World Court Coalition

Freedom from Nuclear Weapons

Conference Report

6 - 7 July 2006, Brussels, European Parliament

International Peace Bureau

International Association of Lawyers Against Nuclear Arms

International Physicians for the Prevention of Nuclear War

International Network of Engineers and Scientists

Abolition 2000 Europe

World Court Project UK

International Law Campaign

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The European Parliament in Brussels

Freedom from Nuclear Weapons

through Legal Accountability and Good Faith

Conference Report

Organised by

International Physicians for the Prevention of Nuclear War
Abolition 2000 Europe
International Association of Lawyers Against Nuclear Arms
International Peace Bureau

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SPOKESMAN
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CONTENTS

INTRODUCTION

This publication records a two-day conference which marked the tenth anniversary of the Advisory Opinion of International Court of Justice (ICJ), the World Court, on the Threat or Use of Nuclear Weapons. The aim of the conference was to identify relevant aspects of international law and treaty obligations clarified by the Opinion.

The first day concentrated on the legal implications of the Advisory Opinion, emphasising developments since 1996. It started with a review of the Opinion, and a reminder of how nuclear weapons affect people. The rest of the day considered Nuclear Policy Concepts, including an examination of the concept of "good faith" in relation to current nuclear weapons policy.

The second day examined the various options for another request to the World Court for a fresh ruling regarding compliance with the Good Faith obligation to achieve global nuclear disarmament. This was followed by presentations of civil society initiatives linked with the 1996 World Court Opinion and a return to the World Court.

Some of the presentations published here are derived from written transcripts and others from the excellent audio-version provided by Radio Nizkor.

We would like to extend our thanks to:

Ernst Guelcher and Marilyn Neven who worked hard for the conference to take place in the European Parliament;

MEPs Caroline Lucas and Gisela Kallenbach who sponsored the conference;

Hans Lammerant, Pol d'Huyvetter, Urban Gibson and Reiner Braun who took part in the organisation;

our chairs, Rae Street, Dr. Ronald McCoy, Professor Manfred Mohr, Cora Weiss;

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6 JULY 2006

WELCOME TO THE CONFERENCE

Rae Street

Rae Street is a Vice-Chair of the Campaign for Nuclear Disarmament (CND-U.K.)

Welcome to this Conference which has such significance for us today. It is ten years since the World Court's Advisory Opinion on nuclear weapons but I imagine that almost everyone here is disappointed because we have made so little progress towards nuclear disarmament since then.

Instead of disarmament we have nation states and alliances of nation states still retaining nuclear weapons. Their empty phrases proclaim that they need nuclear weapons as a "minimum deterrent". It is even worse in 2006 than ten years ago. Not only do we have nations defying treaties on nuclear weapons. We now have them flagrantly defying established principles of international law.

So, friends, it must be our fervent hope in this conference, that we will search for ways to strengthen the principles of the World Court and to pressurise Governments to understand that if they say they have principles of democracy and justice, then they themselves must uphold those principles. This is an enormous task, but I am sure that together we can do it, that we can look for pathways to the future.

Ernst Guelcher

Ernst Guelcher is a peace activist and researcher who works for the Green/ European Free Alliance group in the European Parliament

Today we celebrate the tenth anniversary of the ICJ Opinion. How far have we come since then? Sitting here in the European Parliament I recall that some months ago this Parliament, on the initiative of the Green MEPs, for the first time officially adopted some of the language of the Advisory Opinion and stated that this should be integrated into the European Security Strategy and the European Strategy on Weapons of Mass Destruction. The language of illegality has become part of official European policy at the highest level. This is the good news.

The bad news is that nothing has moved at all with the Council of Ministers. NATO totally ignores the Advisory Opinion, preferring to think of nuclear deterrence. So although the Opinion is taken seriously by judges, lawyers, peace activists and academics, it is still an enormous step to influence the political community So I am particularly proud to have you all here in the Parliament as after all this is a political community. Tomorrow MEPs Caroline Lucas and Gisela Kallenbach will be here. We shall be having dialogues with the European Council, with Mr Solana, and with ministers. We hope we can bridge the gap.

MAIN FINDINGS OF THE COURT AND LEGAL DEVELOPMENTS SINCE 1996

Judge Christopher Weeramantry

Judge Weeramantry is a former judge of the International Court of Justice and President of the International Association of Lawyers Against Nuclear Arms (IALANA)

It gives me the greatest pleasure to address an audience of such dedicated workers in the cause of the abolition of nuclear weapons. This is, after all, the most important question before the citizens of this world. Nuclear weapons have the potential, as you all know, to destroy all that civilisation has built up over thousands of years of effort. We are, in a sense, sleepwalking into danger because of the fact that nuclear weapons have not been used for 60 years. This has lulled the people into a sense of false security. It has not happened so far - it is unlikely to happen at all. But the dangers are increasing and the problem is becoming ever more immediate and urgent. That is why a conference of this sort is most opportune.

The Advisory Opinion of the International Court of Justice was a historic event on the route to the abolition of nuclear weapons. It laid down categorically for the first time that the principles of customary international law and, in particular, international humanitarian law, were strong enough to outlaw nuclear weapons altogether.

The Opinion of the Court was also historic because it resulted in a tremendous amount of co-operative effort from across the world. We were amazed at the number of people who gathered in the vicinity of the Court and at the enormous number of petitions we received which numbered millions – millions of signatures, millions of documents. In fact we had no room in our very spacious archival rooms in the Peace Palace to accommodate this mountain of material and we had to accommodate it somewhere else.

There were people who came from all over the world to give evidence before the Court and who told us the most harrowing tales of the suffering that nuclear weapons cause. There were the Mayors of Hiroshima and Nagasaki. There were people from different areas affected by nuclear weapons. A lady from the Marshall Islands gave us very, very harrowing evidence. She said, "We have come all the way from the Marshall Islands to tell the judges of the Court how harrowing are the sufferings which our people have endured since nuclear bombs were first exploded in our area. We have children born with two heads, children deformed in various ways, and jellyfish babies who are so abnormal that they can hardly be called human beings."

Another reason why the case was so significant was that perhaps for the first time in the entire history of the Court every judge who participated wrote a separate opinion. They all expressed themselves as fully as they could and the case attracted a vast amount of international publicity. We are pleased to see that since then it has been recognised in some national parliaments. It has also been recognised every year by United Nations General Assembly Resolutions. It has also been cited in a whole series of cases where peace activists have appeared in court. Those charged with various offences have sometimes been acquitted.

Several features of the Opinion are most important. First of all, the Opinion drew on a rich repository of principles of humanitarian law contained in what we call Customary International Law. Many members of the general public falsely believe that you need a treaty to ban nuclear weapons. In fact that argument was seriously misused before the Court by some of the countries supporting nuclear weapons. You do not need a Treaty because the weapons already stand condemned by the universal principles of law. These have grown up over the ages because humanity has always been very sensitive to the cruel and unnecessary suffering that some weapons impose. For example, at the 12th century Lateran Council, the doctors of the Church said that the crossbow and the siege engine, which were new at that time, were too cruel to be used in warfare among Christian nations. You get that sort of tradition in all cultures. For example in Hindu law, in the Ramayana as well as the Mahabharata, you have a very curious reference to a hyper-destructive weapon which could ravage enemy countryside and kill thousands of soldiers in one stroke. The leaders of the time were told: "You shall not use this weapon without first consulting the sages of the law". They said, "You cannot use this weapon in war because it goes beyond the purpose of war. This is not to annihilate your opponent but to subdue him then talk peace with him, and then live in peace with him." This appears in every tradition you can think of. Islamic law is very strict on the principle that there should be no weapons, such as barbed arrows, that cause unnecessary suffering. In the nineteenth century the civilised nations of the world decided that the dum-dum bullet, which explodes on entry into the human body, was too cruel to be used in warfare among civilised nations.

The civilised nations of the world fully accept this but some of them say that nuclear weapons can be used. The absurdity of the proposition that nuclear weapons can be used legally is evident to any child of ten or any visitor from outer space. So an important feature of the Opinion is that it drew upon the principles of customary international law and announced to the world that nuclear weapons needed no special treaty to ban them. They were already condemned outright and downright by a whole battery of principles of Customary International Law.

So that is very clear. By a majority of one the Court decided not to express an Opinion regarding the legality of the use of nuclear weapons in one situation only, that of extreme self-defence where the very survival of a State was at stake. However, there were dissenting opinions arguing that there was an absolute prohibition on the use of nuclear weapons in all circumstances. So nuclear weapons stood roundly condemned by this judgment.

Another important aspect of this judgment was the unanimous statement by the judges that there was an obligation on the nuclear powers to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international supervision. Ten years later it is our obligation to examine this keynote part of this judgment. We need to examine how far this unanimous opinion of the highest court in the world, the supremely authoritative statement of international law, has been observed by the nations of the world. It is vital that we do this now, as the danger is growing.

There is a proliferation of nuclear states and of movements prepared to resort to terrorism who would like to lay their hands on nuclear weapons. The knowledge of how to make a nuclear weapon is being disseminated at an alarming rate on the internet. There is a growing tendency to ignore international law or to trample it underfoot. A number of nuclear states fear that any nuclear exchange between states would irretrievably damage their populations and their environments. There is a whole series of skirmishes and wars all over the world which could at any time eventually result in the use of nuclear weapons. Furthermore, if a nuclear weapon is used again, there may well be a potential for nuclear retaliation this time, resulting in an exchange of nuclear weapons. This could lead to dire consequences. For all these reasons it is urgent that we consider this matter now with a view to bringing it to an acceptable conclusion.

Now to the issue of good faith, which is the crux of this decision. Nuclear powers must take meaningful steps, in good faith, to end their possession of nuclear weapons. Good faith, of course, can be analysed *in extenso* because all legal traditions in the world have a tradition of good faith as opposed to merely applying the letter of the law. Good faith has been expounded in the literature of not only our legal systems but also in traditional legal systems. Roman law, Canon Law, Civil Law, Hindu law, Buddhist law, and Islamic law all invoke the concept of good faith, saying that if parties are in negotiation with each other, all are under a duty to act in good faith and all its elements must be equally observed. In Hindu law there is a lot of literature on Dharma or righteous conduct. In African traditional law there is considerable emphasis on good faith. My friends from New Zealand were telling me the other day about how Maori law also has this emphasis on good faith in one's relations with neighbours.

So good faith in law is a very ancient concept. It also is a very broad concept. It is a very meaningful concept and it has many different aspects. It means there has got to be correspondence between word and deed. We must ask ourselves whether the behaviour of the nuclear powers shows a correspondence between word and deed. Are declarations matched by corresponding action? Are there secret reservations? Is there any dissembling? Is there any back-tracking? If so this militates against good faith. Is there openness and transparency? Is there a complete disclosure of relevant facts? Is there a readiness to submit one's actions to external scrutiny? Are meaningful steps being taken towards the goal of nuclear abolition? Are the nuclear powers sincerely trying to achieve it? Are they restraining themselves from taking steps that militate against their goal?

One can announce that one is committed to disarmament but at the same time develop or refine nuclear weapons. That is backtracking when one should be moving forward and this contradicts the concept of good faith. Are there indefinite postponements that show that one is not serious? Has a reasonable time-span been set? Is there co-operation with the other parties involved in this enormous task? Is there anything that indicates a continuity of effort or are there only spasmodic bursts of activity followed by cessations of activity? Are the proposals of other parties being considered? Is there universality of action?

One could go on for quite a long time, examining the implications of good faith. It is for us, as citizens of Planet Earth, to ask ourselves whether the main powers that are committed to this solemn responsibility are complying with the obligation stated in the most authoritative fashion by the highest court in the world that they should get rid of their nuclear arsenals and move in good faith towards that result.

So these are all questions that we have to consider and I am delighted that I have had the opportunity of addressing such an influential and dedicated group of peaceworkers. I do hope that now that we are marking the 10th anniversary of this historic judgment, we will concentrate our efforts once again and revive the fading embers of that anti-nuclear flame that once burnt so brightly, and which seems to have been somewhat extinguished. So I wish you well in all your deliberations and I thank you once again for the opportunity I have had of speaking to you. Thank you.

THE EFFECTS OF NUCLEAR WEAPONS

Dr. Victor W. Sidel, MD

Dr Sidel is a past Co-President of International Physicians for the Prevention of Nuclear War

Due to shortage of time Dr Sidel delivered a shortened version of his prepared presentation which was accompanied by slides. The full presentation he planned is reproduced here.

I am honoured and pleased to be invited to give this presentation as a representative of the International Physicians for the Prevention of Nuclear War (IPPNW) and as a participant in the efforts in 1993 and 1994 to urge the World Health Organization and the United Nations General Assembly to request an Advisory Opinion from the International Court of Justice. Evidence gathered by IPPNW and other groups on the effects of nuclear weapons on health and on the environment formed a major part of the evidence that was the basis for these requests. The Advisory Opinions issued by the ICJ in 1996 were largely based on this evidence.

The nature of nuclear weapons and the consequences of their use place them clearly within the category of weapons prohibited from use in war by international law. First, nuclear weapons have an explosive force thousands or millions of times greater than that of conventional munitions. Even crude nuclear weapons may have an explosive force greater than the most powerful conventional weapons ever deployed. Second, at the moment of detonation temperatures comparable to the interior of the sun are generated. A thermonuclear explosion can cause third degree burns up to 5 miles away from the point of an air burst. Third, nuclear weapons generate ionising radiation from the initial gamma and neutron flux of the explosion. Finally, there is additional exposure to radiation from the fallout of the radioactive material cast into the air – usually from a ground burst, but from almost any form of nuclear explosion – that contaminates the ecosphere and causes radiation injury.

Development of nuclear weapons in the United States was initiated by a 1939 letter from Albert Einstein and Leo Szilard to President Franklin Delano Roosevelt warning that Nazi Germany might be able to produce nuclear weapons. This letter led to the $2 U.S. 2 billion Manhattan Project that developed and constructed three weapons based on nuclear fission, each producing a nuclear explosion with a yield equivalent to about 10,000 to 20,000 tons (10 to 20 kilotons) of TNT. One of these bombs was used for a test in Alamogordo, New Mexico on July 16, 1945, one to bomb Hiroshima on August 6, and one to bomb Nagasaki on August 9.

The 12.5 kiloton bomb detonated in the air over Hiroshima created ground temperatures that reached about 7,000 degrees Celsius. Of the 76,000 buildings in the city, 92% were destroyed or damaged. "black rain" containing radioactive fallout fell for hours. There were over 100,000 deaths and about 75,000 injuries in a population of about 350,000. Of 298 physicians 270 were dead or injured and 1,564 out of 1,780 nurses died or were injured. The 21 kiloton bomb detonated in the air over Nagasaki levelled 6.7 million square metres (2.6 square miles). There were 75,000 immediate deaths and 75,000 injuries.

The physical effects of nuclear weapons include a thermal wave, a blast wave, an electromagnetic pulse, and production of radiation and radioisotopes. Specifically, the effects of a 15 kiloton nuclear weapon include:

- At the centre of the blast (ground zero) the overpressures would be greater than 20 pounds per square inch (psi), sufficient to destroy all but the skeletons of reinforced concrete structures.
- At approximately 0.6 mile (1.0 km) from the centre of the blast, the overpressures would be about 10 psi, sufficient to destroy all wood and brick-built structures.
- The blast not only destroys buildings but turns bricks, lumber, furniture, cars, and people into missiles. Overpressures on the order of 0.5 to 2 psi will turn a window into a thousand particles of glass travelling in excess of 100 miles per hour.
- The winds rushing out from the centre of the blast cause air to rush back in fanning the fires produced by the thermal radiation and the initial blast damage creating a fire storm.
- The injuries would include tens of thousands of burns, particularly third degree burns. These would occur on top of thousands more second degree burns and crush injuries due to collapsed buildings. Hospital beds, trained personnel, and medical supplies would be unavailable.
- Ruptured organs (particularly lungs). Penetrating trauma (due to the objects that were turned into missiles). Fractured skulls and compound fractures from people having been turned into missiles until they struck any hard object.
- There would be a significant number of deaf people due to ruptured eardrums.
- Many people would be blinded. Anyone as far away as 20-30 km who made a reflex glance at the fireball would suffer retinal burning and potential blindness.

Radiation exposure would result from the initial radiation flux of neutrons and gamma rays and from the fallout of the radioisotopes produced by the detonation. Radiation poses a particular problem for rescuers since there is no way to know

whether a person has received a 100 REM exposure and might survive with adequate care or has received a 1,000 REM exposure and will die regardless of what treatment is offered.

Overall, there would be extensive blood loss and the combination of all of the above injuries (burns, crush injuries, ruptured organs, fractures, radiation exposure).

