Editorial Committee (1976-92)
- Human Rights & Human Welfare* (Denver, CO)
Editorial Review Board (2004--)
- Human Rights Quarterly* (Cincinnati, OH)
Editorial Review Board (1981--)
- Innovation in International Law Series* (Transnational Publishers, Ardsley, NY)
Editorial Advisory Board (1989-2007)
- Intergenerational Justice Review* (Oberursel, Germany)
Editorial Board (2007--)
- Journal of World Peace* (University of Minnesota)
Editorial Board (1985-88)
- Procedural Aspects of International Law Monograph Series* (Transnational Publishers, Inc.)
Series Editor (1994-2003)
- The Whole Earth Papers* (New York, NY)
Editorial Advisory Board (1978-85)
- Transnational Publishers, Inc. (Ardsley, NY)
Editorial Advisory Board (1995-2007)
- World Editorial & International Law* (Northampton, MA)
Vice-Chair, Editorial Board (2002-2004)

Special Consultancies and Projects (reverse chronology)

- 2009-- Co-founder/Co-Director, Commons Law Project (CLP) (an independently funded initiative in cooperation with The University of Iowa Center for Human Rights)
- 2007-- Director, Climate Legacy Initiative (a joint project of the Vermont Law School Environmental Law Center and The University of Iowa Center for Human Rights)
- 2006-- Senior Human Rights Adviser, IKEA Social Initiative
- 2005-- Senior Scholar, The University of Iowa Center for Human Rights (UICHR)
- 2004-- Senior Human Rights Adviser, UNICEF Innocenti Research Centre, Florence, Italy
- 2001-- Board of Directors, PDHRE-People's Movement for Human Rights Education
- 1994-- Advisory Board, Direct Information Access Network Association (DIANA)
- 2000-05 Advisory Board, WSUI/KSUI/UITV Broadcasting Services, The University of Iowa
- 1997-99 Chair, Global Focus: Human Rights '98, The University of Iowa
- 1995-97 Co-Director, Iowa Project on the Study of Global Corruption
- 1994 (Jul) Member, Human Rights Fact-Finding and Conflict Mitigation Mission to the Republic of Georgia
- 1993-99 Consultant, Nuclear Age Peace Foundation, Santa Barbara, California
- 1992 (Sep) Member, Human Rights Fact-Finding and Conflict Mitigation Mission to the Kosovo Region of the new Yugoslavia
- 1991-92 Advisory Committee, South Africa Constitution Watch Commission
- 1991-99 Speakers Bureau, Iowa Humanities Board
- 1989-97 Advisory Group for the K-12 Curriculum Guide on Human Rights and Peace Education, Columbia University Teachers College Peace Education Program
- 1988-90 Advisor, Fourth Freedom Forum, Goshen, Indiana
- 1987 (Jun-Jul) Member, Palestinian Human Rights Fact-Finding Mission to the Israeli Occupied Territories of the West Bank & Gaza
- 1987 (Jan) Chief Judge, *People of the Earth v. China, France, Union of Soviet Socialist Republics, United Kingdom, United States, et al., IN RE More Than 50,000 Nuclear Weapons*, PDWC No. LA-83-0001, Provisional District World Court, Federation of Earth, Los Angeles, California
- 1986 (Apr-May) Educational Leader, Soviet-American Legal Study Tour (Moscow, Tbilisi, Yerevan, Baku, Leningrad)
- 1985-86 Advisory Committee, National Conference on the Nicaraguan Constitutional Process
- 1985 (Feb) Member, Human Rights Delegation accompanying return of political dissident (now President) Kim Dae Jung of Korea to Seoul, Korea
- 1984 (May) Member, International Law Delegation to Havana, Cuba on behalf of National Lawyers Guild
- 1983-84 Consultant, American Bar Association Standing Committee on World Order Under Law
- 1978-82 National Advisory Board, Council on Learning Project of the National Endowment for the Humanities on "Education and the World View"
- 1977-80 Consultant, Global Education Systems, Bradford, England
- 1977-79 Member and Consultant, Club of Rome Project on Global Learning ("Innovative and Prospective Learning for Man and Society")
- 1976-84 Advisory Board, Peace and Conflict Studies Committee, Earlham College. Richmond, Indiana
- 1976-80 Consultant to United Nations Educational, Scientific and Cultural Organization (UNESCO) on World Disarmament Education Project and 1980 World Congress on Education and Disarmament
- 1976 Consultant, Global Education Associates, New York City
- 1978-90 Senior Fellow and Consultant, World Policy Institute (formerly Institute for World Order), New York City
- 1967-69 (Oct) Consultant and Instructor, Naval War College

