

**REPORT ON THE OCTOBER 9, 2006 TEST DETONATION**  
**OF AN ALLEGED NUCLEAR DEVICE BY THE**  
**DEMOCRATIC PEOPLE’S REPUBLIC OF KOREA\***

by the

**Committee on Foreign and International  
Law of the New York County Lawyers'  
Association**

**Committee Deliberations and Findings**

At a meeting of the Foreign & International Law Committee on October 30, 2006, the question of whether the Democratic People’s Republic of Korea, (“North Korea”) violated existing International Law by the test- detonation of an alleged nuclear device on October 9, 2006, was discussed.

This issue was considered in deference to a request by a former President of the New York County Lawyers’ Association for a report on the legality of North Korea’s actions. As such the Report does not evaluate or judge the political motivations of North Korea or any other state referred to herein, as political analysis is not within the remit of this Committee. The Report addresses North Korea’s recent nuclear test in the context of the *supra-* national obligations of Public International Law, (Law of Nations).

This Report expresses the Committee’s findings that:

- i) North Korea violated no current international legal obligation by conducting its October 9, 2006 test detonation.
- ii) The current nuclear-state practice of retaining nuclear arsenals requiring test detonations for their maintenance and renewal facilitates experimental nuclear weapons testing by non- nuclear states which have not acceded to non- proliferation treaty obligations.
- iii) This will progressively lead to an untenable and unstable situation unless major changes are made in the nuclear defense policies and practices of leading nuclear states.

\* This Report was issued on March 2, 2007 by the Committee on Foreign and International Law and does not necessarily reflect the views of the New York County Lawyers' Association or its Board of Directors.

### **Preamble**

The Committee considered North Korea's actions in relation to:

- i) its current treaty obligations and international declarations,
- ii) the 1996 Advisory Opinion of the World Court on the Threat and Use of Nuclear Weapons and,
- iii) International Customary Law.

### **Background**

On October 9, 2006, North Korea announced that it had detonated an experimental nuclear bomb. A subsequent US intelligence statement asserted that a small underground detonation involving less than one kiloton had occurred near Kilchu, North Hamgyong Province, in North Korea.

The Committee proceeded on the basis that North Korea's announcement of the October 9, 2006 detonation reflected a correct statement of fact and then analyzed the international law implications of North Korea's action.

#### **1. North Korea's Existing Treaty Obligations**

Two important treaties were discussed in this regard, namely the 1970 Treaty on the Non-Proliferation of Nuclear Weapons, ("Nuclear Non-Proliferation Treaty") and the 1996 Comprehensive Test Ban Treaty.

- a) The Nuclear Non-Proliferation Treaty

i) Aims of the Treaty

The Nuclear Non-Proliferation Treaty, (NPT) entered into force in 1970 and is the most widely subscribed treaty after the UN Charter having at one time 188 signatory states.<sup>1</sup> In essence it bars all non-nuclear state parties from acquiring nuclear weapons and obligates all parties to the Treaty to negotiate in good faith for their elimination.<sup>2</sup> In terms of Article V the potential benefits of nuclear energy are to be made available to non-nuclear state parties, subject to certain safeguards. Article X, para. 2 provided that the Treaty's continuance would be reviewed by state parties 25 years after the Treaty's entry into force. On May 11, 1995, a Review and Extension Conference of state parties decided to continue the Treaty indefinitely.

ii) North Korea and the Nuclear Non-Proliferation Treaty

North Korea acceded to the Treaty on December 12, 1985 and subsequently entered into a "Safeguard Agreement" with the International Atomic Energy Agency (IAEA) as required by Article 111 to verify that all fissionable material supplied to North Korea under the Treaty was employed exclusively for the peaceful nuclear purposes referred to in Article V.<sup>3</sup> Following a dispute between North Korea and the IAEA in 1993<sup>4</sup>, North Korea initiated, in March of that year, the three-month withdrawal notification procedures under Article X, para.1 of the Treaty. Article X, para.1 provides that a party to the Treaty has the right to withdraw "if it decides that extraordinary events, related to the subject matter of this Treaty, have jeopardized the supreme interests of its country."

However, as the result of subsequent energy-agreement negotiations with the US, North Korea suspended the three-month withdrawal-notification procedures on the last day thereof.<sup>5</sup> Approximately ten years later, on January 10, 2003, North Korea, again announced

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<sup>1</sup> Ratified by the US on March 5, 1970.