Despite opposition by J. Robert Oppenheimer and other physicists who had worked on development of nuclear fission bombs in the Manhattan Project, construction of bombs based on nuclear fusion (thermonuclear or hydrogen bombs) began at the order of President Truman in 1951. Weapons based on nuclear fusion involve forcing together of atoms of two isotopes of hydrogen (deuterium and tritium) to form an unstable atom of helium, which then decays to an atom of stable helium. This loss of a tiny amount of matter generates even more energy than a fission bomb. Under the direction of Edward Teller, hydrogen bombs with yields of over 10 million tons (10 megatons) of TNT were produced, a yield almost one thousand times greater than the Hiroshima and Nagasaki bombs. The first explosive test took place in the Marshall Islands in the South Pacific on November 1, 1952.

After the release of information on the physical effects of thermonuclear bombs and testimony before the Congressional Committee on Atomic Energy about a possible "limited" thermonuclear attack on the United States, a group of Boston physicians led by Dr. Bernard Lown analysed the medical consequences of such an attack. That analysis demonstrated that the health effects of thermonuclear weapons would be far more horrific that the health consequences of the Hiroshima and Nagasaki bombs. The series of papers published by Dr. Lown and his colleagues in the *New England Journal of Medicine* led to the formation of Physicians for Social Responsibility (PSR) in the United States in 1963 and of the International Physicians for the Prevention of Nuclear War (IPPNW) in 1980. Several representatives of IPPNW are at this conference, including Dr. Ron McCoy, the current co-President, and leaders of IPPNW affiliates in Germany and Belgium.

It is the view of IPPNW and its affiliates that the threat of nuclear war has increased during the ten years since the ICJ Advisory Opinions. It is estimated that 27,000 nuclear warheads exist, with an explosive force of over 200,000 Hiroshima-sized bombs, equivalent to the force of 10 billion tons of TNT, 2 tons for every human on the planet. Of these, 2,000-3,000 are on hair-trigger alert, ready to be launched on a few moments notice. Bush Administration's 2002 Nuclear Posture Review asserts a permanent role for nuclear weapons into the future. Russia and China remain targets and five other countries are listed as potential targets of U.S. nuclear weapons: Iran, Iraq, Libya, North Korea, and Syria. The Nuclear Posture Review reshapes the U.S. arsenal from one intended mainly for deterrence to one

for nuclear war-fighting and the distinction between nuclear and non-nuclear missions and weapons becomes blurred. A further threat comes from the miniaturization of nuclear weapons which could well blur the divide between nuclear weapons and other weapons. IPPNW and its affiliates have also produced estimates of what would happen if a nuclear bunker-buster were used to attack nuclear weapons facilities in North Korea or Iraq.

The numbers of nuclear weapons that are on hair-trigger alert, launch-on warning, increases the danger posed by the United States Nuclear Posture Review, which puts forward the claim that the U.S. may use nuclear weapons against any nation that uses other forms of weapons of mass destruction. There have been many close calls in which the people whose fingers were on the nuclear buttons came very close to launching nuclear weapons in response to unexplained rockets that had been monitored. Physicians for Social Responsibility has listed the possibilities of an accidental nuclear war and has estimated that 6 million people could be killed by such a mischance. Accidental nuclear war became more likely. On January 25, 1995, a warning related to a U.S. scientific rocket led to activation — for the first time in the nuclear era — of "nuclear suitcases" carried by Russian leaders. It took eight minutes to conclude that the launch was not a surprise nuclear strike. Russian President Yeltsin had four minutes to decide whether to launch a retaliatory nuclear weapon in response.

A large-scale nuclear war in which many nuclear bombs are exploded would likely mean the end of civilization in affected countries, radioactive contamination of whole continents, and permanent large-scale damage to the environment. Such a war might result in what has been termed nuclear winter, even though fewer than 100 nuclear weapons were detonated. In such a scenario airborne contaminants absorb and reflect the sun's rays and smoke from fire storms block sunlight. This would cause an extended period of semi-darkness and freezing temperatures and would result in severe damage to Earth's ecosystem. No significant medical response would be possible. Hospitals will be destroyed and most health care providers will be killed. There would be no electricity, water or telephone service and no drugs, sterile solutions, bandages. Roads would be impassable. The rescuers would risk radiation exposure and there would be little help from the outside. It is likely that society as we know it would collapse.

Albert Einstein has said: "The explosive force of nuclear fission has changed everything except our modes of thinking and thus we drift towards unparalleled catastrophe. We shall require an entirely new pattern of thinking if humankind is to survive." Judge Weeramantry and his colleagues in the ICJ have provided us with some new patterns of thinking and of action. We must use these new patterns to move forward to the abolition of nuclear weapons.

THE ROLE OF PUBLIC INTERNATIONAL LAW AND THE ICJ IN A CHANGING WORLD

Dr. Hans Corell

Dr Corell has been Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations until March 2004

Distinguished Participants, Dear Colleagues and Friends, first of all I should like to express my gratitude to the organisers for inviting me to speak on this occasion. Disarmament is a question of vital importance for humanity. Needless to say, the need for nuclear disarmament must be at the forefront here, not least in view of the lack of progress in this field in later years. Although referred to as a failure, North Korea's long-range missile test a couple of days ago casts a shadow over our Conference.

I have been asked to make a more general overview of international law at the beginning of this Conference. The title of my address is "The Role of Public International Law and the ICJ in a Changing World".

The polar bear perspective

I would like to share with you some impressions from an event in which I participated less than a week ago: the Tallberg Forum. This event takes place every summer in a very scenic setting in Dalecarlia in my country Sweden. The Forum brings together participants from different walks of life from all over the world: heads of state, politicians, businessmen, scientists, journalists, writers, artists, lawyers, representatives of non-governmental organisations and indigenous peoples, etc. This year we were some 450 people from more than 60 countries from all continents. Secretary-General Kofi Annan participated by live video link at the opening session.

The Forum asks the question "How on earth can we live together?" - This year with the addition "Getting serious". The challenge discussed was, on the one hand, the necessity to reconcile the need for economic growth with limited energy resources and the fragilities of the environment, and, on the other hand, the need to strengthen democracy, the rule of law and human rights.

"How do we resolve the triple-E equation: economy/energy/environment?", we were asked. The combination of frantic economic activity with the exponential rise of population leads to two phenomena: critical shortages of key natural resources and closer interdependences.

One of the panels at the Forum discussed the topic "The new landscape of human security - how do we get organized to deal with the risks?" Many risks were identified: poverty, disease, terrorism, transnational crime, corruption, environmental degradation; the litany is by now well known. The lack of statesmanship was also identified by one panellist. Indeed, this was one of the concerns that I expressed in my farewell lecture upon leaving the United Nations in 2004.

Discussions focusing on the situation in ten places in the world were also held in parallel workshops. One of these places was the High North. We focused on the Arctic and noted among other things that the polar bear is threatened by extinction. Why? Because the polar ice is melting! Another workshop looked at the situation in Bangladesh and its capital Dhaka. But now you may ask: why is he talking about all this? Is there a connection between the polar bear and Dhaka - and, more importantly, nuclear weapons and our work at this Conference?

Indeed there is! When the ice in the Arctic is gone - and this will most probably be a reality within less than 100 years - there will be no more polar bears. At the same time the melting of the ice will cause the sea level to rise by one meter, affecting millions of people around the world and in particular in Bangladesh. The dilemma is that the melting of the ice in the Arctic is caused by sharply raising temperature in that area which in turn is caused by the burning of fossil fuel in other parts of the world. And it is here that the most serious effects of this melting will materialise rather than in the Arctic itself.

So, something has to be done if we want to reverse this threat. The environmental degradation and the continued burning of fossil fuel need to be addressed. These are complex issues that demand our full attention. Consequently, other threats that can be removed with more limited efforts should be dealt with expeditiously.

And this is where we have the connection with the issues that we are discussing in our Conference. We simply cannot afford spending time and energy on half-hearted and unproductive disarmament talks any more. The threat from weapons of mass destruction can be removed. What is needed here is political will.

In this context there is also a further link to the Tallberg Forum. As the discussion in the panel on human security proceeded, one of the participants, a retired military officer, declared that in spite of the seriousness of the other threats identified, in his view the most serious threat to humankind was the risk of nuclear war. If the proliferation continues, the day will come when somebody presses the button.

I wanted to share these brief impressions from Tallberg with you because they so clearly highlight the relevance of the topic that I have been asked to address.

There is a need for an international order based on the rule of law

My presentation will touch upon the development over the last decades in the field of international law, including international criminal law. The point I will make is: there is a need for an international order based on the rule of law. This point is certainly not new, but it is of greater importance now than ever before.

The role of international tribunals, and in particular the ICJ, will be highlighted. The focus will also be on some aspects of disarmament. However, I will not address the ICJ advisory opinion on the nuclear arms issue or the prospects of requesting a new advisory opinion from the Court. There are others present who are better placed than I am to deal with those matters.

The UN Charter

When one addresses the question of the role of public international law, it is natural to take the Charter of the United Nations as a point of departure. The Organisation was established after the Second World War by persons who had experienced two world wars. Its main engineer was the United States of America.

Of particular interest in this context are the provisions in the Charter that establish the system of collective security. This system has two main elements: the prohibition laid down in Article 2, paragraph 4 against the threat or use of force against the territorial integrity or political independence of any state, and the provisions that allow the use of force only in self-defence or with the authorisation of the Security Council.

Article 103 of the Charter deserves special attention in this context:

"In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

This provision is of great importance in order to understand the present-day system of international law. The authors of the Charter understood that, in addition to existing international law, there would be further development. Indeed, Article 13 of the Charter prescribes that the General Assembly "shall initiate studies and make recommendations for the purpose of - - - encouraging the progressive development of international law and its codification".

But the framers of the Charter understood that in order to avoid repeating the mistakes of the past and to "save succeeding generations from the scourge of war", to quote the preamble of the Charter, it was necessary to make certain that whatever new international agreements emerged, the Charter would prevail. Hence, Article 103 of the Charter.

This provision must be understood to mean that also imperatives prescribed in e.g. a Security Council resolution would have the same effect.

Human rights and other fields of international law

If we look at the progressive development of international law and its codification we can conclude that tremendous advances have been made, in particular in recent years.

The Secretary-General alone is the depositary of more than 500 multilateral treaties. These treaties cover almost every aspect of human life, and every day various treaty actions are being undertaken at the UN Headquarters, such as signatures and the deposition of instruments of ratification. Every month, there are more than two million hits against the UN treaty database. This shows that, increasingly, information is sought from this central source.

Among the most important treaties are the conventions for the protection of human rights. These treaties are based on the Universal Declaration on Human Rights adopted by the General Assembly on 10 December 1948. The two most significant among them are the Covenant on Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights, both adopted in 1966. There are also regional conventions on human rights.

This field of international law has had great impact on the constitutional law in almost every state in the world community. Today, there is not a new constitution elaborated without a chapter on basic rights, modelled after the Covenants, or at least a general reference to the contents of the Covenants.

But also other fields of law could be mentioned: peaceful settlement of international disputes, diplomatic and consular relations, refugees and stateless persons, narcotic drugs, traffic in persons, health, international trade and development, transport and communications, navigation, economy, statistics, educational and cultural matters, status of women, freedom of information, penal matters, commodities, maintenance obligations, law of treaties, outer space, telecommunications, disarmament, environment, and fiscal matters.

The United Nations Convention on the Law of the Sea

From the viewpoint of international peace and security, it is essential to mention an instrument which may not be so well known outside expert circles, namely the United Nations Convention on the Law of the Sea. This convention - often referred to as the Constitution of the Oceans - has played a significant role ever since its entry into force in 1994.

The potential for disputes in the maritime area is great. It is therefore important to have an authoritative source of law that States can resort to in order to solve their differences. From personal experience, having conducted three bilateral negotiations on maritime delimitation, I know that the Convention is of great value in assisting States in identifying reasonable solutions to questions that are highly

sensitive. Such questions can easily be exploited for political purposes both at the international and national level, perhaps not least the latter.

The Antarctic Treaty

Another example that should be mentioned in this context because it is interesting also from a disarmament point of view is the 1959 Antarctic Treaty, which was established immediately after the International Geophysical Year in 1957-58. The twelve nations that had been active in Antarctica during that year managed to agree that peaceful scientific cooperation in the Antarctic should continue. The Treaty applies to the area south of 60° South latitude. The Antarctic continent is some 14 million square kilometres, nearly one and a half times the size of the U.S.

The Antarctic Treaty is an example of a situation where States have been able to cooperate even during the most difficult times - in this case during the Cold War. The three objectives of the treaty are simple but must be said to be unique in international relations:

- To demilitarise Antarctica in order to establish it as a zone free of nuclear tests and the disposal of radioactive waste, and to ensure that it is used for peaceful purposes only;
- To promote international scientific cooperation in Antarctica;
- To set aside disputes over territorial sovereignty.

Article 1, paragraph 1 of the treaty reads as follows:

"Antarctica shall be used for peaceful purposes only. There shall be prohibited, *inter alia,* any measure of a military nature, such as the establishment of military bases and fortifications, the carrying out of military manoeuvres, as well as the testing of any type of weapon."

There are presently 45 States parties to the Antarctic Treaty, 28 of them being so-called Consultative Parties, the others Acceding States. The treaty must definitely be mentioned among the success stories in the field of international law. Every year the States parties gather for the Antarctic Treaty Consultative Meeting, during which important decisions and measures are adopted relating to the administration of the treaty area. This year's meeting took place in June in Edinburgh.

International trade law

Another field of public international law that should be highlighted in this context is international trade law. Many believe that this law is mainly for specialists focusing on a very specific area of the law, not related to peace and security. I beg to differ.

A proper trade law is among the first requirements that must be satisfied if States want to participate in global trade, competing on equal terms with other States in

the global market. The United Nations Commission on International Trade Law (UNCITRAL) has made an extraordinary contribution here.

Since its establishment in 1966, UNCITRAL has developed texts in several areas, such as international commercial arbitration and conciliation, international sale of goods, insolvency, international payments, international transport of goods, electronic commerce, and procurement and infrastructure development.

This is not the place to go into detail on trade law. However, in order to demonstrate the interconnectivity between the different sectors of international law it is central to point to a situation where the connection with international peace and security may not be so obvious.

International criminal law

One field of international law where the development has been extraordinary over the last few years is international criminal law. The events in the former Yugoslavia and Rwanda prompted the UN Security Council to establish ad hoc criminal tribunals to deal with genocide, crimes against humanity and war crimes committed in those countries. A Special Court has been established to address the situation in Sierra Leone. The leaders of the Khmer Rouge in Cambodia may soon be brought to justice before the Extraordinary Chambers of the national courts of that country, based on an agreement with the United Nations.

The establishment of the International Criminal Court in 2003, only five years after the conclusion of the Rome Statute is a major achievement. With some perspective, the 1998 Rome Conference will probably be regarded as one of the most important international conferences in the legal field in the 20th century.

The overriding purpose of the establishment of these courts and tribunals is to address the impunity that, with few exceptions, has been customary in the past.

The International Court of Justice

The ICJ, which is the principal judicial organ of the United Nations, will no doubt have an ever increasing importance in the future. Gradually, the Court has developed into an organ to which States turn to solve their disputes. Of particular interest is that States in Africa have resorted to the ICJ on several occasions.

The border dispute between Cameroon and Nigeria could be mentioned as an example. The ruling by the ICJ in 2002 in this case demonstrates in a very clear manner how the Court can contribute to international peace and security. The dispute concerned the whole border between the two countries, but in particular the oil-rich Bakassi Peninsula. In its judgment the ICJ ruled that Bakassi belonged to Cameroon.

According to the judgment, Nigeria was due to hand over the peninsula in 2004 but

failed to do so because of "technical difficulties". Secretary-General Kofi Annan engaged himself in the matter and has been pressuring the two sides to implement the Court's ruling. Nigeria has now consented to transfer the peninsula to Cameroon. An agreement, signed between the two countries last month and witnessed by representatives of France, Germany, the United Kingdom, and the United States, sets out the procedures for Nigeria's withdrawal and provides for a follow-up committee to witness its implementation. This should be seen as a major achievement.

Public international law will be of increasing importance in a changing world

These examples from different legal fields are intended to demonstrate that public international law will be of increasing importance in a changing world. In any legal system, the ultimate answer to what the law means in a particular case may have to be given by a court of law. Hence, the role of the ICJ and, indeed, of other international dispute settlement mechanisms will be even more critical.