Conventional Organizational Affiliations (alphabetical order)***Legal***

- American Association for the International Commission of Jurists
- American Bar Association (ABA)
- Standing Committee on World Order Under Law (1984-92)
- Section on International Law and Practice (1984-92)

Section on Individual Rights and Responsibilities
 American Society of International Law (ASIL)
 Counselor to the Society (2007--)
 Vice-President (1992-94)
 Executive Council (1970-76)
 Nominating Committee (1972-73)
 Executive Committee (1975-76)
 Ad Hoc Committee on The Governance of the ASIL (1969-71)
 Chair, 1972 Annual Meeting
 Chair, Committee on the Selection of the Honorary Member (1991-92)
 Chair, Regional Outreach Network (1992-96)
 Committee on Annual Awards (1985-86)
 Committee on Regional and Local Activities (1970-71)
 Committee on Student and Professional Development (1972-82)
 Committee on Regional and Local Activities (1969-75)
 Research Committee (1994-96)
 Working Group on the Ratification of the Human Rights Covenants by the United States(1980-91)
 Study Panel on Reprisals in International Law (discontinued)
 Study Panel on the Role of International Law in Civil Wars (discontinued)
 Study Panel on State Responsibility (continuing)
 Commons Law Project (CLP) (2009-)
 Co-Founder/Co-Director(2009-)
 Direct Information Access Network Association (DIANA)
 Advisory Board(1994-99)
 Global Network for the Study of Human Rights and Environment (GNHRE) (2011-)
 Independent Commission on Respect for International Law
 Chairperson 1985-88)
 International Association of Lawyers Against Nuclear Arms (1988-)
 Academic Council (1988-)
 Chair 1992-99)
 International Human Rights Law Group
 Advisory Council (1989-)
 International Law Association (American Branch)(1968-87)
 International League for the Rights and Liberation of Peoples (North American Chapter)
 National Consultative Council (1986-99)
 Interest Group on the United Nations Decade of International Law (1991-99)
 Lawyers Committee on American Policy Towards Vietnam
 Consultative Council (1968-74)
 Lawyers Committee on Nuclear Policy
 Board of Directors
 Consultative Council
 Lawyers Alliance for World Security (LAWS)
 Peace Law and Education Project, Meiklejohn Civil Liberties Institute
 Advisory Council (1984-99)
 Plains Justice
 Board of Directors (2010-)
 Procedural Aspects of International Law Institute
 Advisory Council (1976-94)
 Board of Trustees (1994-)
 Director of Publications (1994-2003)
 Editor, Procedural Aspects of International Law Monograph Series (1994-2003)
 Chair, Publications Committee and Editorial Board, Procedural Aspects of International Law Institute (1994-)

Non-Legal

Advisory Committee on Human Rights in Lebanon (a project of the American Friends Service Committee)
 American Committee for Human Rights (ACHR)(discontinued)
 Board of Directors (1984-87)
 Consortium of Peace Research, Education and Development (COPRED)
 Executive Committee (1976-82)
 Chairperson (1978-79)
 Council on Foreign Relations

Emergency Committee for the Defense of Democracy and Human Rights in Iran (discontinued)

Federation of American Scientists

Elected Member, National Council (1996-99)

Fourth Freedom Forum Advisor (1988-94)

Global Education Associates

Board of Trustees (1978-86)

International Advisory Council (1986-)

Institute for Public Accuracy

Roster of Experts (1998-)

International Peace Research Association

International Society for Educational, Cultural, and Scientific Interchanges (ISECSI)

International Studies Association (ISA)

International Law Section

Peace Studies Section

Iowa City Foreign Relations Council

Program Committee (1988-99)

Iowa Nuclear Weapons FREEZE Campaign

At-Large Advisory Committee

Midwest Coalition for Human Rights

Founding Member (1995-)

Midwest Conference for U.S. Institute of Peace Planning Committee (terminated)

Planetary Citizens (discontinued)

PDHRE-People's Movement for Human Rights Education

Board of Directors (2001-)

Survival International (USA)(discontinued)

Board of Directors (1988-91)