<sup>2</sup> Article 1 bars *nuclear state* parties from transferring nuclear weapons to *non-nuclear states*, including organizations, or assisting them to acquire nuclear weapons Article 11, according bars *non-nuclear state* parties from receiving nuclear weapons or manufacturing them. Article VI requires *all state* parties to pursue negotiations to eliminate nuclear weapons.

<sup>3</sup> The Safeguard Agreement for inspection and verification with the IAEA was to "*remain in force as long as the Democratic People's Republic of Korea is a party to the Treaty [NPT].*"

<sup>4</sup> North Korea objected to a February 1993 request by the IAEA for special inspections of North Korea's plutonium storage sites at its Yongbyong Nuclear Scientific Research Center.

<sup>5</sup> This energy agreement, (the "Agreed Framework") provided for the supply to North Korea of "proliferation resistant" nuclear power reactors and oil burning energy plants in return for the cessation and reversal of North Korea's own nuclear project. In addition, two light water reactors were to be provided to North Korea by the Korean Peninsula Energy Development Organization, (KEDO) by 2003. (See Moxley, "Nuclear Weapons and International Law in the Post Cold War World," page 563, fn 11).

its withdrawal from the Non-Proliferation treaty, with immediate effect, citing its previously suspended 1993 withdrawal notice and the US's failure to properly implement the energy agreement.

iii) Effectiveness of North Korea's Withdrawal From the Treaty

I) The Declaration

Since the Treaty provides no mechanism to determine whether a party to the Treaty has acted in good faith in declaring that extraordinary events have arisen jeopardizing its supreme national interests, North Korea's Article X, para. 1 withdrawal declaration is not subject to challenge. In effect, Article X, para. 1 permits each state party to determine whether or not its own interests have been jeopardized. This appears to have been the original intention of state parties to the Treaty. Though Article VIII permits parties to propose amendments to the Treaty and contains mechanisms for their adoption, no amendment to Article X, para. 1 requiring independent scrutiny of state parties' withdrawal statements has been made.

II) The Three-Months Notice

The Treaty requires three-months notice to all state parties and to the UN Security Council of a state's withdrawal from the Treaty. (Article X, para.1).<sup>6</sup> North Korea contends that its previous 1993 notice, (suspended on the last day of the three-month period in June 1993) coupled with its 2003 notice fulfills this requirement. Even if North Korea's assertion on the effective date of withdrawal is incorrect, it is clear that after the expiry of three months from the date of its 2003 notice, its obligations under the Treaty legally terminated.

It should be kept in mind in this regard that the provisions of the Vienna Convention on Treaties are applicable in determining the date on which North Korea's withdrawal notice became effective. Though the Vienna Convention only formally applies to the interpretation of treaties that entered into force after 1980, (ten years after the Non-Proliferation Treaty entered into force), its provisions codified existing international customary law on such matters. As such, they are applicable to the interpretation of the Non- Proliferation Treaty as

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<sup>6</sup> The role that the Non-Proliferation Treaty ascribes to the UN Security Council appears to be that of a passive recipient of withdrawal notifications. Though the Security Council is not specifically designated as a "depository," its function in receiving such notices under Article X (1) appears to fulfill that designation under Article 77 (d) of the Vienna Convention. (See subsequent discussion *in gremio* on the application of the Vienna Convention) Had the state parties to the Non- Proliferation Treaty wished to ascribe a more active role to the Security Council, they could have done so by amendment under Article VIII. Under Article 65 (2) of the Vienna Convention, only state parties may object to withdrawal notices. As the Security Council is not a party to the Non- Proliferation Treaty, it has no independent powers of objection in this regard.

sources of customary international law.

In terms of Article 65 (2) of the Vienna Convention, withdrawal from a treaty becomes effective at the expiry of three months after notice, unless a state party objects. Article 65 (3) of the Vienna Convention provides the mechanism for objections to be resolved by the UN Security Council under Article 33 (2) of the UN Charter. This only applies however after the objecting party has exhausted all other remedies, including adjudication and can establish that issues of international peace and security are involved. (Article 33 (1) UN Charter)

In the absence of any indication that any state party to the Non- Proliferation Treaty has invoked these procedures, North Korea's withdrawal would have been effective under international customary law, as codified in the Vienna Convention, at the expiry of three months after the date of its 2003 notice.

### III) Suspension of North Korea's Treaty Obligations on Breach of the Treaty by Other State Parties

North Korea could also justify the suspension of its obligations under the Non- Proliferation Treaty on the basis of breaches of the Treaty by other state parties. In this regard, Article 60 (2)(b) of the Vienna Convention permits a state party to suspend its obligations where one or more parties are in material breach of multilateral treaty obligations.