It is also essential to point to the fact that the influence of the courts in any given system goes far beyond the cases adjudicated. It is true that Article 59 of the Statute of the ICJ prescribes that the decision of the Court has no binding force except between the parties and in respect of that particular case. However, for obvious reasons States look to the jurisprudence of the Court and draw their own conclusions. Therefore, this jurisprudence is of great assistance to States when they attempt, as they should, to solve disputes among themselves without resorting to a third party.

The development over the last few years gives cause for apprehension

To many, the assertion that public international law will be of increasing importance in a changing world is self-evident. Some might even consider the statement a banality. But regretfully, the development over the last few years gives cause for apprehension.

Of particular concern is the way in which the world's most powerful nation, the United States of America, has turned its back on multilateralism. Their tendency to go it alone has had a very negative impact on the efforts to create an international legal order that is respected by the state community.

The U.S. National Security Strategy adopted in 2002 should be mentioned specifically. According to this strategy the U.S. would feel free to use force without a clear mandate from the Security Council. This attitude flies in the face of the UN Charter and its system of collective security, in particular Article 51 on self-defence. The U.S. position creates uncertainty among other players in the international arena.

It is interesting to compare this attitude to the mind-set demonstrated by the U.S. at

the time of the establishment of the United Nations. The declaration by President Harry S. Truman before Congress in his State of the Union Address on 16 April 1945 comes to mind: "The responsibility of the great States is to serve and not to dominate the world."

Recommendations by the Weapons of Mass Destruction Commission

This Conference will among other things study the possibilities of having yet another advisory opinion on the nuclear arms issue from the ICJ. Let us therefore look at the question through the prism of the Weapons of Mass Destruction Commission.

As you are all aware, on 1 June this year this Commission, chaired by Dr Hans Blix, presented its report "Weapons of Terror - Freeing the World of Nuclear, Biological and Chemical Arms" to the Secretary-General of the UN. Let me quote from the preface:

"Some of the current stagnation in global arms control and disarmament forums is the result of a paralysing requirement of consensus combined with an outdated system of block politics. However, a more important reason is that the Nuclear Weapon States no longer seem to take their commitments to nuclear disarmament seriously - even though this was a central part of the NPT bargain, both at the treaty's birth in 1968 and when it was extended indefinitely in 1995."

Blix also maintains that bringing the Comprehensive Nuclear-Test-Ban Treaty (CTBT) into force would significantly impede the development of new nuclear weapons.

It deserves to be recalled in this context the unanimous statement about nuclear disarmament by the ICJ in its 1996 advisory opinion:

"There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."

The Weapons of Mass Destruction Commission has presented a number of recommendations - 60 to be precise.

In this context, I would draw your attention in particular to the following recommendations:

- Recommendation 1 that all parties to the NPT need to revert to the fundamental and balanced non-proliferation and disarmament commitments that were made under the treaty and confirmed in 1995 when the treaty was extended indefinitely.
- Recommendation 20 that points to the special responsibility that Russia and the United States have in this context.

- Recommendation 4 on the establishment of a secretariat to handle administrative matters for the parties to the Treaty.
- Recommendation 7 on legally binding negative security assurances by the Nuclear Weapon States parties to the NPT to non Nuclear Weapon States parties and similar assurances by non NPT states that possess nuclear weapons.
- Recommendation 14 on universal adherence to the International Convention for the Suppression of Acts of Nuclear Terrorism and to the Convention on the Physical Protection of Nuclear Material and implementation of UN Security Council resolution 1540.
- Recommendation 28 that states should sign and ratify the CTBT and the particular request to the United States to reconsider its position and proceed to ratify the treaty.
- Recommendation 57 that international legal obligations regarding weapons of mass destruction must be enforced.

However, most importantly, all these recommendations and the other recommendations by the Commission emanate from a body on which the world's leading experts on disarmament are represented. It would be irresponsible of the world community not to act upon their advice.

There is a need to strengthen multilateralism and the rule of law

Let us now against this background revert to the question of the role of public international law in a changing world. What further reflections could be offered as a point of departure for your work?

May I suggest that we focus briefly on three aspects: the existing law, the need for new law, and the inter-governmental organisations such as the United Nations, and their members.

With respect to existing law, as it appears from what I have said, there is an impressive body of law that governs our society. With few exceptions, States realise that this law has to be followed and, indeed, they make great efforts to observe their international legal obligations. If these obligations are not complied with, the reason is more often than not lack of resources to implement them.

The need for the rule of law at the national and international level has also been identified as a major issue for the future. The latest global expression of support for the rule of law appears in the Summit resolution adopted by the United Nations General Assembly in September 2005.

Systematic efforts should be made here to assist States that need help to implement a system under the rule of law. Assistance is given by the United Nations and its organs, the World Bank, the European Union and others. But more could be done.

Remarkable efforts are also made by non-governmental organisations. The International Bar Association and the American Bar Association are presently considering how to create a global rule of law network.

But those who assist should also set the example. Just look at the way in which the misnomer "war on terrorism" is conducted! The violations of human rights standards that has occurred in the name of this so called war - no matter how necessary it is to counter terrorism - is damaging our efforts to strengthen the rule of law. It will take a long time to repair this damage. Those who offer assistance to others for the establishment of the rule of law must be credible. How often do we not hear references to "double standards" these days?

With respect to the need for new law I will be brief. As things develop, there will always be situations where there is a need to regulate new phenomena. So it has been in the past, and so it will be in the future. The requirement at the international level is that States negotiate in good faith and that they abide by their commitments. Pacta sunt servanda! The field of disarmament is a case in point!

Finally, the inter-governmental organisations. Obviously, these organisations are indispensable for the interaction among States.

These days there is also much talk about new actors at the international level: transnational enterprises, civil society and, for that matter, criminal organisations that operate regardless of borders.

While most of this development is positive - I refer in particular to the Global Compact, the increased attention to Corporate Social Responsibility and the work of the non-governmental organisations - the fact is that there is really no alternative to the sovereign nation state when it comes to governance. As a matter of fact, States need strengthening; it is obvious that weak or failing States represent a threat to world order.

In this era of globalisation there will be an increasing need for States to cooperate. And this they must do through various inter-governmental organisations - in particular the United Nations with its overriding responsibility for international peace and security. I refer again to Article 103 of the Charter.

The UN has been criticised for not being effective enough. This may be true. And certainly the UN could do better. But we should be clear about one thing: the UN cannot do better than its members permit.

For someone who has worked in the UN Secretariat for a period of time, this becomes so obvious. It is therefore mind-boggling to observe how the Organisation is literally undermined by its most powerful member as if its administration had lost their history books.

At the same time we must note with regret that many UN members are not

democracies and that therefore many peoples of the world do not have a fully legitimate representation at the international level.

The combination of those two phenomena should also make us aware that the demands for UN reform to a certain extent is an excuse; it is a way of diverting attention from the fact that it is the members of the UN that are in greater need of reform than the Organisation itself. Actually, reform at the national level in certain States would automatically translate into a more effective United Nations!

New challenges: more people to feed, more energy consumption, and a different geopolitical situation

Let me close by pointing to two completely different phenomena that will present enormous challenges for the future.

The world population is today about 6.5 billion. According to the United Nations Population Division it will be 9.1 billion by 2050. By that time it is also expected that China and India will have bypassed the European Union and the U.S. in terms of Gross Domestic Product. More people to feed, more energy consumption, and a different geopolitical situation!

Conclusion

The conclusion is obvious: the world needs statesmanship and a solid international legal order!

Thank you for your attention!

THE INTERNATIONAL HUMANITARIAN LAW ASPECTS OF THE ADVISORY OPINION

Louise Doswald-Beck

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Most of you are already fairly familiar with the Opinion. I was asked to talk about the International Humanitarian Law (IHL) aspects of this Opinion. I will concentrate on some of the factors that appeared to motivate some of the judges to come to certain conclusions. Lawyers will often use technical aspects of the law in order to prove the result they want to achieve. Any good lawyer can argue convincingly a case using such technicalities and this can be confusing for non-specialists. Therefore I would like to walk you through some of the arguments in order to show some alternative ways of looking at these legal technicalities.

The first point which was alluded to this morning by Judge Weeramantry was the fact that the Court stated that the lawfulness of the use of nuclear weapons has to be evaluated within the rules of IHL. That was utterly uncontroversial. All the States which made submissions to the Court accepted that. The other uncontroversial point is that one can use the basic rules of IHL, in the absence of a treaty, to evaluate whether the use of nuclear weapons would be lawful or not. Only two states, Russia and France, argued in their submissions that the only way to ban a weapon is by a treaty, but none of the other States were of this view. The predominant view, that the use of nuclear weapons must be evaluated in accordance with the basic rules of IHL, was confirmed by the Court's Advisory Opinion and this was how the vast majority of judges in their individual Opinions undertook their assessment.

The Court then considered the major relevant rules. Several were argued in the various States' submissions, such as Human Rights Law, Environmental Law and Neutrality Law. These are not just minor side-issues but they are not the centre of humanitarian law as discussed in that Opinion.

The judges concentrated on what they called "the two cardinal principles", and I shall do the same today. The term "cardinal principle" is non-existent in international law and I have no idea how the ICJ invented it. Either something is Customary Law or it isn't, and an evaluation of what is Customary Law is an exercise in itself, as I know, because I am one of the co-authors of the International Committee of the Red Cross' study on Customary Law. A rule might be a sort of

super Customary Law, termed "*jus cogens*" which means that it is a customary rule that cannot be undermined by treaty or otherwise derogated from. I have decided I am not going talk about *jus cogens* here. I am just going to talk about the customary principles as generally understood.

The first basic Customary Law principle under which we evaluate whether a weapon can be lawfully used or not, is that which provides for the distinction between combatants and non-combatants; in other words whether weapons are capable of distinguishing between these. In this context one looks at whether a weapon is indiscriminate. The second basic Customary Law principle is the prohibition of the use of weapons that cause superfluous injury or unnecessary suffering. The Court described this as "a harm greater than that unavoidable to achieve legitimate military objective." I would like to take these two and examine them in the context of what the Court said, and what the various judges had to say.

I'll start with the second one - the prohibition of superfluous injury or unnecessary suffering. It basically prohibits excessively cruel weapons. If one can use a certain type of weapon to achieve a particular military result, then using a weapon which creates more damage, more suffering than that which is necessary to achieve that particular military result, becomes excessive and therefore violates this principle. All judges mentioned this but hardly analysed it with the exception of Judge Higgins, and, in an implied fashion, Judge Guillaume. Judge Higgins is the only one who tried to make a "positivist evaluation" looking at the technicalities of the law. She referred to a general understanding of this rule, i.e. that it is: "some sort of equation between, on the one hand, the degree of injury or suffering inflicted…and, on the other, the degree of necessity underlying the choice of a particular weapon". That is accurate. She then considered the following: "what military necessity is so great that the sort of suffering that would be inflicted on military personnel by the use of nuclear weapons would ever be justified?" She concluded that "only in extreme circumstances (defence against untold suffering or the obliteration of a State or peoples) could conceivably 'balance' the equation between necessity and humanity".

On a technical level I can see how she came to that conclusion. A lawyer could validly make that argument. However, there are two problems with it. The first is that this approach assumes that you will make a careful evaluation in every instance. In the normal way, what States do when they choose to ban a weapon is to look at the normal intended use, not an exceptional use. They will then decide, for the usual intended method, "is the result going to be excessively harmful for that military purpose?" On the other hand to try and make an evaluation at any given moment during a conflict involves an analysis of the specific situation. When it comes to nuclear weapons, given what was mentioned this morning, one must

sometimes make hair-trigger decisions. If you're facing a nuclear strike, you're going to have to respond to it in four or eight minutes. Are you going to be able to make this kind of evaluation? I don't think it's very realistic. Although from a purely technical legal point of view, you could say, "each moment we will evaluate whether the suffering expected will not outweigh the specific military need", doing so in a situation close to panic is likely to be problematic.

Closely associated with this issue is a point referred to by Judge Weeramantry in his separate Opinion. Has there ever really been a proper analysis of whether, in the extreme case of when you are losing the war and your back is against the wall, the use of nuclear weapons is going to win the war for you. In order to come to that kind of conclusion, you have to analyse the question carefully, not just make the general assertion that in an extreme situation such use would win the war.

The second objection that I have to Judge Higgins' evaluation is more important, and indeed the crux of the matter. Has there been a proper recent evaluation, i.e. now, in 2006, of whether modern conventional weapons could actually achieve the military need typically referred to in the context of nuclear weapons? In other words, is there ever a situation in which a nuclear bomb would do something that conventional weapons could not do? I have been told by quite a few military personnel that the answer is no. In this day and age, with the kind of power and penetrability that conventional weapons now have, they can do the military job perfectly well. If this is the case, then we can answer Judge Higgins' question differently i.e. there is no situation that justifies the degree of suffering caused by nuclear weapons. A nuclear weapon would cause suffering beyond the military need because of its long-term effects, in particular the long-term radiation effects which prevent recovery from otherwise non-lethal injuries (radiation suppresses the body's ability to heal); thus its use would cause superfluous injury or unnecessary suffering.

Moving on to the next technical aspect: are these weapons capable of distinguishing between civilians and military? Two examples are sometimes cited: use against a submarine in the middle of the ocean, and against an army in the middle of the desert.

The first issue is: what are indiscriminate weapons? There are two interpretations of this. One of these was used by Judge Higgins and tends to be used by the United States: is it possible to aim a weapon at a military target? If so, then it is not indiscriminate. It is clear that nuclear weapons can be aimed at a target. If the understanding of "indiscriminate" is limited to that definition, then those in favour of the lawfulness of nuclear weapons feel that they have solved the problem.

But that is not the only interpretation of what "indiscriminate" means. I can tell you, from research I did for the Customary Law study, that the majority of state

practice introduces a second condition for what could be considered an indiscriminate weapon: if the effects of a weapon, once targeted accurately at a military objective, are uncontrollable, the weapon is indiscriminate. This is because one cannot realistically evaluate in advance what the effects are going to be. The obvious examples of weapons which have been prohibited by treaty, because of their indiscriminate effects, are chemical weapons and biological weapons. Both those types of weapon can be targeted but no one can reasonably foresee the extent and location of the effects. With nuclear weapons that is precisely the problem. The effects depend on the weather, just as they do with chemical weapons. Radioactive fall-out, especially, will go up in the stratosphere and fall, God knows where.

The next aspect that I want to talk about was not mentioned in the Advisory Opinion itself but was referred to a great deal by several judges in their individual opinions and in several State submissions. This is the doctrine of proportionality in attack. In my view there is a perversion of humanitarian law taking place which most people are not aware of. There are too many persons, even teachers of humanitarian law, who are of the view that for the use of a weapon or an attack to be lawful (i.e. to respect the principle of distinction), we have to look at two things: has a military objective been targeted and is any collateral damage proportionate or disproportionate, i.e. is the collateral damage likely to be excessive in relation to the value of the target? If affirmative, then the military objective cannot be attacked. This is the rule of proportionality in attack and it is an important and valuable rule. However, to limit an evaluation of the lawfulness of a weapon to this aspect of the principle of distinction is a dangerous approach. It eliminates the second definition of "indiscriminate" that I talked about before. It may be that a lawful military objective has been targeted, but in order to assess whether collateral damage will be excessive, you need to make an evaluation **before** you attack of what those collateral effects will be. Otherwise, how are you going to make the evaluation? It is impossible. You are supposed to be able to weigh the value of the military objective against likely collateral damage and then assess whether the latter is excessive. In order to be able to make that evaluation you need to be able to **know** what the extent and likely location of collateral effects are going to be. The whole difficulty when you're looking at nuclear weapons is that you will **not know** the full extent of collateral effects. You **cannot** know in advance. You don't know the way the wind is going to blow from one moment to the next. You don't know how much is going to go into the stratosphere and where it's going to end up.

This brings me back now to my submarine example and my desert example. The argument is that a nuclear strike on a submarine in the middle of the ocean is not going to hit anything – apart from the submarine. But it will. The radiation fallout is going to affect fish and sea-life. The fish is likely to be eaten by people and that is going to have an effect on their health. The effects of what you eat are more

severe than what you breathe in. How are you going to evaluate that in advance? Perhaps some of the people who eat the fish are pregnant. What effect is that going to have on others? So I'm not convinced by the argument that a nuclear strike on a submarine in the middle of the ocean is not going to affect people. How about the example of an army in the middle of the desert? Let's say you have a certain amount of fallout with the dust, you have wind going in various directions. The initial effects might be less but can you really foresee this? How much will go up into the stratosphere and land in various parts of the globe?

The last argument is this: these days we have small tactical weapons the effects of which can be contained and therefore everything's going to be fine. But having heard various opinions from physicists, there is no nuclear weapon, however small, that will not result in radiation that will be let out into the atmosphere. This is especially so if one intends to use it in a tactical way against a very small specific objective. It is likely to be detonated nearer the ground, which means that there is likely to be more fallout. As a result there will be the same problem of the indiscriminate effects of radiation ending up in various unforeseeable places. You cannot evaluate whether it is proportionate or not in advance.