Transnational Foundation for Peace and Futures Research (TFF) (Lund, Sweden)

International Law and Human Rights Consultant to the Board of Directors (1992-)

Union of American and Japanese Professionals Against Nuclear Omnicide

Advisory Council

United Nations Association/USA (Iowa Division)

Board of Directors (1985-)

U.S. Association for the Club of Rome

World Future Studies Federation

WSUI/KSUI/UITV Broadcasting Services Advisory Board, The University of Iowa (2000-)

University of Iowa Committees and Affiliations (chronological order)

Fulbright Screening Committee (1967-69; 1991-92); Standing Committee on University Relations with the Federal Government (1968-71); Executive Committee, Center for International Studies (1968-71); Executive Committee, The University of Iowa Chapter of the AAUP (1970-71); Faculty Advisory Committee on International Education 1973-76); Global Studies Program (1978-); Faculty Senate, interim appointment (Jan 1983 - Apr 1983); Human Dimensions/Policy Group, Center for Global and Regional Environmental Research (1991-98); Executive Committee, Center for Global and Regional Environmental Research (1994-98); Chair, Global Focus: Human Rights '98 (1997-99); International Programs Advisory Council (1997-99); International Instruction and Research Programs Committee (1997-99); Cultural Affairs Committee (1998-2001); WSUI/KSUI/UITV Broadcasting Services Advisory Board (2000-)

UI College of Law Committees and Affiliations (chronological order)

Admissions Committee (1966-71); Long-Range Planning Committee (1966-67); Curriculum Committee (1969-71; 1985-88); Interdisciplinary Studies Committee (1971-76); Moot Court Committee (1971-76); Retention Committee (1974-76); Joint Program, MCL, Interdisciplinary Studies and Undergraduate Instruction (1978-80; 1985-92); Research & Professional Research and Development Committee (1978-80; 1985-92) (Chair, 1989-90); Speakers Committee (1978-92); Building and Equipment Committee (1979-92); Faculty Advisor, Iowa Society of International Law and Affairs (1967-76; 1980-99); Faculty Advisor, Jessup International Moot Court Competition (1982-96); Faculty Advisor, *Transnational Law and Contemporary Problems* (1989-99); Chair, International and Comparative Law Program (1990-99); Special Committee on Focus (1990-92); Chair, Graduate Program in International and Comparative Law (1991-99)

Courses Taught or Teaching (alphabetical order)

American Exceptionalism and International Law Research Seminar; Arms Control, Disarmament and the Law (Seminar); Conflict of Laws; Conflict Resolution; Dynamics of International and Comparative Human Rights (inter-disciplinary University-wide Seminar); Foreign Relations and the Constitution; Foundations of Public International Law; Global Corruption and the Law (Seminar); Global Interdependence and Human Survival: An Introduction to World Order Studies (an undergraduate course taught in 1975-76 as part of The University of Iowa's World Order Studies Program); Human Rights in the World Community; Human Rights Law and Policy Research Seminar; International Law; Intergenerational Rights and Climate Change Research Seminar; Legal Regulation of International Intervention

(Seminar); Policy-Oriented Jurisprudence (Seminar); Problems in International Law and Policy Research Seminar; Transnational Law; Torts; World Organization and World Public Order; World Politics and International Law (Seminar)

Foreign Travel (71 foreign jurisdictions in alphabetical order)

Andorra, Armenia (USSR), Austria, Azerbaijan (USSR), Bahamas, Belgium, Bermuda, Brazil, Cambodia, Canada, Cape Verde, Cayman Islands, China, Corsica (France), Costa Rica, Cuba, Czech Republic, Denmark, Dominican Republic, Egypt, England, Finland, France, Gambia, Gaza (Palestine), Georgia (USSR & post-USSR, incl Abkhazia & South Ossetia), Germany, Gibraltar (UK), Greece, Hong Kong, Hungary, India, Ireland, Israel, Italy, Japan, Kazakhstan (USSR), Kenya, Liechtenstein, Luxembourg, Mexico, Monaco, Morocco, The Netherlands, New Zealand, Norway, Portugal, Russia (USSR & post-USSR), San Marino, Scotland, Serbia (Yugoslavia & post-Yugoslavia), South Korea, Spain, St Lucia, Sweden, Switzerland, Taiwan (ROC), Thailand, Turkey, Tadjikistan (USSR), Uzbekistan (USSR), Vietnam, Virgin Islands, West Bank (Palestine), Croatia (Yugoslavia), Bosnia-Herzegovina (Yugoslavia), Kosovo (Yugoslavia & Serbia), Montenegro (Yugoslavia), Slovenia (Yugoslavia), South Africa