In this regard there appears to have been a continued failure by state parties under Article VI of the Treaty to enter into good faith negotiations for nuclear disarmament and for the preparation of a separate treaty to place nuclear weapons under strict international control, as in the case of chemical and biological weapons. (As appears hereunder, the International Court of Justice reaffirmed the importance of the former obligation in a 1996 Advisory Opinion and urged compliance)

It would also appear that the US and certain non-nuclear NATO state parties are in breach of Article 1 of the Treaty, by permitting and accepting respectively indirect access to nuclear explosive devices.

Therefore though North Korea's October 9, 2006 nuclear test detonation may be considered as an important step in the manufacture and acquisition of a nuclear weapon, prohibited by Article II of the Nuclear Non-Proliferation Treaty, North Korea cannot be said to have been in violation of that Treaty's requirements, since at the time of the detonation it was not a state

party to the Treaty.<sup>7</sup> Alternatively, its obligations under the multilateral Treaty could be considered permanently suspended under international customary law due to violations by other state parties.

b) Comprehensive Test Ban Treaty

i) Aims of the Treaty

The Comprehensive Test Ban Treaty developed from “side understandings” between certain state parties to the Nuclear Non-Proliferation Treaty during proceedings to extend the latter Treaty indefinitely in 1995. The Comprehensive Test Ban Treaty seeks to prohibit all nuclear test detonations by prohibiting state parties from conducting “nuclear weapon test explosions” or encouraging or participating in such explosions. Article II of the Treaty establishes a Comprehensive Nuclear Test Ban Treaty Organization to ensure implementation of the Treaty’s provisions, including verification of compliance. The Treaty was initially signed by 65 countries in September 1996. Currently 135 states have ratified the Treaty.<sup>8</sup>

ii) North Korea and the Comprehensive Test Ban Treaty

North Korea has neither signed or ratified the Treaty and is not bound by its provisions. Though the US signed the Treaty on September 24, 1996, the US Congress refused to ratify it in October 1999. Several nuclear states, including the US, Russia and China, have voluntarily imposed moratoria on nuclear weapons tests explosions, but these voluntary restraints are not indefinite and in 1998 both Russia and China conducted such tests.

iii) Failure of Treaty to Enter into Force

In many ways the provisions of this Treaty would have created a more effective brake on nuclear proliferation, banning all nuclear test explosions by both nuclear and non-nuclear state parties. Such restraints however would have impeded the nuclear states, in certain circumstances, from developing new nuclear weapons technology and upgrading their nuclear arsenals. As a result the Treaty has not entered into force.

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<sup>7</sup> Like Israel, India and Pakistan.

<sup>8</sup> Article XIV of the Treaty provides that it will only enter into force when ratified by all 44 states listed in Annex 2 to the Treaty. These states, including the US, participated in a June 18, 1996 Disarmament Conference. To date only 34 of the listed states have ratified the Treaty.

Accordingly, North Korea has not violated the provisions of this Treaty as a result of its October 9, 2006 test detonation as it was neither a party to it, nor did the Treaty enter into force.

c) 1992 Joint Declaration for the Denuclearization of the Korean Peninsula

On January 20, 1992, North and South Korea jointly declared their intentions to use nuclear energy solely for peaceful purposes and not to test, store, deploy or use nuclear weapons. The Declarations entered into force on February 19, 1992. Since the Declarations were bilateral in nature, they fall within the codified customary international law provisions of the Vienna Convention on Treaties. For example, Article 2 (1) of the Vienna Convention defines a “treaty” as comprising “an international agreement “. embodied in “two or more related instruments.”<sup>9</sup>

On May 12, 2003, however, North Korea announced that the Joint Declaration had been “violated” and “ruptured” due to US interference in the Korean Peninsula by increased US war exercises and by the stockpiling of nuclear weapons in the area. North Korea alleged that the “*United States has turned South Korea into the biggest forward nuclear base in the Far East and a strategic nuclear weapons depot.*” (May 12, 2003 official announcement by P’yongyang Korean Central Broadcasting Station) <sup>10</sup>

In terms of Article 62 (1) of the Vienna Convention, North Korea would have been entitled to withdraw its separate Declaration on the basis of a fundamental change in circumstances, namely the alleged stockpiling of nuclear weapons in South Korea.