Therefore do not accept the approach that limits the test of whether a weapon is indiscriminate to whether one can accurately target an objective and if the collateral effects are excessive. The majority of states in the world additionally include uncontrollable or unforeseeable collateral effects in their definition of an indiscriminate weapon.

The final point I want to talk about is the reference to "an extreme circumstance of self-defence" in paragraph 105, 2.E of the Opinion and which several judges evoked in their separate opinions. In paragraph 42 of the Opinion, the Court actually made an important and correct statement: "a use of force that is proportionate under the law of self-defence must**,** in order to be lawful, also meet the requirements of the law applicable in armed conflict which comprise in particular the principles and rules of humanitarian law". It's not one or the other. The only judge who said plainly that nuclear weapons are illegal under humanitarian law but self-defence is more important was Judge Fleischhauer. In paragraph 2 of his separate opinion he stated that "the nuclear weapon is, in many ways, the negation of the humanitarian considerations underlying the law applicable in armed conflict…The nuclear weapon cannot distinguish between civilian and military targets". He then went on to argue that if the use of nuclear weapons is denied as a last option in self-defence, then this would give priority of humanitarian law over the right to self-defence which cannot be acceptable as all legal systems allow the right of self-defence. I consider this argument to be extremely dangerous. It is reminiscent of an old German doctrine: "*kriegsraison geht vor kriegsmanier*" which

means that the purposes of war are more important than the rules of war. The Nuremberg Tribunal in three cases said this was completely unacceptable. Judges Guillaume and Schwebel implied a similar approach by stressing the importance of self-defence and concluding that the use of nuclear weapons would be lawful in an extreme circumstance of self-defence. However, if the other judges understood paragraph 105, 2.E of the Opinion to mean that self-defence trumps humanitarian law, that is contrary to what they themselves wrote in paragraph 42, and what the majority of them actually said in their separate Opinions. Not only must the conditions of self-defence (necessity and proportionality) be respected but also the rules of international humanitarian law.

The only other possible interpretation of paragraph 105, 2.E is the approach used by Judge Higgins, namely, that in an extreme circumstance, the use of nuclear weapons might not be superfluous or disproportionate. But I've already said what I think about that in my previous analysis of these two particular legal points.

In my view paragraph 105 does not make sense. It's not coherent in terms of the Advisory Opinion as a whole and it's not coherent with what the majority of judges said in their separate Opinions. Strangely, many of the judges voted in a way that did not reflect their separate Opinions. Judge Weeramantry was by far the most coherent in this regard. Although Judge Higgins dissented, I thought that her Opinion was the closest to paragraph 105 of the Advisory Opinion. It makes the most sense, therefore, to read the Advisory Opinion itself without paragraph 105, as well as the various separate dissenting Opinions, in order to have a better sense of what the various judges were actually saying. In fact eight of the thirteen judges who expressed their views on the merits stated that the use of nuclear weapons would violate the rules of international humanitarian law (Judges Bedjaoui, Ferrari Bravo, Fleischauer, Herczegh, Ranjeva, Shahabuddeen, Weeramantry and Koroma). Given that the Court stated in paragraph 35 of the Opinion that "the destructive power of nuclear weapons cannot be contained in either space or time", the view of this majority is, in my opinion, the only possible one.

Judge Christopher Weeramantry

I have listened with great fascination to the masterly analysis that Louise has made of humanitarian law and its applicability in the context of the Opinion of the International Court. However, I would like to make this discussion a little broader than purely humanitarian law because that is only one branch of Customary International Law. The latter is a much broader concept and humanitarian law is a sub-section within it.

I'll just give you a few of the principles of humanitarian law that are relevant to our discussion. First of all there is the prohibition against the indiscriminate killing

of civilians and against the causing of cruel and unnecessary suffering. The rules of *jus cogens* prohibit genocide. These principles would automatically come into operation if, for example, a bomb were dropped upon a populated city with a million people. There is also the prohibition against environmental damage, against inter-generational damage, as well as of the use of noxious gases and analogous materials. Causing damage to neutral states is also prohibited. Suppose there are two belligerent states firing nuclear bombs at each other. Neutral states that are not in the least concerned with the conflict would be irretrievably damaged. This violates the basic principle of customary international law that belligerents should not damage non-combatants in non-combatant states.

The whole purpose of war is to establish by superior military force who is the correct party to a dispute. However, after that you have got to live in peace with each other. Using a nuclear weapon nullifies the possibility of a return to peaceful co-existence and co-operation because of the irretrievable damage on a massive scale that has been caused. Damage to medical centres is also prohibited. As Dr Sidel told us this morning, the whole international medical system would be unable to cope with the medical consequences of one nuclear weapon. In addition there is the question of damage to centres of religious worship and cultural objects.

You can give a whole list of principles of customary international law, some of which are principles of humanitarian law, which would be violated by the use of nuclear weapons. Why do we say so? Here are just a few effects of nuclear weapons. They cause death and destruction on an unprecedented scale. 140,000 were killed in Hiroshima. They cause congenital deformities, mental retardation and genetic damage for generations. They have the potential to cause nuclear winter and block out the sunlight. They damage the environment, not only for the present generation, but also for many generations to come. They contaminate and destroy the food chain. There are medical effects such as cancer, leukaemia and keloids, as well as gastro-intestinal and cardiovascular effects. These continue for decades. They destroy the eco-system, they produce lethal levels of heat and blast, radiation and radioactive fallout. They produce an electro-magnetic pulse which knocks out all communication systems. They span a time range of thousands of years – plutonium B has a half-life of 20,000 years. They produce social disintegration. They irreversibly damage the rights of future generations.

So those are the consequences that have to be examined in the light of the applicable principles of international law. One should not be too legalistic in looking at the humanitarian principles. One should look at it in a broader way. Humanitarian principles are based on traditions that have come down for thousands of years. In the Crimean war there were prohibitions on the use of weapons involving sulphur. The Martens clause, which gives us the real basis for the

consideration of humanitarian law, speaks of the usages established among civilised people, the laws of humanity, and the dictates of the public conscience. These tell us that it is absolutely unacceptable to kill and maim hundreds of thousands of children, damage the environment, kill various life forms, or to interfere with the food chain. All that becomes self-evidently negative contradicted and condemned by principles of Customary International Law.

So I would plead that we look at the whole problem in the larger context of the principles of Customary International Law At least a dozen can be advanced. These show that nuclear weapons stand condemned by every humanitarian consideration as well as every consideration of co-existence among nations. When a nuclear weapon is exploded one cannot say in which direction the wind will blow its radioactive components. Anyone who uses such a weapon knows this. Radioactivity will certainly be diffused over a much wider area than the immediate area of conflict and over a much longer period of time than the lifetimes of all involved. It will certainly involve the destruction of life-forms other than human beings.

It is clearly foreseeable then that these rules would come into automatic operation. It is also useful to remember that the United States was very much in the forefront of the evolution of these rules. For example President Lincoln requested Professor Lever to formulate the principles of humanitarian law that were then embodied in the U.S. military manuals. President Wilson said, "By painful stage after stage has that law been built up with legal results indeed but always with a clear view of what the heart and conscience of mankind demanded." Nuclear weapons totally destroy what the heart and conscience of mankind demand in the light of the principles of decent co-existence and harmonious relationships and which should continue after hostilities have ceased. So all of these are factors which I think broaden the scope of the debate and bring in a number of considerations which are not confined to humanitarian law alone. They can and should go beyond that. So I think that this discussion has been most helpful in focusing our attention.

Hans Lammerant

Hans Lammerant is a member of the Forum for Peace Action and of Bombspotting

Any evaluation of the Advisory Opinion for the merits it has for campaigning against nuclear weapons must take into account discussions about the implementation of the customary rules of International Humanitarian Law and how this affected the Court's thinking.

The Court identified two cardinal principles of International Humanitarian Law, the Principle of Distinction and the Principle of Unnecessary Suffering. These principles are part of Customary Law and they apply to nuclear weapons. All the Nuclear Weapon States accepted that these intransgressible rules apply to nuclear weapons. There was much more discussion of how, specifically and concretely, to apply these rules. The Court brought some of these discussions to a conclusion. The Court finally failed to reach a decisive ruling because it lacked the factual information to apply these rules.

Article 51 of the 1977 Protocol 1 Additional to the Geneva Conventions shows different ways of applying the Principle of Distinction between civilians and combatants. These are firstly the prohibition against attacks against civil populations as such, and secondly the obligation to maintain this distinction from moment to moment and to safeguard the civilian population as much as possible.

These are characterized in three different ways. Firstly, an indiscriminate attack is one which is not directed at a specific military objective. Secondly it is an attack which uses a method or means of combat which cannot be directed at a specific military objective. Thirdly, it is one which uses a matter or means of combat in which the effects cannot be limited. If these matters or means are not judged to be indiscriminate in themselves, belligerents must take the Proportionality Rule into account. Would the incidental civilian losses be so high that they have to be considered as excessive in relation to the anticipated military advantage? In other words, is there an upper limit to civilian collateral damage?

One question here is how far these different characterizations are part of Customary Law. In the past it was contested whether indiscriminate *weapons* exist as such. Several states defended the position that only indiscriminate *methods* of combat existed. What is important, they argued, is how the weapon is used. This means that it cannot be judged beforehand whether or not a certain weapon is indiscriminate in itself. Another area of discussion was how it could be tested whether a weapon is indiscriminate. In particular there was disagreement on how the effects need to be taken into account.

The second cardinal principle is that of Unnecessary Suffering. There is a prohibi-

tion on the use of methods and means of combat which cause excessive suffering compared to the military advantage obtained. The objective of military action is to put enemy combatants out of action, not to make their deaths unavoidable, or to aggravate their suffering. As with the Principle of Distinction, there was discussion on whether a weapon, by its very nature, can cause unnecessary suffering. During the negotiations for Protocol 1, several groups of experts tried to distinguish which elements of International Humanitarian Law were already Customary Law. Here again it was disputed whether weapons could be indiscriminate or cause unnecessary suffering in themselves and how far the effects have to be taken into account.

When Protocol 1 was negotiated, several states added a statement of their understanding of Article 51. According to these states there was no such a thing as an indiscriminate weapon. The arguments used by the Nuclear Weapon States before the ICJ reflected this understanding. The Nuclear Weapon States argued that the legality of the use of nuclear weapons could not be evaluated in a general or abstract way or in advance. Every evaluation had to take the precise circumstances of use into consideration. The U.K. mentioned the use of low yield nuclear weapons against warships on the High Seas or troops in sparsely populated areas. Both the U.S. and the U.K. submissions argued that a weapon would not be indiscriminate if it could be accurately targeted at a specific military objective.

However the Court's Advisory Opinion does recognize the existence of weapons which are indiscriminate by their very nature. It says that states may never make civilians a target of an attack and must never use weapons which cannot distinguish between civil and military targets. The Court approached the Principle of Unnecessary Suffering in the same way. The Opinion says that it is prohibited to use weapons which uselessly aggravate suffering. This clearly implies that it is possible to judge whether a weapon is illegal or not before using it by invoking these principles.

The effects of nuclear weapons are also discussed in the Opinion. The Court observed the likely effects on the environment. The characteristics of nuclear weapons, it says, are such that they cannot be contained either in space or time. It is clear from the Opinion that the Court believed that the effects of nuclear weapons are an important test of their legality.

We can therefore identify the merits of the Advisory Opinion. If nothing else, it is the most authoritative and detailed discussion of International Humanitarian Law as it existed at that point. The Court could not finally decide whether nuclear weapons were illegal or not. It stated that it did not have the necessary knowledge of facts at its disposal to come to such a conclusion. But it clarified Customary Law. From that it follows that if the likely effects of nuclear weapons are

considered, an evaluation of legality before their use is possible for specific nuclear weapons. If states are thinking of deploying such weapons, they can judge beforehand whether that particular weapon is indiscriminate or would cause unnecessary suffering. Therefore the argument used by the Nuclear Weapon States, that the legality of the use of nuclear weapons could not be judged in the abstract, was clearly negated by the Court.

We can now evaluate the Court's final conclusion. The Court was unable to rule on the legality of the use of nuclear weapons in an extreme circumstance of self-defence in which the very survival of a state would be at stake. But this does not mean that the use of nuclear weapons would be legal in that circumstance. President Bedjaoui states: "I cannot insist too strongly on the fact that the Court's inability to go beyond the conclusion it reached cannot in any manner be interpreted as having opened the door to the recognition of the legality of the threat and use of nuclear weapons."

I think it is important to show that this is a coherent and valid conclusion even though it is strangely worded. It can be interpreted in a way that does not contradict the body of the Advisory Opinion. The first part of the dispositif stated that the rules of the UN Charter have to be observed. Therefore nuclear weapons could only be used in self-defence. In addition, the threat or use of nuclear weapons must comply with International Humanitarian Law.

So why is self-defence in the conclusion? As I see it, the Court was describing the situation for which it couldn't come to a decision. In a situation where the very survival of a state would be at stake, it was impossible for the Court to make a balance between self-defence and the demands of International Humanitarian Law because it did not have the facts at its disposal. It needed these facts to make a judgment because of the current state of international law, which does not contain a clear treaty prohibition of nuclear weapons and makes an evaluation of the facts by the customary rules necessary. This situation is a very limited, extreme and theoretical situation. It is important to understand this because it provides coherence to the Opinion and allows us to take it further.

It is also important to note what Judge Bedjaoui said in his separate opinion. According to him, existing nuclear weapons were illegal and indiscriminate. However, he leaves open the possibility that in the future science could develop other nuclear weapons which would not be indiscriminate and which would not cause unnecessary suffering. "… Unless science succeeds in developing 'clean' nuclear weapons which affect combatants and at the same time do not affect non-combatants, it is clear that the nuclear weapon has non-discriminating consequences and violates humanitarian law at the utmost."

These conclusions concerning the use of nuclear weapons also have implications for the deployment of nuclear weapons. In paragraph 42 of the Opinion the Court made

the connection between International Humanitarian Law and self-defence: "The proportionality principle may thus not in itself exclude the use of nuclear weapons in self-defence in all circumstances. But at the same time, a use of force that is proportionate under the law of self-defence, must, in order to be lawful, also meet the requirements of the law applicable in armed conflict which comprise in particular the principles and rules of humanitarian law." In paragraph 48 the Court stated: "Whether this [deterrence] is a 'threat' contrary to Article 2, paragraph 4, depends upon whether the particular use of force envisaged … would necessarily violate the principles of necessity and proportionality. In any of these circumstances the use of force, and the threat to use it, would be unlawful under the law of the Charter."

If the existing rules of International Humanitarian Law are applied to the specific nuclear weapons which are deployed at the present time, it is clear that the use of these weapons would be indiscriminate and cause unnecessary suffering. The burden is therefore on the Nuclear Weapon States to evaluate their weapons and prove their case and the Court clarified which rules of International Humanitarian Law they must apply. The Court did not have the necessary facts at its disposal but the Nuclear States do. States must be aware of the effects of the weapons they deploy. The law is clear that states must evaluate the effects of nuclear weapons before using them and they should be pressed to do this.

The law is clear enough for states to evaluate the effects of nuclear weapons before using them and states should be pressed to do this. The Court based its assessment on the broader issues of nuclear weapons policy by linking the law of self-defence to the rules of International Humanitarian Law. NATO, for example, refuses to disclose in what precise situations they would use nuclear weapons because they say that would give an advantage to an enemy. They are entitled to say that provided the envisaged use is legal; but they have to prove this first.

Finally, I want to mention another aspect of International Humanitarian Law. Article I of the four Geneva Conventions says that the contracting parties undertake to respect the present Convention in all circumstances. This is also considered to be Customary Law. The commentary by the International Committee for the Red Cross adds the words "to ensure respect" and this was intended to strengthen that duty. It means that states must prepare in advance the legal materials and other means of enforcing the Convention as and when the occasion arises. So when states are confronted with the fact that the position they defended before the ICJ, namely that the legality of nuclear weapons cannot be judged before their use, was rejected by the Court, they have a duty to consider the legal status of their nuclear weapons. They have a case to prove, namely that the envisaged use of these weapons would be legal. I think that this is also an issue of compliance in good faith, not, this time, with the NPT but with International Humanitarian Law itself.