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Dr. Burns H. Weston
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BURNS H. WESTON

Bessie Dutton Murray Professor of Law Emeritus

BIBLIOGRAPHY

This bibliography was prepared by the Reference Staff of the University of Iowa Law Library and contains all published works within the following categories: Books and Monographs; Chapters in Books; Articles in Law Reviews, Other Scholarly Journals, and Digital Repositories; Book Reviews; Statutory Drafting; Reports to Governmental Bodies and Professional Associations. Insofar as possible an effort has been made to consolidate all works that have been reprinted or substantially reprinted under the first published appearance of that work. This bibliography does not contain works in progress or works that have been accepted for publication but have not yet been published. This bibliography is intended to be current as of March 1, 2014.

BOOKS AND MONOGRAPHS

International Claims: Postwar French Practice. Syracuse, NY: Syracuse University Press, 1971, xv, 237 pages. (Procedural Aspects of International Law Series, vol. 9).

International Claims: Their Settlement by Lump Sum Agreement, with Richard B. Lillich. Charlottesville, VA: University Press of Virginia, 1975 (vol. 1, ix, 372 pages; vol. 2, x, 372 pages). (Procedural Aspects of International Law Series, vol. 12).

Editor of and contributor to *Toward World Order and Human Dignity: Essays in Honor of Myres S. McDougal*, with W. Michael Reisman. New York: Free Press, 1976, xviii, 603 pages.

Editor of *Food/Hunger Macro-Analysis Seminar: A Do-It-Yourself Manual*, by William Moyer and Erika Thorne. New York: Transnational Academic Program, Institute for World Order, 1977, vii, 92 pages.

Editor of *World Food/Hunger Studies: A Curriculum Guide*, with the assistance of Kimberley A. Bobo. New York: Transnational Academic Program, Institute for World Order, 1977, 229 pages.

Editor of *Peace and World Order Studies: A Curriculum Guide*, with Sherle R. Schwenninger and Diane E. Shamis. New York: Transnational Academic Program, Institute for World Order, 1978, vi, 476 pages.

Editor of *Basic Documents in International Law and World Order -- Selected Provisions*, with Richard A. Falk and Anthony A. D'Amato. St. Paul, MN: West, 1980, xiii, 447 pages; 2nd ed., St. Paul, MN: West Publishing Company, 1990, xiv, 960 pages; 3rd ed., *Supplement of Basic Documents to International Law and World Order: A Problem-Oriented Casebook*, with Richard A. Falk and Hilary Charlesworth, St. Paul, MN: West Group, 1997, xix, 1344 pages; 4th ed., *Basic Document Supplement to International Law and World Order*, with Richard A. Falk, Hilary Charlesworth, and Andrew L. Strauss, St. Paul, MN: Thomson-West, 2006, 1745 pages.

Editor of *International Law and World Order: A Problem-Oriented Coursebook*, with Richard A. Falk and Anthony A. D'Amato. St. Paul, MN: West Publishing Company, 1980, xxi, 1195 pages; 2nd ed., St. Paul, MN: West Publishing Company, 1990, lxxxvii, 1335 pages; 3rd ed., with Richard A. Falk and Hilary Charlesworth, 1997, lxxv, 1441 pages; 4th ed., with Richard A. Falk, Hilary Charlesworth, and Andrew L. Strauss, St. Paul, MN: Thomson-West, 2006, 1512 pages; *Teacher's Manual*, 1990.

Editor of and contributor to *International Claims: Contemporary European Practice*, with Richard B. Lillich. Charlottesville, VA: University Press of Virginia, 1982, x, 204 pages. (Procedural Aspects of International Law Series, vol. 15).

Editor of *Toward Nuclear Disarmament and Global Security: A Search for Alternatives*. Boulder, CO: Westview Press, 1984, 746 pages.

Editor of *Human Rights in the World Community: Issues and Action*, with Richard Pierre Claude. Philadelphia: University of Pennsylvania Press, 1989, xiv, 376 pages; 2nd ed., 1992, xiii, 447 pages; 3rd ed., 2006, xviii, 543 pages.

