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Nuclear Crossroads: The Urgent Need for Action to Prevent Catastrophe

We are deeply alarmed by increasing risks that nuclear weapons will be used by intent, miscalculation or accident. The Singapore Summit is an encouraging sign that the dangerous US-North Korea confrontation will give way to a process leading to a peaceful and denuclearized Korean peninsula. Nonetheless, the danger of nuclear war in this new moment may be greater than at the height of the Cold War; it is surely more unpredictable. Global nuclear disarmament – not just preventing the spread of nuclear weapons – is imperative.

This statement addresses the new US-Russian nuclear arms race; the North Korean situation; US actions in relation to the agreement and Security Council resolution regarding Iran's nuclear program; and ongoing risks of accidents and miscalculations involving nuclear weapons. At the end, we recommend actions to be taken by IALANA affiliates and other civil society actors.

1) **The US Nuclear Posture Review released 2 February 2018 moves the world toward nuclear inferno.** It fails to propose any initiatives, bilateral or multilateral, for arms control and disarmament, and rejects US ratification of the Comprehensive Nuclear-Test-Ban Treaty. It proposes two new capabilities, a low-yield warhead deployed on submarine-launched missiles and a sea-based, nuclear-armed cruise missile, and carries forward the destabilizing replacement of the existing air-launched cruise missile with a stealthier, more capable version. The review also repeatedly refers to the role of nuclear weapons in responding to “non-nuclear strategic attacks”.

Similarly alarming signals are coming from Russia. In a 1 March 2018 address, President Vladimir Putin described the development of an array of new nuclear weapons delivery systems, including a nuclear-powered cruise missile, an underwater drone carrying “massive nuclear ordinance”, and a multiple warhead ballistic missile with virtually unlimited range capable of flying over the South as well as the North Pole.

US and Russian plans for a new nuclear arms race – vertical proliferation – blatantly disregard the Nuclear Non-Proliferation Treaty. The NPT preamble declares the “intention to achieve at the earliest possible date the cessation of the nuclear arms race.” And, NPT Article VI requires the pursuit of negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date. Yet there are no negotiations on the subject taking place or in sight. Further, stopping vertical proliferation is not enough. The agenda should now be:

- adoption of policies of non-use of nuclear weapons in recognition of the incompatibility of their use with international humanitarian law as well as the principles of humanity and dictates of public conscience, as is set out in the preamble to the Treaty on the Prohibition of Nuclear Weapons and subsequently reaffirmed by the International Red Cross and Red Crescent Movement;
- fulfilment through good-faith negotiations of the principal objective of Article VI, the elimination of nuclear arsenals, as set forth in the International Court of Justice's unanimous 1996 affirmation of "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."

2) With the exchange of threats between North Korea and the United States in 2017, the world probably was the closest it has been to nuclear war since the Cuban Missile Crisis. The Singapore Summit and other moves in 2018 toward resolution of the crisis and achievement of peace and eventual denuclearization on the Korean Peninsula are therefore most welcome. To be sure, complacency is not at all warranted, as the maneuvering over the summit and its limited and vague results demonstrate. Nonetheless, that North Korea has refrained this year from testing nuclear explosives and missiles is a very positive step. Also noteworthy is the reaffirmation in the Panmunjom Declaration of the Non-Aggression Agreement precluding the use of force by North Korea and South Korea in any form against each other. The US and North Korea must reach the same result, as IALANA called for in its statement of 10 October 2017. Progress is important not only for the paramount reason of avoiding war, which might very well become nuclear. It also is crucial for the purpose of preserving the non-proliferation regime and proceeding with global nuclear disarmament.

We underline that the people and government of South Korea have taken a leading role in seeking a peaceful solution to the long confrontation on the Korean Peninsula that is at the root of the nuclear crisis there. The current South Korean government was brought to power by a powerful democracy movement, and continues to receive overwhelming public support for its peace initiatives. These actions show that a mobilized population can affect government policy at the highest level, and should be an inspiration for people everywhere.

3) The US declaration that it will no longer implement the Joint Common Plan of Action and will reimpose sanctions on Iran inconsistent with the JCPOA is a major blow to international governance and to peace and disarmament in the region and the world. The JCPOA, para. 28, provides that the parties to it "commit to implement this JCPOA in good faith and in a constructive atmosphere, based on mutual respect, and to refrain from any action inconsistent with the letter, spirit and intent of this JCPOA that would undermine its successful implementation." A viable international order requires good-faith execution of agreements whether considered political or legal. Success in

international cooperation is not possible if promises and representations cannot be relied upon.

The IAEA has found that Iran is in compliance with the JCPOA, and no extraordinary circumstances otherwise justify the US action. Further, the UN Security Council unanimously endorsed and incorporated the agreement in Resolution 2231 of 2015. The JCPOA likewise provides for its integration with Security Council action. Under the JCPOA, para. 34(ii), “this JCPOA and the commitments in this JCPOA come into effect” ninety days after endorsement of the JCPOA by the Security Council, as was done by Resolution 2231. The resolution establishes a mechanism linked to Iran’s implementation of the JCPOA for the lifting of Security Council imposed sanctions against Iran. The last provision of its preamble “[u]nderscor[es] that Member States are obligated under Article 25 of the Charter of the United Nations to accept and carry out the Security Council’s decisions.”