NUCLEAR POLICY CONCEPTS AND SELF-DEFENCE

Peter Weiss

Peter Weiss is the former President and the current Vice-President of IALANA

In 1837 a brig called the Caroline, parked in the waters separating Canada from the U.S. which was then, and to some extent still remains, a British colony. I say that, having just come from there. Apparently the United States decided to support the Independence Movement in Canada and occasionally they would send the Caroline into Canadian waters presumably to assist with providing them with some kind of ammunition. The British did not like that at all and so they decided to set the Caroline afire as a result of which two American sailors died, a number were injured and the boat was destroyed.

We heard this morning discussion of the principle of proportionality. The United States took the position that the British response was hardly proportional to what the United States was doing and a series of conversations ensued. At the end of these Daniel Webster, then the Secretary of State of the United States, formulated the classic definition of self-defence, which was accepted by the U.K. Government. That decision ran something like this: "the necessity of self-defence must be instant, overwhelming, leaving no choice of means and no moment for consideration." That has remained the classic definition of self-defence in international law in the past 200 years. However, is it actually applied? To this we have to answer, "No!" It's an interesting principle of international law instead of the mummified one. It is invoked from time to time but it has undergone an almost complete transformation as I think I will succeed in demonstrating in the time that remains to me.

What is it that the Court actually said about self-defence? What it did, on any number of occasions and any number of paragraphs, was a kind of genuflection to the principle that self-defence is justified and that the use of force is justified in self-defence. For instance, the Court says in paragraph 30, where they discuss the obligation to protect the environment, that this obligation does not negate the right of self-defence. However, as we have heard this morning, there is this constant tension in the Opinion between this principle and that principle. In paragraph 40, the Court said, "the entitlement to resort to self-defence under Article 51 is subject to certain constraints." Then in paragraph 41, it sets out the restraints as consisting of the principles of necessity and proportionality. In that connection it cites the famous Nicaraguan case "Military and Paramilitary Activities against Nicaragua." In paragraph 43, the Court says, "it does not see any need to go into the question of

escalation. But the very nature of nuclear weapons and the profound risks associated therein, are further considerations to be borne in mind by States believing they can exercise a nuclear response in self-defence in accordance with the principle of proportionality." The Court also mentions an obligation in Article 51 to report self-defence measures immediately to the Security Council, but it says, "these measures shall not in any way affect the authority and responsibility of the Security Council to take such action as it deems necessary."

So here we have a nice principle, self-defence, and then we have what is more important - what can you do in self-defence? I don't think I have a great deal to add to what was said this morning by Louise and others about the fact that the overarching responsibility to use, if ever, nuclear weapons in accordance with the principles of humanitarian law, is highly applicable to the principle of self-defence. In fact this tends to negate much of what I have described as the genuflection principle. My wife, Cora and I got off the Japanese Peace Boat two days ago on the leg of their cruise from Vancouver to Alaska. The people on the boat, who were interested in what we had to say about nuclear weapons and international law, kept asking questions about Article 9 of the Japanese constitution. They wanted to know whether we thought that what Japanese troops were doing in Iraq was compatible with the principle of self-defence under Article 9, which says that Japanese military forces shall not be used for aggression but they may be used for self-defence. The people on the boat couldn't understand what self-defence had to do with supporting the Iraqi military effort.

And so it is with the relationship of self-defence to the nuclear issue. Article 2(4) of the United Nations Charter was intended to implement the principal purpose of the United Nations Charter which was to save future generations from the scourge of war by prohibiting aggression. Then there is that unfortunate Article 51, which says but of course in a case of self-defence, military force may be used.

I said I was going to show you how the Caroline principle has been buried by something called pre-emptive war. Pre-emptive is one of those linguistic acrobatics designed to hide the true intent of the policy. There is also in international law a principle that truly pre-emptive military action may be justified under certain circumstances. For instance, if you had absolute incontrovertible knowledge that a nuclear weapons-armed plane was taking off from Baghdad airport bound for London or New York, military action might be taken to bring that plane down, even before the aggression was consummated. That is pre-emptive war and it is in line with the Caroline principle. But what the United States calls pre-emptive war, and what has now unfortunately generally been accepted, as pre-emptive war, is really not so at all. It is preventive war, based on the merest speculation. Three examples that are familiar to all of you, the Iraq war based on speculation or rather

misrepresentation about Iraqi attempts to produce nuclear weapons. Now we have the threat made against Iran that the United States reserves to itself the right to take military action and, if necessary, nuclear action, against Iran based on the merest speculation. The people who are supposed to know tell us that this really means that it would take Iran anywhere from 5-10 years to develop its first weapon. Then you have the North Korean situation. I have to tell you that about ten days ago our Vice-President, Mr Cheney, in an attempt to dissuade the Koreans from launching their missile, said that "a threat was not a good way to start negotiations."

So the principle of self-defence has now become the justification for aggression. What is particularly relevant to this conference is that it is the speculation about nuclear weapons that has become the justification for aggression under the guise of self-defence. I find that very relevant to our consideration of how we create a critical mass of people to do something about nuclear weapons by going back to the Court. It seems to me that while we have all experienced the difficulty of enlisting massive support for a campaign focussed solely and principally on nuclear weapons, the world is becoming very tired of war. Certainly in the United States the movement has grown tremendously in recent months. If we succeed in presenting to people this connection between speculation about nuclear weapons, used as justification for aggression, we should be able to mobilise not only people who have been in the anti-nuclear weapons movement for a long time, but also those who want to see an end to the kind of aggression that we've seen with respect to Iraq and that we now may be seeing with respect to other countries.

To go back to the Opinion, self-defence is referred to any number of times, but in an equal number of times the Court hedges in the reference to self-defence with questions of necessity, proportionality and humanitarian law. The net result is a kind of zero sum approach to self-defence with the zero firmly fixed on the question of the threat of nuclear weapons.

I don't know that this fits in particularly with this afternoon's session, but I thought I would share with you a statement that I found again recently, that has been buried by history in the ensuing 50 or 60 years. In 1946, Bernard Baruch spoke to the United Nations about his plan to control atomic energy. "We are here to make a choice between the quick and the dead. That is our business. Behind the black portent of the new atomic age lies a hope which seized upon with faith can work our salvation. If we fail, then we have damned every man to be the slave of fear. Let us not deceive ourselves. We must select world peace or world destruction."

Steven Haines

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I'm very happy indeed to be here and thanks very much to George Farebrother for inviting me. I've been to several gatherings of people who are interested in the abolition of the nuclear dimension within the international system in the U.K. and elsewhere, and I'm always very happy to attend and throw into the discussion a slightly different view. I always feel very welcome in these groups even though my views differ in certain respects quite profoundly from the views of most of the people I am speaking to.

One of the great regrets to me, as people have commented this morning, is that we're not far away from NATO HQ here, and I suspect that there is not a single representative of NATO staff here in the room. It's sadly the case that we have a situation in which two sides of a particular debate very rarely, if ever, engage with one another, and I am doing my little bit in a sense to provide some sort of grit in the oyster in the context of that debate. I said to George, "What do you want me to talk about?" And he said, "It's up to you really." I thought I would sense the tenor of the meeting and come out with one or two things that I hope will provoke some dissent but also some serious and constructive discussion.

I'm both an international lawyer, by academic training, and also an international relations specialist as head of an international relations department in a university. This is a rarity in the U.K. In the U.S. it's very common. Quite a large number of political scientists, as they call themselves, are also lawyers. Quite a lot of politicians are lawyers. In the U.K. that is not necessarily the case, and international law and international relations very rarely get dealt with by those who are single operators in both fields. I look at international law very much from an international politics perspective, which to many international lawyers probably means that what I'm about to say isn't worth very much, but I hope it's not seen that way.

What I like to do is to put international law into the context of the international system. What I believe about nuclear weapons is based on my own understanding and assessment of the international system. I don't think one can seriously consider the role and the function, the wisdom or the idiocy of nuclear weapons, unless you have some understanding of where the international system is, what the nature of it is and how we should go about coping with it.

When I teach my students I talk to them about the international system which I regard as essentially about power. It's about patterns of power and how those patterns of power flux and how they move and shift and develop over time. A very good starting point, although it's not necessarily the only one, for looking at the international system, is the mid-17th century peace of Westphalia, the emergence of the Westphalian state system. There are various trends in that system over the last three or four hundred years that are easily identified by the historians and we are currently, in the argument of some, still in that Westphalian state system. I have some problems with that. I like to think of where we are and where we are going. One thing that I will say is that there was a massive feature of that international system for almost its entire existence up to the middle of the last century, and that was Great Power War. This was a blight on the landscape in many ways and it came, of course, to a really atrocious pinnacle in the 20th century in both the First World War and the Second World War. Great Power War tore the world apart.

Interestingly though, there has not been a Great Power War since 1945. Why should that be the case? I'm not going to say emphatically that the reason for that is that we had a nuclear balance for most of that period. I don't know whether that is a fact or not. However, I strongly suspect that it was a major factor in the reason why we are able to sit here this afternoon in the European Parliament, which is the focal point of the political activity of those former great powers that used to spend an inordinate amount of their time tearing each other apart on the battlefields of Europe. What has happened in Europe in the last 50 or 60 years is quite incredible. I think great power relations these days are not about fighting wars, certainly not between great powers. The patterns of power are shifting.

Military power, for all to see in Iraq, is showing itself up to be a blunt instrument. It is not anything like as effective as the amount of money that is spent on it would seem to suggest. Military power is something that has to be used carefully and it has to used with wisdom. Personally, I have to say - and I disagree with the official U.K. line on this - I'm three years out of the system anyway: I don't believe we should have gone into Iraq. It made no sense to me and I think it was fundamentally flawed, not only from a legal point of view but from a strategic point of view.

The international system is changing. The nature of war has been changing. Over the last 50 or 60 years and certainly since the end of the Cold War, what we know of as war, the sort of war that I've seen the results of myself, in Sierra Leone and Kosovo, is not very pleasant to behold. Warfare is something that any sane person wants to see reduced, both in terms of quantity and intensity. That is what I'm personally committed to. However, I have to warn that the international system is by no means a system of certainties. We are in a state of flux in that system. I think it's shifting in very positive ways, despite what has happened over the last five or

six years. We have globalisation. We have integration. I've already mentioned the EU I think that augurs well for the future in other regions of the world, but it certainly hasn't covered the rest of the world yet.

We also have the normative dimension. If anybody thinks that international law doesn't count, and there are one or two people who do feel that, then the debate and the criticism that has been generated as a result of the British American decision to go into Iraq, is proof positive in my view that international law certainly does matter. There is no doubt at all that the law issue in the U.K. has had a very damaging impact indeed on the standing of our Prime Minister and the popularity of his government. So the normative of the dimension of the international system is very important in a way that it probably wasn't in the 19th century, a very positivist century. It was state sovereignty that mattered. International law was based on the consent of states, but now we have an international legal system that includes a lot of other things. One only has to look at, for example, the ICJ's ruling in the Barcelona case and consider the extent to which what states do within their own borders these days is not necessarily their own business and nobody else's. Human rights law is a new body of law which has come into effect since the middle of the 20th century.

All of these things mean that the international system is changing, I think for the better. We should, therefore, I think, place whatever we think about nuclear weapons in that process of change. I'm not entirely optimistic and because of this I'm very cautious. I think there is less need for nuclear weapons than we thought some years ago. But I don't believe that the need for them has disappeared altogether. Three or four years ago when I was in the central policy staff in the Ministry of Defence, I was involved in an analysis of the Kashmir crisis involving India and Pakistan. I came away from that analysis, absolutely convinced that the existence of nuclear weapons, the nuclear dimension in South Asia, effectively reduced the possibilities of conventional war, for two reasons. India and Pakistan both knew that they had that capability, to what extent was not entirely clear. We were engaged with the Pakistani and Indian governments over this in order to try and reduce the tension in the region. I can tell you that the only reason that we were doing the analysis in London, and similar analysis was being done in Washington, was because of the nuclear dimension. If it had not been for this I do believe that there was a very strong chance indeed of India and Pakistan going to war over Kashmir. That did not happen.

I think it's too pat, frankly, to assume that just because the obvious effects of a nuclear explosion would be so profound, that nuclear weapons are invariably always 100 per cent a bad thing. I personally believe they are responsible for having kept a reasonable peace in Europe for over half a century. I also personally believe that they are capable of preserving peace in certain circumstances not

involving great powers. It depends on how you define great powers. You may regard India as a great power.

I have to say that I find it very sad that the two sides of the debate almost flatly refuse to talk to one another. I was at a debate at the LSE a couple of months ago. My debater was the current chairman of CND. She wouldn't engage. She read out a prepared script and would not debate at all. I was perfectly happy to engage, to discuss, to exchange views, to relate to her, to have a glass of wine with her afterwards. She wasn't interested. I have to tell you now that there are problems on both sides of this debate in that sense, the fact that there is nobody, (I do know one person in the room who comes from the Ministry of Defence) from the other side. This is not a debating chamber today. It's a chamber in which most people are agreeing with each other. I think that's rather regrettable.

Let me just go on and talk a little bit about one or two of the legal aspects. The problem I have always had about the ICJ Advisory Opinion is that I believe that it was ill-conceived in the first place to ask the ICJ to give an Advisory Opinion on the question as it was posed. The question was far too broad-ranging. It wasn't narrow enough, or focused enough. You weren't asking a particular question. It was just too broad. I also think, and I'm going to defer to the ICJ judge who is here today, that the Court was faced with something of a dilemma. If it had come down firmly on one side or the other in response to that question then it may well have been leading to its own undermining. There isn't any doubt in my mind at all that even if the ICJ Advisory Opinion had said that nuclear weapons are emphatically illegal, and that their use or threat of use etc, is counter to international law, then that Advisory Opinion would have been firmly ignored. There is no possibility that the U.K., the U.S., France and the other nuclear powers are going to take a blind bit of notice of a ruling that turns round and says that nuclear weapons are illegal.

One of the problems I think you have in the anti-nuclear field is that they're not going to take any notice of you either. I think part of the reason for that, and I like to regard members of this group and this movement as friends, is that you are unrealistic in your objectives. You need to think very carefully about what is practical and what is possible. At the moment in the U.K. we're having a bit of a debate over the future of the British strategic nuclear deterrent. I'm sorry for using this word, but I think we could have a discussion about that later. I have a very simple view of this. First of all I don't believe that Trident needs replacing. I think that it's got some years in it yet and there isn't any need for an immediate decision on this, but even if there were to be a need, I believe the U.K. has got an excellent opportunity to reduce its capability. There is absolutely no need in my mind for four Trident boats and the number of missiles and warheads we have at the moment. There is an ideal opportunity to scale down the U.K. nuclear deterrent.

However, I believe it's responsible for the U.K. to continue possessing a nuclear deterrent because I believe the international system is one in which I would be happier with the U.K. at that top table. Not for any reasons of national pride but I do believe we bring a responsible voice to that top table. You may disagree. So reduce it. But can I get anyone in the anti-nuclear movement to argue the case around Whitehall that we should be reducing. I can't get anyone to do it. Nobody is arguing this case in the U.K. at the moment. The arguments are going on in Whitehall, the Treasury, in the MoD and the Foreign Office. I don't think I'll manage to get the anti-nuclear movement to give up its absolute and total requirement for total disarmament. But I do believe there is a role here for those who think this through. I believe that the Treasury and the Chancellor would find it extremely difficult if there emerged in the U.K. debate today, a consensus that the U.K. needed a much less capable deterrent than the one that it's got at the moment. But that debate is not raging because the two sides in the debate, who are occupying extreme ends of it, are not talking to each other. I think that's very sad, and I think there is a role there for a responsible debate about progressive reduction in nuclear weapons that isn't taking place because the anti-nuclear lobby isn't wanting to engage in it. It's all or nothing. I frankly think that's impractical and it won't produce a result.

As to whether this issue should go to the ICJ again. My feeling on that is this. One of the things the ICJ studiously ignored, avoided almost entirely when it was considering its Advisory Opinion ten years ago, was the issue of deterrence. In fact it stated that it wasn't going to address the issue. Anybody who's looking at the legal consequences or legal debate surrounding nuclear weapons who does not address the policy of deterrence is living on a planet that I don't inhabit. That is how these weapons have been used for over half a century and to ignore the issue of deterrence and what role it plays in the international system, is frankly barking mad to me, with all due respect to the honourable judge present. If it goes back to the ICJ I cannot imagine that deterrence will not be an issue to be discussed. If it is then I would refer you to Stephen Schwebel's Dissenting Opinion in which he makes a very powerful argument that deterrence is a fundamental part of Customary Law. Certainly it is part of state practice and if one holds my position, I do believe that the use of nuclear weapons is a use that doesn't involve their **actual** use. They balance, they deter and they are **not** used. In that sense I have some sympathy for Kenneth Waltz's argument in his famous - or infamous - depending which side of the debate you're on, Adelphi paper of about 20 years ago, on "nuclear weapons, more may be better". I think there's some very powerful arguments in that as indeed there are in Carl Sagan's opposing views, published very conveniently in a little book with both arguments in it, just recently. There are big issues to debate here and there's lots of issues that it would take a lot longer than 20 minutes to cover.