Toward Post-Cold War Global Security: A Legal Perspective. Santa Barbara, CA: Nuclear Age Peace Foundation, 1992, 26 pages. (Waging Peace Series Booklet 32).

Editor of *International Environmental Law and World Order: A Problem-Oriented Coursebook*, with Geoffrey Palmer and Lakshman Guruswamy. St. Paul, MN: West Publishing Co., 1994, lxxiii, 1199 pages; Supplement of Basic Documents, St. Paul, MN: West Publishing Co., 1994, xvii, 1308 pages; 2nd ed., St. Paul, MN: West Group, 1999, lxxxix, 1297 pages; 2nd ed., Supplement of Basic Documents, with Lakshman D. Guruswamy, Geoffrey W. Palmer, and Jonathan C. Carlson, St. Paul, MN: West Group, 1999, xix, 1549 pages; 3rd ed., with Jonathan C. Carlson and Sir Geoffrey W.R. Palmer. St. Paul, MN: Thomson Reuters, 2012, xc, 1564 pages; 3rd ed., Supplement of Basic Documents, with Jonathan C. Carlson and Sir Geoffrey W.R. Palmer. St. Paul, MN: Thomson Reuters, 2012, xx, 1540 pages.

Editor of *International Law & World Order: Basic Documents*. Irvington, NY: Transnational Publishers, 1994, looseleaf, 7 volumes.

Editor of *Preferred Futures for the United Nations*, with Saul H. Mendlovitz. Irvington, NY: Transnational Publishers, 1995, ix, 515 pages. First published in slightly different form in the Fall 1994 issue of *Transnational Law and Contemporary Problems* (vol. 4, no. 2) and served as preparatory reading for a symposium held at The University of Iowa on 12-14 April 1995 and entitled "UN50: Preferred Futures for the United Nations."

Editor of and contributor to *The Future of International Human Rights* with Stephen P. Marks. Ardsley, NY: Transnational, 1999, xvii, 514 pages.

International Claims: Their Settlement by Lump Sum Agreements, 1975-1995, with Richard B. Lillich and David J. Bederman. Ardsley, NY: Transnational Publishers, 1999, xiii, 359 pages.

Editor of *Child Labor and Human Rights: Making Children Matter*. Boulder, CO: Lynne Rienner Publishers, 2005, xxv, 541 pages.

Green Governance: Ecological Survival, Human Rights, and the Law of the Commons, with David Bollier. New York: Cambridge University Press, 2013, 392 pages.

CHAPTERS IN BOOKS

“Community Regulation of Foreign-Wealth Deprivations: A Tentative Framework for Inquiry,” in *Essays on Expropriations*, edited by Richard S. Miller and Roland J. Stanger. Columbus, OH: Ohio State University Press, 1967, at 117, 49 pages; reprinted in *Roundtable Conference on International Law Problems in Asia: Held Under the Auspices of the University of Hong Kong, January 2nd-6th 1967*, edited by Vincent Shepard. Hong Kong: Hong Kong University Press, 1969, at 597, 47 pages.

“International Law and the Deprivation of Foreign Wealth: A Framework for Future Inquiry,” in *2 The Future of the International Legal Order*, edited by Richard A. Falk and Cyril E. Black. Princeton, NJ: Princeton University Press, 1970, at 36, 147 pages; reprinted with revisions from “International Law and the Deprivation of Foreign Wealth: A Framework for Future Inquiry Part I,” 54 Va. L. Rev. 1069 (1968), 66 pages and “International Law and the Deprivation of Foreign Wealth: A Framework for Future Inquiry Part II,” 54 Va. L. Rev. 1265 (1968), 90 pages.

Reporter of “Report of Working Group on Decision Processes: Conflict Resolution and the Control of War--The Organized Planet--Human Rights and Individual Participation,” with Francis Wolf, in *Environment and Society in Transition: Scientific Developments, Social Consequences, Policy Implications*, 184 *Annals of the New York Academy of Sciences* 635 (1971), 9 pages; reprinted in *Managing the Planet*, edited by Peter Albertson and Margery Barnett. Englewood Cliffs, NJ: Prentice-Hall, 1972.

“Valuation Upon the Deprivation of Foreign Enterprise: A Policy- Orientated Approach to the Problem of Compensation Under International Law,” with Dale R. Weigel, in *1 The Valuation of Nationalized Property in International Law*, edited by Richard B. Lillich. Charlottesville, VA: University Press of Virginia, 1972, at 3, 37 pages.