As a result, North Korea’s separate Declaration was not binding at the time of its experimental nuclear detonation on October 9, 2006.

2. The 1996 Advisory Opinion of the International Court of Justice

a) The Opinion

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<sup>9</sup> North Korea’s joint declaration should be distinguished from a unilateral declaration, the facts and circumstances of which would determine its enforcement. See *Eastern Greenland Case*, (Denmark v. Norway) 1933; No 53,3 World Court Reports 151.

<sup>10</sup> The historical cause of the “rupture” is explained as follows by Kathleen Bailey, in her work, “Strengthening Nuclear Nonproliferation,” page 6: “Some nations have joined the NPT but have failed to adhere to its letter or spirit. In the 1970’s for example, three parties to the treaty-Taiwan, South Korea and Iran- all had clandestine nuclear weapons programs in various stages of development. Taiwan was pressured intensively by the United States to abandon its effort. Similarly pressure was placed on South Korea. To entice Seoul to agree, the United States assuaged its security concerns by extending nuclear protection to South Korea.”

Following requests by the World Health Organization and the UN General Assembly in 1993 and 1994 respectively, the International Court of Justice issued a 1996 advisory opinion on the question of the “Legality of the Threat or Use of Nuclear Weapons.”<sup>11</sup>

After reviewing *inter alia*, Humanitarian Law, the Law of Neutrality and certain provisions of the UN Charter, the majority of the Court found the threat or use of nuclear weapons was generally contrary to the rules of International Law applicable to armed conflict and, in particular, to the principles and rules of Humanitarian Law. The Court could not definitively conclude however that the threat or use of nuclear weapons would be unlawful in extreme circumstances of self defence. (Opinion, para 105, E) After reaching this conclusion, the Court unanimously stated that there was an obligation by states to pursue and conclude good faith negotiations to effect a nuclear disarmament. (para 105 F)<sup>12</sup>

#### b) North Korea’s Position

North Korea has been a member of the UN since September 17, 1991 and, like the US, does not recognize the compulsory jurisdiction of the Court under Article 36 (2) of the Statute of the International Court of Justice. Never the less, like the US, it submitted arguments to the Court that addressed the General Assembly’s question about the legality of the threat and use of nuclear weapons.<sup>13</sup> North Korea argued in a written statement to the Court that: “The threat or use of nuclear weapons in any case is a violation of the UN charter and the existing international laws, and therefore should not be allowed on any account.” (May 18, 1995 letter from the Permanent Representative of the Democratic Peoples Republic of Korea)

This was contrary to the views of the US, which argued that international law did not prohibit the use or threatened use of nuclear weapons.<sup>14</sup>

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<sup>11</sup> The Court found that the World Health Organization, unlike the UN General Assembly had no standing to request such an opinion. Accordingly, the Advisory Opinion, (General List No. 95 of July 8, 1996) dealt only with the General Assembly request for an opinion.

<sup>12</sup> See also the obligations imposed on state parties under Article VI of the Nuclear Non- Proliferation Treaty, foot note 2, *supra*.

<sup>13</sup> Unlike a judgment in a contentious matter, the Court’s advisory opinions have no direct binding force on any particular state.

<sup>14</sup> The US argued *inter alia*, that there was no consensus among states to support a customary law prohibition on the use of nuclear weapons. “No evidence of such practice exists with respect to nuclear weapons and it cannot be implied from the decision of States possessing such weapons to abstain from using them for humanitarian, political or military reasons, rather than from a belief that such abstention was required by law.” (US Representative Michael Matheson; Verbatim Record of Oral Argument, November 15, 1995, pages 77-78)

c) The Effect of the Advisory Opinion on North Korea's Test Explosion

The Court's Advisory Opinion primarily focused on the military threat and use of existing nuclear weapons by nuclear weapons states, not the experimental test detonations by non-nuclear states seeking to manufacture and possess such weapons. It found that possession of such weapons did not *per se* necessarily lead to the inference that such weapons would be used. (Opinion, para. 48) The Court also noted that though treaties that addressed the testing, manufacture and possession of such weapons "pointed to an increasing concern in the international community with these weapons," they did not constitute a prohibition *per se* on such activities. (Opinion, para 62)

Further, contrary to North Korea's position expressed in its written submission, the Court could not conclude that it would be unlawful to use nuclear weapons in extreme circumstances of self defense. (Advisory Opinion, para. 105 E) In this regard it should be noted that following North Korea's October 9<sup>th</sup>. 2006 test detonation, the North Korean Foreign Ministry issued a statement justifying the test detonation on the basis that "*the US extreme threat of a nuclear war and sanctions and pressure compel [it] to conduct a nuclear test.*"

The Advisory Opinion considered the legality of the threat and use of nuclear weapons by nuclear states against other states because this was how the UN General Assembly formulated its question to the Court. Therefore the legality of test detonations, for developing and possessing such weapons by non- nuclear states, was not directly addressed by the Court. Accordingly, North Korea's October 9, 2006 detonation would not have violated the Court's Opinion on international law as it related to the specific question submitted to it.