Commander Robert Green, Royal Navy (Ret'd)

Commander Robert Green was formerly of the Royal Navy and later Chair of the World Court Project in the U.K.

Well, I'm actually in a very interesting position now. I want to first of all thank Steven particularly for accepting George's invitation to come today, because this is something I've been looking forward to for some time. I will try to respond to some of Steven's points as I go along; but I think it'll probably be better if we have it under discussion.

Peter has exposed the fragilities of self-defence. Nuclear deterrence is what I want to talk about; and I'm glad that Steven has addressed that. Its relationship to self-defence: of course you could say, as do its proponents, that it underpins self-defence. For those who accuse the International Court of Justice of not addressing nuclear deterrence, I think I must speak on behalf of Judge Weeramantry who could never be accused of not addressing nuclear deterrence head-on in over 80 pages of his Dissenting Opinion; and I will have something more to say about how the rest of the Court handled it.

I'd like to start with a proposition: that nuclear deterrence is in fact state-sponsored nuclear terrorism. And I think this is very relevant to the current so-called 'war on terror'. Professor Richard Falk was uncompromising: "Nuclear weaponry and strategy represent terrorist logic on the grandest scale imaginable." So I contend that all the Nuclear Weapon States are vulnerable to the charge of hypocrisy. And incidentally, the Oxford English Dictionary defines *terrorist* (it is there) as "Anyone who attempts to further his views by a system of coercive intimidation".

Nuclear deterrence entails a fundamental moral deception: threatening the most indiscriminate violence possible, unrestrained by morality or the law, to achieve what nuclear-armed state governments claim are the highest moral ends. It is also the antithesis of maintaining international peace and security. That is why I would argue that state-sponsored nuclear terrorism must be rejected and outlawed.

We all know that to live by threats and menaces is evil. One analogy for nuclear deterrence is that neighbours have amassed enough high explosive laced with anthrax to blow up each other plus the whole neighbourhood and make it uninhabitable for years.

Another intrinsic, inescapable part of nuclear deterrence dogma is the generation of hostility and mistrust. By inhibiting cooperation in promoting true security, nuclear deterrence tends to be self-perpetuating. So this adds another layer of deception, which deepens the immorality.

Its immorality can be seen in hypocritical attempts to pretend that something so flagrantly wrong can be accepted as right. A blatant example was using the following benediction for the commissioning of a British Polaris submarine: "Go forth into the world in peace: be of good courage; hold fast that which is good; render no man evil for evil; honour all men; love and serve the Lord, rejoicing in the power of the Holy Spirit."

By contrast, the Royal Navy Ship Names Committee I believe may have been unusually perceptive when they named the last U.K. Polaris submarine *HMS Revenge*, and the last Trident submarine *HMS Vengeance*.

And of course the hypocrisy deepened in March 2002 when the British Secretary of State for Defence stated that, like the U.S., the British government was prepared to use nuclear weapons if British forces were threatened by chemical or biological weapon attack anywhere in the world – not just in extreme self-defence. And France of course recently followed suit. I could go on in more detail into that hypocrisy.

But the double standards here are staggering: not least, that part of the U.S. strategy to combat WMD – echoed by the British and French – is to *use its own*, risking provoking opponents to use theirs too or redouble efforts to get some. Moreover, the pre-emption doctrine in this form violates the principle of proportionality, as we have heard.

I believe there is an interesting parallel here, with slavery. You may or may not know that the campaign to abolish slavery began in Britain in 1785, when slavery was accepted in much the same way as nuclear weapons now are – by the establishments of a small group of predominantly Western states and their allies. And three of the leading slaving states are now the leading guardians of nuclear deterrence dogma: the U.S., U.K. and France.

Pro-nuclear advocates use the pro-slavery arguments: they are a "necessary evil", "cost-effective", "not against the law", and anyway "there is no alternative". They were outmanoeuvred by a small group of committed anti-slavery abolitionists, who surprisingly focused on the *illegality* of slavery – not just its cruelty and immorality. For the first time, the law and public opinion were harnessed on a human rights issue. This was what forced British politicians to vote against a system which at that time underpinned their wealth.

I would now like to refer specifically to Steven's criticism of the World Court for not addressing nuclear deterrence. We all know here that in its Advisory Opinion the Court wished to avoid a direct conflict with the five recognised Nuclear Weapon States, all of which subscribe to nuclear deterrence policies. It therefore decided not to comment specifically on the legal status of nuclear deterrence. This

could have been linked to pressure. For example, at the Oral Proceedings on the case in 1995 the French delegate warned "against any pronouncement which, directly or indirectly, might imply judgment being passed on a defence policy based on deterrence." The British echoed the Americans when they said that "to call in question now the legal basis of the system of deterrence on which so many states have relied for so long for the protection of their peoples could have a profoundly destabilising effect."

Now, Steven and I have had a very interesting correspondence going on rather publicly in one of the top defence journals in Britain recently: this is *RUSI Defence Systems* – and we actually had a special page devoted to our exchange back in March/April. I'd just like to read or paraphrase my response to his criticism.

He cited the American judge Schwebel in support. Yet Schwebel's main argument was that, because nuclear deterrence apparently worked in the 1991 Gulf War (a highly contentious claim), it was justified in law! This revealed for me an unacceptable attitude for a supposedly impartial judge, whereby he had allowed his evidently pro-nuclear views to take precedence over the law. No doubt for this reason, his was not a majority ICJ view.

Despite such pressures, the Court did not shrink from stating in paragraph 36 of its main Opinion that it took account of the "unique characteristics of nuclear weapons, and in particular their destructive capacity, their capacity to cause untold human suffering, and their ability to cause damage to generations to come." The next paragraph reads: "The Court will now address the question of the legality or illegality of recourse to nuclear weapons in light of the provisions of the [UN] Charter relating to the threat or use of force." The subsequent discussion was clearly about nuclear deterrence, as in the following extract: "In short, if it is to be lawful, the declared readiness of a State to use force must be a use of force that is in conformity with the Charter. For the rest, no State – whether or not it defended the policy of deterrence – suggested to the Court that it would be lawful to threaten to use force if the use of force contemplated would be illegal."

The Court then determined unanimously that any threat or use of nuclear weapons must conform to international humanitarian law, of which the Nuremberg Principles are a part. It also confirmed that the principles of the law of armed conflict apply to nuclear weapons. Then in paragraph 95 it concluded: "In view of the unique characteristics of nuclear weapons… the use of such weapons in fact seems scarcely reconcilable with such requirements." There is no scenario where the use of even a single 100 kiloton U.K. Trident warhead – eight times the explosive power of the Hiroshima bomb – could be lawful. Therefore I contend that the Court actually quite cleverly affirmed the general illegality of the fundamental practice which constitutes nuclear deterrence, while offering a face-saving way for the

Nuclear Weapon States to extract themselves from a policy upon which they remain needlessly impaled.

I think I'll draw my comments to a conclusion, by speaking up for one of the women in the audience, namely Angie Zelter, who I know cannot be accused of avoiding debate on this issue. I have actually helped her on several occasions try to get a debate going with Prime Minister Tony Blair and his government. I would also draw attention to another member of the audience, Lord Ronald Murray, a former Solicitor General in the British Labour government back in the 1970s, who has helped us a lot about countering some of the ideas from the Scottish High Court.

Maybe I will just end: we are hearing – and I think I am thoroughly in agreement with Steven – that the nature of conflict is indeed shifting, and humanitarian law is coming of age. Three of the leading proponents of slavery failed to stop the abolitionists. This was because courageous ordinary British, American and French citizens mobilised unstoppable public and political support for their campaign to replace slavery with more humane, lawful and effective ways to create wealth. The analogy holds for nuclear deterrence, which can and must be discarded for more humane, lawful and safer security strategies if civilisation and the Earth's ecosystems are to survive. Thank you.

NEGOTIATING IN "GOOD FAITH"

Dr. John Burroughs

John Burroughs, J.D., Ph.D., is the Executive Director of the Lawyers' Committee on Nuclear Policy in New York and author of the book "The Legality of Threat or Use of Nuclear Weapons: A Guide to the Historic Opinion of the International Court of Justice"

Disarmament Obligation: In its 1996 advisory opinion, the International Court of Justice on nuclear weapons concluded unanimously that: *"There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."* The Court in large part was interpreting Article VI of the NPT, which requires all states to pursue in good faith negotiations on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament.

The Court's interpretation has been directly endorsed by nearly all states. In the most recent General Assembly vote on the resolution following up on the ICJ opinion, 165 states voted for the paragraph containing the Court's statement of the obligation, including non-NPT states India and Pakistan. Only three states voted against it, the United States, Russia, and Israel; the four abstainers included France and Britain.

It also is strongly reinforced by the unequivocal undertaking to eliminate nuclear arsenals adopted by the 2000 NPT Review Conference.

What does the obligation of good-faith negotiation of the elimination of nuclear weapons require of states? International law in general with respect to good faith negotiation clearly requires that you enter into the negotiations, that you consider proposals of the other side, and that you re-examine your own position, all in order to reach the objective of the negotiations.

For example, in the ICJ case involving a treaty commitment between Hungary and Slovakia to build a dam and carry out related environmental remediation, the Court directed the parties to go back and negotiate some more. The Court stated that the *"principle of good faith obliges the Parties to apply [the treaty] in a reasonable way and in such a manner that its purpose can be realized.*

In the *North Sea Continental Shelf Cases*, the Court said that the parties must conduct themselves so as to make the negotiations *"meaningful, which will not be the case when either insists upon its own position without contemplating any modification of it*".

A World Trade Organization panel has stated that good faith *"implies a continuity of efforts …. It is this continuity of efforts that matters, not a particular move at a given time, followed by inaction."*

According to eminent international lawyer Antonio Cassesse, when there is an obligation of good faith negotiation, even when the exact objective of negotiations has not been specified or its achievement mandated: *"both Parties are not allowed to (1) advance excuses for not engaging into or pursuing negotiations or (2) to accomplish acts which would defeat the object and purpose of the future treaty."*

In the case of Article VI, the Court relied on a distinction drawn in international law between two kinds of obligations, an obligation of conduct and an obligation of result. The ICJ said Article VI involves both kinds of obligation, stating: "the legal import of [Article VI] 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.

Where did the ICJ find these two obligations? In Article VI itself, there is some reference to a result – it refers to nuclear disarmament as well as to the required conduct. That is good-faith negotiation. In addition, one of the Treaty's preambular paragraphs refers to "the elimination from national arsenals of nuclear weapons and the means of their delivery."

The Court's statement of the obligation of good-faith negotiation in the context of nuclear weapons was unusually strong. The far-reaching nature of the Court's analysis is based on three factors.

One is the text of Article VI and the preamble I have just referred to.

The second is that there is already an agreement – the NPT – requiring non-possession of nuclear weapons by most states. In the hearings before the Court in 1995, Gareth Evans, then Foreign Minister of Australia, argued that a norm of non-possession of nuclear weapons is embedded in the NPT that "must now be regarded as reflective of customary international law" and that in conformity with that norm all states possessing nuclear arsenals must negotiate their dismantlement.

The third is that the disarmament obligation is bound in a reciprocal and mutually reinforcing relationship with the illegality and illegitimacy of nuclear weapons and their threat or use.

All this is not to say that the Court is enjoining the achievement of a particular outcome; it need only be one that accomplishes "nuclear disarmament in all its aspects." The Court undoubtedly would accept either a convention prohibiting and eliminating nuclear weapons, or a "nuclear-weapon-free world [underpinned] by a universal and multilaterally negotiated … framework encompassing a mutually

reinforcing set of instruments" referred to in the 2000 New Agenda resolution.

But it certainly is possible to identify criteria and measures for implementation of the disarmament obligation. For that, I turn to examination of Article VI and its application by NPT Review Conferences.

Article VI: The Nuclear Weapon States have long viewed the NPT as an asymmetrical bargain. In this view, the NPT imposes specific, enforceable obligations in the present on non-Nuclear Weapon States, while requiring of Nuclear Weapon States only a general and vague commitment to good faith negotiation of nuclear disarmament to be brought to fruition in the distant future if ever. The 1995 and 2000 NPT Review Conferences, and the 1996 International Court of Justice opinion, decisively rejected that view. In particular, the 2000 Review Conference outcome set forth a detailed and comprehensive agenda for the achievement of a nuclear-weapon-free world, an agenda approved by all states participating in the conference, including France and the United States.

Assuming that these results are taken seriously, it is now established that the NPT requires the achievement of symmetry by obligating the Nuclear Weapon States to eliminate their arsenals.

The key question is why are these results to be taken seriously?

First of all, states should abide by their commitments. If they do not, international co-operation is severely undermined; there is less incentive to make future commitments if past ones have been ignored. At a minimum, good faith would require that if one set of commitments towards meeting a legal obligation and a policy objective is discarded, an alternative course should be proposed. That has not been done.

Second, as a matter of international law, the results of the 1995 and 2000 Review Conferences decisively informs the proper interpretation of the disarmament obligation. Article 31(3) of the Vienna Convention, entitled "General Rule of Interpretation," provides that in addition to the text and preamble of a treaty, *"there shall be taken into account … (a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation."* So there are two factors, subsequent agreement and practice. The 1995 and 2000 outcomes fit both categories.

The 2000 NPT Review Conference Final Document states that the "Conference agrees" on the Practical Steps. Further, the agreement was reached in the context of a proceeding authorized by Article VIII of the NPT "to review the operation of this Treaty with a view to assuring that the purposes of the Preamble and the provisions of the Treaty are being realized."

In addition to constituting an *agreement*, the Principles and Objectives and Practical Steps also are part of a *practice* of the parties to the NPT that has been consistent over the course of the treaty's life, dating back to its inception. The agenda from the beginning included *"the cessation of testing, the non-use of nuclear weapons, the cessation of production of fissionable materials for weapons use."* Disarmament measures have been the subject of discussion at every Review Conference since then. The 1995 Principles and Objectives echoed the 1968 agenda in identifying the CTBT and a convention banning the production of fissile materials for nuclear weapons as important measures for the "effective implementation of Article VI."

Under the Vienna Convention, in short, the 2000 Practical Steps, as an application of Article VI, are an essential guide to its interpretation.

The "Renewed Determination" resolution (A/RES/60/65) sponsored by Japan in the 2005 General Assembly and adopted by a vote of 168 to two (United States, India), with seven abstentions, identifies the elements of the Practical Steps that are essential to moving forward.

Its adoption means that nearly all governments in the world, including close allies of the Nuclear Weapon States, are now on record as favouring application of the principles of transparency, irreversibility, and verification "in the process of working towards the elimination of nuclear weapons". While those principles are embedded in the 2000 NPT Review Conference outcome, the resolution clearly and unambiguously declares that the principles, together, are inherent in effective reduction and elimination.

The resolution also acutely singles out two other general commitments from 2000 whose fulfilment would greatly facilitate progress towards abolition (and make for a safer world now): "the necessity of a diminishing role for nuclear weapons in security policies"; and reduction of "the operational status of nuclear weapons systems".

The State of Compliance: So the law is very developed regarding the requirements for good faith negotiation of nuclear disarmament. What is the state of compliance? In brief, since the conclusion of negotiations on the CTBT in 1996, there is very little progress. No multilateral, plurilateral, or bilateral negotiations on any aspect of nuclear disarmament are now underway. The CTBT has not been brought into force, and no negotiations have begun on a fissile materials treaty. The principles of verification, transparency, and irreversibility have been abandoned in U.S.-Russian reductions. Modernisation of nuclear forces by all nuclear armed states is ongoing. Large numbers of U.S. and Russian warheads – an estimated 3000 altogether - remain ready for nearly instantaneous launch, and reliance on nuclear weapons in declared security postures has not diminished and

in some cases has expanded. The Commission on Weapons of Mass Destruction was very clear that the Nuclear Weapons States are not complying with Article VI, stating (p. 94): "It is easy to see that the nuclear-weapon parties to the NPT have largely failed to implement this commitment [to nuclear disarmament] and failed to 'pursue negotiations in good faith' as required of them under the NPT."

Conclusion: Let me summarize. Article VI of the NPT, the disarmament obligation stated by the Court, the 1995 and 2000 NPT Review Conference outcomes, and various General Assembly resolutions, together provide an entire universe of rich legal materials regarding the requirement of nuclear disarmament and how to achieve it. Further, the case is overwhelming that since 1996 when the CTBT negotiations were completed, the Nuclear Weapon States, especially the United States, are making little progress, indeed are going backwards in key respects. I look forward to the discussion tomorrow of the strategy of returning to the International Court of Justice to ask its opinion regarding compliance with the disarmament obligation.