“Education for Human Survival: An Immediate World Priority,” in *Environment and Society in Transition: World Priorities*, edited by Boris Pregel, Harold D. Lasswell, and John McHale. 261 *Annals of the New York Academy of Sciences* 115 (1975), 11 pages.

“The Role of Law in Promoting Peace and Violence: A Matter of Definition, Social Values and Individual Responsibility,” in *Toward World Order and Human Dignity: Essays in Honor of Myres S. McDougal*, edited by Burns Weston and W. Michael Reisman. New York: Free Press, 1976, at 114, 18 pages.

“Foreword” for *Food/Hunger Macro-Analysis Seminar: A Do-It-Yourself Manual*, by William Moyer and Erika Thorne. New York: Transnational Academic Program, Institute for World Order, 1977, 3 pages.

“Introducing World Food/Hunger Studies: Why Should We Care?” in *World Food/Hunger Studies: A Curriculum Guide*. New York: Transnational Academic Program, Institute for World Order, 1977, at 1, 6 pages.

“Education for Human Survival: An Immediate World Priority,” in *Peace and World Order Studies: A Curriculum Guide*. New York: Transnational Academic Program, Institute for World Order, 1978, 13 pages.

“Peace and World Order Education: An Optimal Design,” in *Peace and World Order Studies: A Curriculum Guide*, 3rd ed. New York NY: Institute for World Order, 1981, at 55, 23 pages.

“U.S. Ratification of the International Covenant on Economic, Social and Cultural Rights: With or Without Qualifications?” in *U.S. Ratification of the Human Rights Treaties: With or Without Reservations?* edited by Richard B. Lillich. Charlottesville, VA: University Press of Virginia, 1981, at 27, 12 pages.

“Introduction,” in *International Claims: Contemporary European Practice*, edited by Richard B. Lillich and Burns H. Weston. Charlottesville, VA: University Press of Virginia, 1982, at 1, 13 pages.

“The New International Economic Order and the Deprivation of Foreign Proprietary Wealth: Some Reflections Upon the Contemporary International Law Debate,” in *The International Law of State Responsibility for Injuries to Aliens: Selected Contemporary Problems*, edited by Richard B. Lillich. Charlottesville, VA: University Press of Virginia, 1983, at 89, 69 pages.

“The Machines of Armageddon,” in *Toward Nuclear Disarmament and Global Security: A Search for Alternatives*. Boulder, CO: Westview Press, 1984, at 1, 18 pages.

“Nuclear Weapons Versus International Law: A Contextual Reassessment,” in *Nuclear Weapons and Law*, edited by Arthur S. Miller and Martin Feinrider. Westport, CT: Greenwood Press, 1984, at 133, 48 pages, reprinted from 28 *McGill L. J.* 542 (1983), 49 pages.

“Human Rights,” in 20 *Encyclopaedia Britannica*, 15th ed., 1985 printing, at 713, 9 pages, reprinted in 6 *Human Rights Quarterly* 257 (1984), 27 pages; reprinted in 133 *Congressional Record* S8613, daily ed. June 24, 1987, 8 pages; reprinted with revisions in 20 *Encyclopaedia Britannica*, 15th ed., 1986 printing, at 714; abstracted in 35 *International Political Science Abstracts* 306 (1985), 1 page.

Contributor to *Encyclopedia of the American Constitution*, edited by Leonard W. Levy, Kenneth L. Karst, and Dennis J. Mahoney. New York: Macmillan, 1986. Includes: “*Belmont, United States v.*” 1:106; “Executive Agreement” 2:666; “International Emergency Economic Powers Act” 2:992; “Marshall Plan” 3:1218; “North Atlantic Treaty” 3:1327; “*Pink, United States v.*” 3:1390; “Status of Forces Agreements” 4:1760; “Treaty Power” 4:1910; “United Nations Charter” 4:1938, 14 pages.

“Israel’s Choice: Nuclear Weapons or International Law,” in *Security or Armageddon: Israel’s Nuclear Strategy*, edited by Louis René Beres. Lexington, MA: Lexington Books, 1986, at 159, 14 pages, adapted from 13 *Denver Journal of International Law & Policy* 1 (1983), 15 pages.

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