The Court however, after dealing with the General Assembly's specific question, added that there was an obligation by states to pursue and conclude good faith negotiations to effect a nuclear disarmament. (para 105 F). This obligation is contained in Article VI of the Nuclear Non- Proliferation Treaty.

Though North Korea withdrew from the Nuclear Non-Proliferation Treaty in 2003, its October 9, 2006 test detonation paradoxically appears to have led to steps toward the fulfillment of this obligation in so far as North Korea is concerned. Prior to the test detonation, the US refused to enter into direct discussions with North Korea over its nuclear program. Approximately three weeks after the test detonation, on October 31, 2006, the US announced that it would participate in six-nation negotiations with North Korea to end its current weapons program.

Accordingly, the October 9, 2006 test detonation would not appear to have violated international law as expressed in the Advisory Opinion.

### 3. International Customary Law

Obligations of a state under International Customary Law arise when a widespread repetitive practice involving similar acts by states becomes recognized by the international community as a binding custom or *opinio juris sive necessitates*<sup>15</sup> Certain of these behavioral state customs are considered so fundamental that no state deviation is permitted. These include peremptory norms of behavior or *jus cogens* against, for example, wars of aggression, slavery, torture and genocide.

Since international customary law rests on the establishment of a clear international consensus on state behavior, the legality of North Korea's test detonation requires it to be examined in the context of the international community's approach to such tests.

#### a) The Comprehensive Test Ban Treaty and International Consensus

The most obvious starting point for an examination of an international consensus on banning test detonations is the Comprehensive Test Ban Treaty that 65 states signed in 1996 and is currently ratified by 135 states. At first sight, the Treaty's lengthy Preamble and its Article I prohibition on nuclear test explosions appear to reflect an international consensus against such tests. But the Treaty has never entered into force since its inception over ten years ago.

As indicated above, (fn 8), Article XIV requires that all 44 states who participated a June 18, 1996 Disarmament Conference, including the US, must ratify the Treaty before it comes into force. In testimony before the US Senate in October 1999, during ratification hearings on the Treaty, former UN Ambassador Jeanne Kirkpatrick expressed the view that:

“Everyone knows that this treaty cannot be ratified. the safety and reliability of our nuclear stockpiles cannot be taken for granted, but must be monitored. Testing (banned forever by this proposed treaty), is a vital part of ascertaining the reliability and safety of our nuclear weapons. It is also a necessary step in modernizing our nuclear weapons.”

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<sup>15</sup> The belief that there is a legal reason or requirement to act in a certain way.

Cited in “Rule of Power or Rule of Law,” Deller, Makhijani & Burroughs, page 49. As Kirkpatrick pointed out, nuclear states such as the US, by virtue of their possession of nuclear arsenals, are required to conduct such tests in order to both maintain weapons integrity and develop new nuclear technology. For such states, testing is a necessary practice to ensure continued possession of viable nuclear weapons systems.

The Treaty therefore does not appear to reflect a clear *opinio juris* or *jus cogens* prohibiting experimental nuclear tests. Of the eight current nuclear weapon states, only three, France, Russia and the UK, have ratified the Treaty. Five other nuclear weapon states, including the US, Israel, China., India and Pakistan, have not.

#### b) Use of Nuclear Weapons and International Consensus

The failure of five nuclear states to ratify the Treaty also emphasizes the lack of consensus on state practice concerning the threat and use of nuclear weapons *per se*. Despite the 1996 Advisory Opinion of the International Court of Justice, *supra*, the US State Department issued a July 8, 1996 statement that indicated that the Court’s Opinion would not alter US practice with regard to the deployment and use of its nuclear weapons systems.

“Nuclear deterrence has played a vital role in maintaining our common security and defending the United States and its allies over the past 50 years. Nuclear deterrence continues to make an essential contribution to preserving peace, security, and stability. We do not believe that the Court’s opinions provide reason to alter the common defence policy of the United States and its allies.”