Jacqueline Cabasso

Jacqueline Cabasso is the Executive Director of the Western States Legal Foundation in Oakland, California. She chairs the Coordinating Committee of the Peoples Non-Violent Response Coalition and convenes the Nuclear Disarmament/ Redefining Security working group of United for Peace and Justice

I am going to talk about the follow-up to the Blix Commission Report. On June 1st, Hans Blix presented "Weapons of Terror - Freeing the World of Nuclear, Biological and Chemical Arms" to UN General Secretary, Kofi Anan. This comprehensive 223 page report includes findings and recommendations developed over a two-year period by this independent international weapons of mass destruction Commission established by the Government of Sweden. The Commission chairman, Hans Blix, is the former head of UNMOVIC which conducted weapons inspections in Iraq. He is also is the former director-general of the International Atomic Energy Agency. The U.S. member of the Commission is former Secretary of Defence, William Perry.

The Blix Report warns of the growing dangers, especially from nuclear weapons, posed by proliferation and terrorism. It notes: "Paradoxically, despite the end of the Cold War, the past decade has seen more setbacks than advances." The Commission clearly holds the U.S. largely responsible for the present crisis by walking away from tried and tested Arms Control Treaties and by launching an illegal preventive invasion of Iraq in the name of counter-proliferation. According to the report the U.S. has seriously undermined international law and endangered international security.

For years now, Americans, in particular, and probably others in this room, have been hearing the message that nuclear weapons are unacceptable in the hands of rogue states and terrorists. However, the Blix Report rightly says that these catastrophic devices are dangerous in anyone's hands. The problems of potential spread of existing weapons and their potential acquisition by terrorists, are all linked. The problem can be solved only by a comprehensive approach leading to the elimination of all nuclear weapons. The Report addresses current nuclear crises in the Middle East and on the Korean Peninsula as well as the proposed U.S. - India Nuclear Co-operation Agreement.

The Report makes 60 specific recommendations. It provides an important opportunity to raise the level of public awareness and government accountability regarding the challenges posed by biological, chemical and particularly nuclear weapons. At the heart of the Commission's findings is the conclusion that, "So long as any state has nuclear weapons, others will want them. So long as any such weapons remain, there is a risk that they will one day be used by design or accident, and any such use would be catastrophic." The Commission rejects the suggestion that nuclear weapons in the hands of some pose no threat, while in the hands of others they place the world in mortal jeopardy. Any Government possessing nuclear weapons can act responsibly or recklessly and often changes over time.

The Report says that 27,000 nuclear weapons are not an abstract theory. They exist in today's world. The question of how to reduce the threat and number of existing nuclear weapons must be addressed with no less vigour than the question of the threat from additional weapons, whether in the hands of existing Nuclear Weapon States, proliferating states, or terrorists. I think that is centrally important.

The Commission's core recommendation is that, "Disarmament and non-proliferation are best pursued through a co-operative rule-based international order applied and enforced through effective multilateral institutions. Accept the principle that nuclear weapons should be outlawed, as are biological and chemical weapons, and explore the political, technical, legal and procedural options for achieving this within a reasonable time." Judge Weeramantry pointed out this morning that nuclear weapons are already outlawed. So we take exception with that characterisation.

Reading again from the Report, we note that Disarmament is in disarray. "Many people thought that the end of the Cold War would make global agreements on disarmaments easier to conclude and implement. Many also expected that public opinion would push for this. The opposite has been the case. The U.S. unilaterally terminated the Anti-Ballistic Missile Treaty in order to proceed with the construction of a Missile Shield, the START-2 Treaty became a casualty as did the framework for a Start-3 Treaty that was agreed in Helsinki in 1997 by Presidents

Clinton and Yeltsin. Some of the current setbacks in treaty-based arms control and disarmament can be traced to a pattern in U.S. policy that is sometimes called collective multilateralism: an increased U.S. scepticism regarding the effectiveness of international institutions and instruments, coupled with a drive for freedom of action, to maintain an absolute global superiority in weaponry and means of their delivery. The U.S. is clearly less interested in global approaches and treaty-making than it was during the Cold War era. More importantly, the U.S. has been looking to what is called counter-proliferation, a policy envisaging the unilateral use of force as a chief means to deal with the perceived nuclear or other WMD threat, as seen in the war to eliminate WMD in Iraq and in official statements regarding North Korea and Iran. The U.S. has claimed a right to take armed action if necessary to remove what it perceives as growing threats, even without the authorisation of the UN Security Council. The overwhelming majority of states reject the claims by the U.S. or any other state to such wide licence on the use of force."

Returning to some of the more specific points, the report deals in depth with the Nuclear Non-Proliferation Treaty, which is of course, one of the subjects we're interested in here. It says, "The NPT is the cornerstone of the disarmament and non-proliferation regime." To strengthen the NPT the Commission recommends that all parties:

- Revert to the fundamental and balanced non-proliferation and disarmament commitments that were made under that treaty, and confirmed in 1995 when the treaty was extended indefinitely.
- Affirm and implement the consensus outcomes of the 1995 and 2000 Review Conferences including the Resolution on the Middle East as a zone free of all nuclear and other weapons of mass destruction adopted in 1995 and the 13 practical steps for nuclear disarmament that were adopted in 2000.
- Adopt, strengthen international atomic energy safeguards, the Additional Protocol as the new norm.
- Create a standing secretariat for the treaty.

Throughout the report the Commission makes clear that in order for the regime to survive, the initial and fundamental balance between disarmament and non-proliferation must be restored. The report largely blames the failure of the U.S., Russia, Britain, France and China to seriously abide by the NPT commitments to nuclear disarmament for the crisis of confidence. While Israel, India and Pakistan are not parties to the treaty, they too have a duty to contribute to the nuclear disarmament process.

The Commission recognises that nuclear weapons have a perverse and powerful

prestige in international politics that inhibits disarmament and propels proliferation, therefore it recommends de-legitimising the weapons and the incentives for acquiring them. States possessing them should reduce the role of nuclear weapons in their security doctrines and provide security assurances to non-nuclear states. The Commission observes that nuclear doctrines affect other states' security assessments and decisions and "explanations by the nuclear 'haves' that the weapons are indispensable to defend their sovereignty, are not the best way to convince other sovereign states to renounce the option".

What does the Blix Commission say about "good faith" specifically? It recalls the landmark Advisory Opinion of the International Court of Justice, which agreed unanimously that "there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control". The Report goes on to say that "… even though Nuclear Weapon States ask other states to plan for their security without nuclear weapons, they do not themselves seems to be planning for that eventuality."

A key challenge is to dispel the perception that outlawing nuclear weapons is a utopian goal. A nuclear disarmament treaty is achievable and can be reached through careful, sensible and practical measures. Benchmarks should be set; definitions agreed; timetables drawn up and agreed upon; and transparency requirements agreed. Disarmament work should be set in motion.

It is easy to see that the Nuclear Weapon States parties to the NPT have largely failed to implement this commitment and failed to pursue negotiations in good faith on nuclear disarmament as required of them under the NPT. Indeed all states that have nuclear weapons are still seeking to modernise their nuclear capabilities. This is very authoritative evidence in our considerations about the possibility of returning to the Court for a follow-up Opinion, because here we have Hans Blix and his Commission definitively saying that the Nuclear Weapon States have failed to act in good faith to eliminate nuclear weapons.

What I want to talk about now is a little bit more on lack of implementation with NPT obligations which demonstrates a lack of good faith. I believe that the U.S. is the most egregious violator. The U.S. is currently modifying existing nuclear warheads to achieve additional capabilities. It is re-tooling its nuclear weapons research design and production infrastructure to allow maintenance of a down-size nuclear arsenal, still numbering thousands of weapons for many decades to come while enabling the production of new nuclear weapons for post Cold War missions envisioned by nuclear planners. It's exploring a different paradigm for nuclear weapons design production certification called the Reliable Replacement Warhead Programme. It is re-vamping systems used to plan and execute nuclear strikes. It is modernising ballistic missiles and other delivery systems and beginning develop-

ment of a new generation of systems to replace existing ones for coming decades. It's developing a global strike capability that will allow the delivery of either conventional or nuclear weapons anywhere on earth in a few hours or less.

That's just a short synopsis. I wish I had time to go into more details, but I want to skip ahead to something that I think you will find very interesting. You may recall that the preamble to the Nuclear Non-Proliferation Treaty also talks about elimination of delivery systems. It calls for the elimination from national arsenals of nuclear weapons and the means of their delivery. So Ambassador Corell this morning said that North Korea's failed test of a long-range missile casts a shadow over our conference. Well, I'd like to know what *this* does for our conference. On June 14th the U.S. successfully test-launched a Minuteman III ICBM from Vandenburg Air Force Base. This is the third one this year. The primary purpose of the launch was to assess and demonstrate the operational effectiveness of the Minuteman III weapon system. The missile's three unarmed re-entry vehicles travelled approximately 4,800 miles in about 30 minutes, hitting predetermined targets in the missile range in the Western Chain of the Marshall Islands. "While ICBM launches from Vandenburg almost seem routine, each one requires a tremendous amount of effort and absolute attention to detail in order to accurately assess the current performance and capability of the nation's fielded ICBM force that is always on alert in Montana, North Dakota, Wyoming, Colorado and Nebraska." Colonel Davis, the programme's public affairs spokesman, said that. He went on the say: "This specific test will provide key accuracy and reliability data for ongoing and future modifications to the weapons system, which are key to improving the already impressive effectiveness or the Minuteman III force." Existing Minuteman land-based missiles are being modernised to improve accuracy and reliability and to extend their service life. Supporting infrastructure has also been upgraded to allow for more rapid re-targeting. The Minuteman refurbishment is so extensive that the retired commander of the U.S. ICBM forces, Major General Thomas H Neary likened the process to "jacking up the radiator cap and driving a new car under it."

Even more shocking, a few days before the North Korean launch, the same William Perry I referred to, who was Clinton's Secretary of Defence, published an op-ed in the Washington Post calling on the U.S. to pre-emptively destroy the North Korean missile. The next day the former Vice President, Walter Mondale, Jimmy Carter's Vice President, supported that call. In 1994 William Perry had been the architect of a plan to pre-emptively destroy North Korea's reactors, and Clinton came very close to doing it until he was talked out of it by the South Korean Prime Minister. So, when we look to what's wrong with the U.S. and its policy, it is not Bush. Bush is a *symptom* of what's wrong with U.S. policy. It's very deeply entrenched and this is something that we must understand if we are

going to get to the root of the problem and get to a solution. This is a case study in bad faith by the U.S. - threatening to launch a long-range missile against North Korea, the latest in a series of many threats. It's also a case-study in bad faith by that Public Affairs officer whose quote I read you. It's also an example of bad faith by the media, which when sensationally covering the planned North Korean missile test, utterly failed to mention this. I haven't found anybody here who knew about this. The BBC didn't report it. The U.S. media didn't report it. That's relevant again to the Blix Commission and good faith. They say, "Research communities, non-governmental organisations, civil societies, businesses and the media and the general public, share ownership of the WMD challenges. They must all be allowed and encouraged to contribute to solutions."

7 JULY 2006

OPENING REMARKS

Caroline Lucas MEP

Caroline Lucas is a Green Party Member of the European Parliament for the South East of England Region. Together with MEP Gisela Kallenbach she co-sponsored the conference on behalf of the Green/EFA Group in the European Parliament

I am happy that later on today we will be able to welcome Mayor Akiba of Hiroshima and President of Mayors for Peace on his second visit to the European Parliament. As a result of Mayor Akiba's visit last year, the European Parliament is now officially supporting the Mayors for Peace 2020 nuclear disarmament vision. That was expressed in a resolution that was passed in this House on weapons of mass destruction at the beginning of this year. It calls for nuclear weapons to be eliminated within just 14 years from today.

Parliamentarians can play a significant role in working with you and other experts to try to harness the growing public momentum to call on governments to rid the world of nuclear weapons. That was amply demonstrated in the recent Greenpeace poll in which 70% of people from six European countries want a Europe free of nuclear weapons. We have a particular role in monitoring the policies of our own governments and holding them to account.

I am sure you will all share a concern about the failure of the latest NPT Review Conference. If European Governments did take the judgment of the International Court of Justice seriously, then there is plenty they could do. They could be establishing a European Continent-wide Nuclear-Weapon-Free Zone, including Russia. They could be disarming the French and British nuclear weapons arsenals instead of modernising them. They could be forcing the U.S. to withdraw its nuclear weapons from European territories now and making NATO give up its concept of nuclear deterrence. There are big challenges ahead since European governments, with a few honourable exceptions, do seem to be moving in precisely the wrong direction. I think we should take positive note of the fact that there is a growing momentum to reverse this. We are doing what we can to harness that momentum. Here in this House, for example, you'll know that there is a recent declaration which is the equivalent of an Early Day Motion that I and my German Green colleague, Angelica Beer, have put down which is now being signed by MEPs, which calls for the withdrawal of U.S. nuclear weapons from Europe. That declaration makes it very clear that the U.S. should give a very clear and precise

timetable and action plan for the withdrawal of weapons from Europe before the end of 2006. But NATO should discuss this item at its Riga Ministerial summit in November and keep the issue as a permanent item on its agenda. To achieve any of all this, the pressure of the peace movement and civil society at large is crucially important.

I shall end with a few reflections about the situation in my own country, the U.K., which sadly, once again, I feel obliged to apologise for, because unfortunately both our Prime Minister Tony Blair and his likely successor, Gordon Brown, have made it clear that they would like to replace the U.K. nuclear weapon system, even though it's a cost of over £25 billion or €40 billion Mr Blair has promised a full parliamentary and public debate on this before coming to his decision, but on this, as on so much else, he appears to be failing in his word. Work is already underway to expand and update the facilities at Aldermaston, which is the place in my own constituency where they upgrade and refit Trident. That's why I'll be joining what I hope will be very many others, at around 6 o'clock on Monday morning to blockade that base, to block the builders and to try to stop them getting to work that day. So I wish you very well with this conference. I can't be here for all of it but I am confident that it will be one more very important step in this movement to rid the world of nuclear weapons.

THE DEVELOPMENT OF THE WORLD COURT PROJECT

Kate Dewes

Dr. Kate Dewes is a co-coordinator for the New Zealand Disarmament and Security Centre. She became a Vice-President of the International Peace Bureau in 1997. She was a pioneer of the World Court Project and was on its International Steering Committee from 1992-96. Her doctoral thesis documents the evolution and impact of the World Court Project (WCP)

It took us a long time to get to the Court and it was certainly not easy but we built on a long history of peace activism. In his Nobel Laureate speech of 1974 Sean MacBride, an IPB President, called for a convention to outlaw nuclear weapons. He was involved in the International Commission of Jurists and the establishing of the U.S. Lawyers' Committee on Nuclear Policy (LCNP) in 1982. He worked with Richard Falk and Peter Weiss in the London Nuclear Warfare Tribunal in 1985 when they passed a Resolution calling for an Advisory Opinion. He also started the MacBride Appeal to get signatures from lawyers around the world. By 1992 there were 11,000 from 56 countries. It is interesting to note that one of the ICJ judges at the time, Bedjaoui, who later became its President, actually signed it.

So in 1986, when retired Christchurch magistrate Harold Evans conceived the idea of going to the Court, he built on what many other people had done before. Harold had worked with the Tokyo War Crimes Tribunal, and had been personal secretary to a New Zealand Prime Minister. He built on New Zealand's experience of taking France to the World Court in 1973 and wrote letters to the Government on nuclear policy. In 1986 Professor Richard Falk of LCNP visited Christchurch and broached the idea with Harold of taking the issue of nuclear weapons to the World Court.

A few months later Harold went to Australia where he met Judge Weeramantry who endorsed the idea of seeking an Advisory Opinion from the World Court. He wrote two open letters, one to the Prime Ministers of New Zealand and Australia in March 1987, and one in May to all the 72 countries that had missions in Australia and New Zealand. He got 22 responses, some of them from states in the Non-Aligned Movement (NAM). The Soviets actually came and visited him in his home.

The New Zealand Government was very cautious at first. Australia was negative. There was interest from some countries, but until the end of the Cold War, no country would take it on. We had to build support from non-governmental groups and started off by enlisting the New Zealand branch of International Physicians for the Prevention of Nuclear War (IPPNW), the United Nations Association, and the Public Advisory Committee on Disarmament and Arms Control.