In para. 2, Resolution 2231 “calls upon” UN member states to take “actions commensurate with the JCPOA and this resolution” and to refrain from “actions that undermine implementation of commitments under the JCPOA.” Paragraph 26 “urges” all states “to cooperate fully with the Security Council in its exercise of the tasks related to this resolution.” Though the resolution does not label either paragraph a “decision” of the Security Council, in adopting them the Council without question was acting to fulfil its “primary responsibility for the maintenance of international peace and security” conferred by Article 24 of the UN Charter. In a 1971 advisory opinion, the International Court of Justice, taking into account “all circumstances”, held legally binding a provision of a Security Council resolution which provision “calls upon all States” to refrain from acts inconsistent with the Council’s determination that “the continued presence of the South African authorities in Namibia is illegal.” Similarly here, under all the circumstances, paras. 2 and 26 of Resolution 2231 are legally binding directives of the Security Council.*

The US is acting contrary to those directives, thereby undermining the effectiveness of the Security Council in addressing issues of nuclear non-proliferation and disarmament in Iran and generally. We suggest consideration of a UN General Assembly request for an International Court of Justice advisory opinion on the legal consequences of Resolution 2231 and the JCPOA. Such an opinion would provide important guidance, *inter alia*, regarding US sanctions imposed on non-US enterprises engaged in commercial dealings in Iran and with Iranian enterprises.

* Hans Corell, former Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations, has expressed the view to IALANA that both paras. 2 and 26 are legally binding on all UN member states. The German parliamentary research service reached the same conclusion regarding para. 2 in “Völkerrechtliche Bewertung der Aufkündigung des Iran-Nuklearabkommens durch die US-Administration,” Wissenschaftliche Dienste, Deutscher Bundestag, WD 2 - 3000 - 074/18, 2018.

The other parties to the JCPOA – Iran, United Kingdom, France, Russia, China, Germany, and European Union – must work to ensure the continued implementation of the agreement. And all nations and global civil society should make clear that US contravention of the JCPOA and Resolution 2231 is unacceptable and dangerous and must be reversed.

4) The existence and deployment of nuclear weapons pose intolerable dangers in the contexts mentioned above and in others as well, as in India-Pakistan and US-China relations. Moreover, the risks of accidents and miscalculations involving nuclear weapons are always with us, as was illustrated by the erroneous alert that nuclear missiles were incoming endured by Hawaiians in January 2018. Alarms determined to be false only minutes before a nuclear response might be triggered have occurred throughout the nuclear age and will continue to do so. One day our luck will run out.

In view of this combination of ominous developments and ongoing risks, nations and civil society actors must act urgently and effectively to set the world – and the US in particular – on a pathway that rather than elevating nuclear risks leads to the repudiation of use of nuclear weapons under any circumstances and the negotiation of the global elimination of nuclear arsenals. Among the steps IALANA affiliates and other civil society actors can take are the following:

- Urge their governments to condemn the new US-Russian nuclear arms race and to support resolutions to that effect in the General Assembly and its First Committee;
- Support continued full implementation of Security Council Resolution 2231 and the JCPOA by Iran, UK, France, Russia, China, Germany, and European Union, and also urge the US to recommit to their full implementation;
- Urge their governments to condemn the US actions in relation to Resolution 2231 and the JCPOA and to support a resolution to that effect in the General Assembly and its First Committee;
- Ask their governments for an assessment of the legal status of Resolution 2231 and the JCPOA;
- Suggest that their governments consider requesting the International Court of Justice to render an advisory opinion on the legal consequences of Resolution 2231 and the JCPOA;
- Commend South Korea, North Korea, and the United States for their dramatic moves toward ending the dangerous standoff between North Korea and the US, and urge all parties to engage productively in negotiations;
- Urge their governments to sign and ratify the Treaty on the Prohibition of Nuclear Weapons.

Relevant materials

[Nuclear Arms Racing is Antithetical to the NPT](#), IALANA, 25 April 2018, Civil Society Presentation to NPT PrepCom, Geneva (available at www.ialana.info)

[A Prescription for Disaster: Trump’s Nuclear Posture Review](#), Guy Quinlan, President, and John Burroughs, Executive Director, Lawyers Committee on Nuclear Policy (LCNP), 12 March 2018 (available at www.lcnp.org)

[US-Russia Nuclear Arms Racing: Still Crazy After All These Years](#), Andrew Lichterman, Western States Legal Foundation, and John Burroughs, LCNP, Truthdig, 16 March 2018 (available at www.lcnp.org)

Council of Delegates of the International Red Cross and Red Crescent Movement, Resolution CD/17/R4, [Working towards the elimination of nuclear weapons: 2018–2021 action plan](#), adopted in Antalya, Turkey, 10–11 November 2017

[North Korea: Solution or Disaster, IALANA Statement](#), Peter Weiss, President Emeritus; Peter Becker and Takeya Sasaki, Co-Presidents, 10 October 2017 (available at www.ialana.info)

[Striking North Korea First Is a Bad Proposal](#), Andrew Lichterman and John Burroughs, Letter, Wall St. Journal, 8 March 2018 (available at www.lcnp.org)

[Legal Consequences for States of the Continued Presence of South Africa in Namibia \(South West Africa\) notwithstanding Security Council Resolution 276 \(1970\), Advisory Opinion, I.C.J. Reports 1971](#), p. 16

[‘This Is Not a Drill’: The Threat of Nuclear Annihilation](#), Clyde Haberman, New York Times, 14 May 2018