See also, the argument presented by the US to the Court, (fn 14) that there was no international consensus prohibiting the use of nuclear weapons.

It should also be noted in this regard that three nuclear states, namely, India, Pakistan and Israel, refused to be bound by the provisions of the Nuclear Non-Proliferation Treaty.

It appears therefore that the current practice by nuclear states of retaining nuclear arsenals that require test detonations for their maintenance and renewal mitigates against the establishment of an international consensus or *jus cogens* against such experimental test

activities.<sup>16</sup>

North Korea's October 9, 2006 test detonation therefore would not appear to violate current international customary law.

#### 4. Current International Law on Nuclear Testing Is Unsatisfactory

The continued nuclear state practice of retaining nuclear arsenals requiring test detonations for their maintenance and renewal not only precluded the entry into force of the Comprehensive Test Ban Treaty, but permits non-nuclear states, in the absence of non-proliferation obligations, to conduct experimental test-detonations for the acquisition of their own nuclear weapons.

The absence of a *jus cogens* prohibition against testing is clearly undesirable and emphasizes the need, expressed in Article VI of the Nuclear Non-Proliferation Treaty and by International Court of Justice in its Advisory Opinion, *supra*, for urgent negotiations on a comprehensive nuclear disarmament treaty that places such weapons and their acquisition under strict international control.

As the Court observed: "In the long run, international law, and with it, the stability of the international community, are bound to suffer from the continuing difference of views with regard to the legal status of weapons as deadly as nuclear weapons. It is consequently important to put an end to this state of affairs. The long-promised complete nuclear disarmament appears to be the most appropriate means of achieving that result." (Advisory opinion, para. 98)<sup>17</sup>

Unfortunately, due to the testing practices of leading nuclear states, this goal does not appear to be currently attainable. A few weeks after North Korea's October 9, 2006 nuclear

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<sup>16</sup> Experimental tests for maintenance and renewal purposes would not technically constitute "proliferation."

<sup>17</sup> In the case of other deadly weapons such as chemical and biological weapons, the International Community has taken positive steps towards disarmament and elimination, starting as long ago as the 1899 Hague Gas Declarations. For example, under the 1972 Biological Weapons Convention and the 1993 Chemical Weapons Convention, the US and other signatory states are committed to destroying their entire stockpiles of such weapons. Nuclear weapons that create deadly genetic and environmental hazards lasting for thousands of years could also be the subject of similar Nuclear Weapons Convention. But see Moxley, *supra*, pages 627 to 628, where he notes that the US's nuclear weapons policy "*is fostered by the United States' agreement not to use or possess chemical or biological weapons.*" The problem appears to be that chemical and biological weapons pose a greater proliferation risk than nuclear weapons due to the simpler and more easily available technology employed in their manufacture. It would appear that a comprehensive ban on the use of nuclear weapons will only be possible when nuclear states are satisfied that chemical and biological weapons no longer pose a credible threat to their security.

detonation, the UN General Assembly First Committee on Disarmament and International Security voted on a resolution introduced by Australia to expedite the entry into force of the Comprehensive Nuclear Test Ban Treaty.

The resolution was approved by 175 states with only two states opposing, namely, the US and North Korea.<sup>18</sup> In opposing the resolution, the US, which had conducted a sub-critical nuclear weapon's test in Nevada in August 2006, explained that it "*cannot support a resolution supporting the Comprehensive Test Ban Treaty.*"

Clearly, without a change in the current defense policies of leading nuclear states such as the US nuclear proliferation will continue to increase, providing both state and non-state organizations alike with such weapons. This is untenable and requires the nuclear states to seriously reconsider their present nuclear policies in the light of their long-term security and defense interests.

## CONCLUSION

- i) Under current International Law, North Korea's October 9, 2006 underground nuclear detonation did not violate any express or implied international commitment of that state.
- ii) The current nuclear state practice of retaining nuclear arsenals requiring test detonations for their maintenance and renewal facilitates experimental nuclear weapons testing by non-nuclear states, which have not incurred non-proliferation treaty commitments.
- iii) This is clearly undesirable and will progressively lead to an untenable and unstable situation unless major changes are made in the nuclear defense policies and practices of leading nuclear states.

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<sup>18</sup> Resolution A/C.1/6/L.48/Rev.1, introduced during the Committee's October 23 to 27, 2006 session. Four states abstained, namely, Columbia, India, Mauritius and the Syrian Arab Republic.