In 1988 I went to a Special Session on Disarmament at the UN and discussed the idea with leading Indian and Swedish government representatives. IPPNW, the IPB and IALANA passed supportive resolutions around 1988/89 partly because Harold and New Zealand doctors went to the international meetings and worked really persistently. Harold came back via Kuala Lumpur and saw Ron McCoy of IPPNW in Malaysia and lobbied the Commonwealth Heads of Government meeting. He then gained the support of the International Commission of Jurists and drafted a UN Resolution. New Zealander Alyn Ware, later the Director of LCNP, talked to several missions in Geneva in 1991 and gained a definite commitment from Costa Rica. By June 1991 when I visited eight Geneva missions with Colin Archer of the International Peace Bureau (IPB), we were told by most of these diplomats that we would need the support of at least 50 states from the NAM.

I then visited Britain and got support from a lot of national and international groups there, and World Court Project U.K. was formed. This was absolutely key. Keith Mothersson of the Institute for Law and Peace (INLAP) wrote *"From Hiroshima to the Hague"* for peace activists and Nick Grief, then teaching law at Exeter University, wrote a *Legal Memorandum* which was published by IALANA. Keith proposed using the De Martens Clause of the Hague Conventions, which referred to "the dictates of the public conscience", for individually signed declarations that would be presented to the Court. Eventually we got 3.8 million of them there in 40 languages. George and Jean Farebrother, working with World Court Project U.K., pioneered this.

The World Court Project (WCP) was officially launched by IPB, IPPNW and IALANA in Geneva in May 1992. Zimbabwe, then Chair of the NAM, opened the Conference and became the first government to announce its support. At this meeting, an International Steering Committee (ISC) was formed comprising representatives of the three principal co-sponsoring organisations plus Alyn Ware, myself, and former RN Commander Rob Green, by then Chair of World Court Project U.K. IPB organised the citizens' campaign, IALANA was concerned with the legal arguments and lobbying at the UN, and IPPNW co-ordinated approaches to the World Health Organisation (WHO) in 1992 and 1993.

We started to compile lists of endorsing organizations and prominent endorsers. By 1994 over 700 organizations had signed on, including many city councils, Greenpeace International, and the Anglican Communion of Primates. In 1992 we began lobbying in capitals. The crucial task was to encourage the NAM to submit a UN Resolution asking for an Advisory Opinion on the use and threat of nuclear weapons. Alyn Ware co-ordinated the lobbying in New York.

In September 1993 in New Zealand 22,000 Declarations of Public Conscience were handed to Members of Parliament in Wellington. They showed a spread of people from all walks of life, judges, bishops and ordinary citizens. When the Disarmament and Justice Minister accepted these he said, in front of the media, "If

it goes to the vote, we'll vote for it". We used this statement to encourage several more countries, including Ireland and Sweden.

Just before the May 1992 WCP launch, IPPNW had attempted to introduce a resolution at the World Heath Assembly (WHA) in Geneva. The move failed because of lack of time to build up government support, and the resolution was not formally on the agenda. However, within weeks it attracted 14 co-sponsors, and a significant number of Health Ministers indicated interest.

We lobbied Ministers of Health prior to another approach to the WHA in May 1993. Two draft Resolutions were prepared for the WHA and for the UN General Assembly. Rob Green visited Canada and Alyn Ware went to the South Pacific Forum. Swedish Dr Ann Marie Janson lobbied five Latin American Health Ministers on a bus trip in Geneva to endorse the WHA Resolution. This time the WHA passed a resolution to request a World Court Opinion on the health and environmental effects of the use of nuclear weapons, with 73 for and 40 against with 10 abstentions. The World Court invited submissions from states.

We presented 100,000 Declarations, the MacBride Appeal and the Hiroshima/Nagasaki Appeal at the UN General Assembly in October 1993. This helped the countries that put themselves on the line to feel supported by civil society. This was important in view of the demarches they received from the Nuclear Weapon States. They said they had never known intimidation like it. Indonesia tabled a resolution and the NAM met all day. That meeting was absolutely critical. The NAM decided not to press for final action that year because the Nuclear Weapon States were linking the resolution with the Comprehensive Test Ban Treaty, the Fissile Material Cut-off Treaty and the Non-Proliferation Treaty. However the NAM reserved the right to raise the issue again in future.

In December 1994 a Resolution asking for an Advisory Opinion from the ICJ on the threat and use of nuclear weapons was finally passed by the UN General Assembly with 78 for and 43 against, with 38 abstentions and 25 non-votes. New Zealand and San Marino were the only "Western" states to vote for it.

During the 1995 Oral Proceedings, 3.8 million Declarations were presented to the World Court, which had difficulty in finding room to store them. Survivors of the Hiroshima and Nagasaki bombings were there, as well as the Mayors of the two cities, who gave very moving accounts.

Forty-four states and the WHO made submissions to the Court - the largest number ever. They included four Nuclear Weapon States. It was the first time that citizens and expert witnesses were allowed to present evidence. There was also a meeting between the Court officials and a delegation of indigenous peoples. Afterwards, Michael Christ of IPPNW said: "We created a new political forum, a new political opportunity which didn't exist before, until citizens' groups decided that this was going to happen and we created it out of nothing. It was an idea, it was 'we'. It is not just lawyers, the doctors or the Peace Bureau. It has been like a thousand points of light".

THE ROLE OF THE ICJ IN THE INTERNATIONAL SYSTEM AND COMPLIANCE WITH ITS JUDGMENTS

Phon van den Biesen

Phon van den Biesen, a Dutch Attorney, is the Vice-President of IALANA. He is a member of the legal team representing Bosnia Herzegovina in its case against Serbia and Montenegro at the International Court of Justice

The topic I was given for this session was, "The role of the International Court of Justice in the international system and compliance with its judgments". As we know, the role of the ICJ is twofold. The first is to resolve conflicts between states parties and the second is to deliver Advisory Opinions.

These two roles are of an entirely distinct nature. In Contentious Cases, cases between states, it is only the states themselves which appear before the Court. However, an Advisory Opinion does not involve states opposing each other as such. There are no applicants or defendants. The only party involved in an Advisory Opinion is the UN body that has requested the Court to deliver the Opinion. At the same time all UN member states may, in principle, be entitled to participate in the proceedings.

Contentious Cases and Advisory Opinions are also procedurally different. When two states, or two groups of states, appear before the Court the parties present their arguments in turn. This happens in several sessions with long intervals between them and the Court needs to ensure that all the positions put by one side are answered by the other. Advisory Opinion proceedings are less antagonistic and rather more informal.

The most important difference between the two sorts of case is the outcome. A Contentious Case will lead to a judgment which will be binding on the states parties involved, but not on any state which did not participate. An Advisory Opinion does not lead to a judgment. Strictly speaking it does not even lead to a decision. The outcome of the proceedings is just the Opinion of the Court or, as the Court has said in various cases, it is merely the reply to the question.

It follows from these distinct differences that the questions of enforceability and compliance also lead to entirely different answers for judgments on the one hand, and for Opinions on the other. Twenty five Advisory Opinions, involving a great variety of legal questions, have been delivered by the Court since it came into being. Over the course of time the Court has clearly established and recorded, in plain, clearly understandable language, the nature of its work with respect to Advisory Opinions. The Court aims to provide certain clarifications of a legal nature in order

to enlighten a UN body, such as the General Assembly, with respect to certain legal questions. As early as the 1950s, the Court held that delivering an Advisory Opinion amounts, in itself, to participation in the activities of the United Nations.

However, there are some thresholds to be surmounted before the Court can begin to entertain a request. The first is that the question should clearly be a legal one. No political question may be answered by the Court. At the same time the Court has acknowledged that most legal questions incorporate political questions as well. The fact that there may be political consequences or repercussions from an Opinion does not mean that the Court should refrain from providing an answer.

The other threshold is that the question put before the Court should be about issues which are within the scope of the UN organ requesting the Opinion. This is a formal requirement for all UN bodies other than the General Assembly and the Security Council. The World Health Organisation (WHO) question on nuclear weapons was not answered by the Court because the Court decided that this was a question which fell outside the scope of the WHO.

The General Assembly is entitled to put any legal question to the Court. According to the statute of the Court, it is not under a legal obligation to deliver an Advisory Opinion but the Court has some discretionary power in whether or not to provide one. However, the Court has stated that it would only refuse to do so if there were compelling reasons. These reasons have not been defined by the Court but it has never used its discretionary power to refuse to respond to a request for an Advisory Opinion from the General Assembly.

There is also a difference when we come to the question of compliance. In a Contentious Case the judgment is binding on the parties involved. It is also enforceable through the Security Council if the states involved do not abide by the judgment. This means that whether a state should be forced to comply with the judgment is ultimately a political decision by the Security Council. On the other hand there is no issue of compliance with an Advisory Opinion because it is not a judgment. It is only an Opinion, a reply. It is not binding on any state because it is not directed to any state party in particular. Consequently, there is no way in which one state could ask the Security Council to enforce an Opinion against another state.

The Court has said in one of its Opinions that it merely states the law. That is a very modest way of describing what the Court is doing because in stating the law, the Court clarifies what the law already meant before the request for an Advisory Opinion was submitted. Therefore the substance of an Advisory Opinion is binding on all states insofar as the law it refers to, such as specific treaties or agreements, is itself binding upon states. That is an important difference. There are politicians who say, "Well, we don't have to worry about Advisory Opinions because they are not binding". That's true. They don't have to worry that the Security Council will

try to enforce it on them; but it is binding by the virtue of its being part of international law.

The most recent example of an Advisory Opinion which has been actively ignored is the Opinion on the wall Israel is constructing on the occupied countries of the Palestinian people. It's not the only example. There is a much older Advisory Opinion delivered by the Court with respect to the Western Sahara. There was an issue between Morocco, Spain and Mauritania which went back and forth to the General Assembly and then led the General Assembly to request the Court for an Advisory Opinion. Morocco was very much in favour of this Advisory Opinion being asked but Spain argued strongly that the Court should refuse to consider it. The Court rejected Spain's objections and issued an Advisory Opinion. Morocco did not like it at all and completely ignored it. As a result the Opinion did not help to resolve the conflict and the parties, including the General Assembly, were forced to fall back on what they had been trying to do before the Opinion was delivered.

We should be aware that an Advisory Opinion provides very substantial and important guidance. It states the law as it is. Today, even more than 10 years ago, the merits of an Advisory Opinion make it an indispensable tool for what we are about to do, especially when we talk about the nuclear disarmament obligation. A great deal may be won by asking for another Advisory Opinion.

EXPERIENCES WITH DOMESTIC COURTS

Court Experiences in the U.K.

Phil Shiner

Phil Shiner is from the British organization Peacerights and head of team at Public Interest Lawyers

I'm going to speak this morning as a U.K. lawyer with practical experience of trying to litigate issues arising from the U.K.'s possession of the nuclear weapon system. I'll be speaking more with my litigation hat on as Public Interest Lawyers, whereas this afternoon I'll be speaking more with my Peacerights hat on when I'm talking about people's tribunals.

The experience I've had over the last few years involves cases in every court in the U.K. from the High Court of Appeal to the House of Lords and a case in Strasbourg for Angie Zelter and others. However, those cases have also brought me into contact with arguments arising from other cases, particularly cases for activists who have tried to use the criminal defence of necessity to shield them from the effects of deliberate damage to premises concerned with nuclear weapons. I want to draw out some lessons from that U.K. experience which I think may be relevant to other jurisdictions.

The first lesson is that in the U.K. there is no question whatsoever that a court would ever rule on whether the U.K.'s possession of its nuclear weapon system, Trident, or any decision to replace it, is, or is not, in breach of international law. That is what we know in the U.K. as the principle of justiciability. The principle says that certain matters are matters of high foreign policy, defence of the realm, and security of the nation. They are not a matter for judge or jury. It's a simple separation of powers issue. I ought to note for our American friends that the principle of justiciability would be more closely equated with what they would know as the "political question." We're about to make a decision to replace Trident and spend £35-40 billion of U.K. taxpayers' money on it rather than on our precious National Health system. If CND or others intend to challenge that decision to replace Trident, they are, in my view, absolutely doomed to fail. Just to give you a quote from the Court of Appeal. This is a case regarding the manufacture of nuclear weapons at Aldermaston. One of our judges puts the principle of justiciability very well and makes it very clear. He says,

The graver a matter of state and the more widespread its possible effects, the more respect will be given within the framework of the Constitution to the democracy to decide its outcome. The defence of the realm, which is the Crown's first duty, is the

paradigm of so grave a matter. Potentially, such a thing touches the security of everyone and everyone will look to the Government they have elected for wise and effective decisions. Of course they may or may not be satisfied and their satisfaction or otherwise, will sound in the ballot box.

There you have it. If you don't like these political decisions, then vote out your Government, but don't come to this court. That's the first principle. But that isn't the end of the matter. It doesn't mean that every time there is a question of law in the context of nuclear weapons that the Government can press the button marked 'National Security', and do what they want. That is not the case.

There are four areas in which a court may be prepared to intervene. The first is where there is actual bad faith on the part of ministers. An example would be a minister who had financial links to a contractor involved with the manufacture of nuclear weapons, and who made a decision, as part of the political process, to award a contract to that contractor. The second area would be where basic procedural duties had been breached. Supposing our Government had given, on the record, a clear public commitment for the fullest public consultation through whatever means, before it made its important decision as to whether to replace Trident. If it simply failed to give the public that opportunity that, in my view, would be a clear opportunity for activists or NGO's like CND, to go to court and get the court to order that the consultation must take place. A third area is where a U.K. statute had actually required the court to review that type of high foreign policy or defence decision.

The fourth area, most importantly, is where human rights issues arise. If human rights issues are engaged in a particular issue, say concerning Aldermaston where we manufacture nuclear weapons, the decision-maker has to strike a balance between the human rights of those who are having those rights removed, and the need for state security. That is particularly important where rights are qualified. By this I mean that most of the rights in the European Convention of Human Rights are not absolute rights. The absolute prohibition on torture is an example of an absolute right. But most rights are qualified. The state is allowed to interfere with those rights in certain circumstances and national security is one of those circumstances. I'm involved in a case at the moment, concerning whether the U.K. Government can pass by-laws at Aldermaston, to absolutely prohibit any organised protest, or use of mobile phones. This would make it impossible for peace activists, who have been on that site for many years, to continue with their lawful business in exercising their rights of freedom of assembly. From what I've seen of those by-laws, I understand that they go too far because they are a disproportionate response to what the state is trying to achieve at Aldermaston, which I presume is less public protest because it is saying that there is national security interest. That

would be an example of where the court might be prepared to intervene, even though the context is one of high foreign policy, defence policy being the manufacture of nuclear weapons.

The third lesson, in my experience, is that it's an absolute mistake to claim too much of the ICJ Opinion, or to try and argue that nuclear weapons, per se, are illegal because they will necessarily breach the intransgressible principles of international humanitarian law. In my view, no such conclusion can be reached. We have to live with the fact that we do have a fudge by reference to the phrase, "in extreme circumstances of self-defence", and we do have a fudge in that the Court deliberately refused to rule on the policy of deterrence, for one cannot say that the policy of deterrence is in itself a threat to use nuclear weapons.

However, my experience is that more nuanced arguments can be made and can be more successful. In the case that I just referred to, the case about manufacturing nuclear weapons at Aldermaston, we wanted the court to look at whether the manufacture of nuclear weapons was in breach of the intransgressible principles of international humanitarian law. The question arose in that case as to whether the Euratom Treaty applied to military uses of nuclear energy. The Government argued that the Euratom Treaty, which brings with it the need for a full justification exercise, only applied to civilian uses of nuclear weapons and not to military uses. We said that one could not protect the health and safety of employees and the public if one did not know what were the background levels of radiation and one does not know what these are if one does not measure the emissions from military uses of nuclear sites. We said that as a full justification exercise had to be carried out, the regulator was bound to say that Trident was in breach of these intransgressible principles. It was automatically on the disbenefit side of the equation, whereas the regulator's environment agency had automatically assumed that there was a benefit from what was going on because it involved de-commissioning old warheads. We got somewhere with that argument in that we managed to split the Court of Appeal one-all with one of the judges sitting on the fence. Unfortunately we were refused leave to go to the House of Lords although not long afterwards that very question was decided by the European Court of Justice in a case, *The Commission versus the U.K.* I have to say, sadly, that the European Court of Justice seemed to have made a political decision and said that actually the Euratom Treaty only applied to civilian uses of nuclear weapons. So that's one example of where nuanced arguments may be made which are more successful.

The fourth lesson I've drawn is that there is no room for activists to think that they can succeed in advancing the argument which says that the defence of necessity allows them to commit criminal damage to equipment or premises associated with the Trident weapon system. I'm not saying that those activists should not advance

those arguments. I am saying that they should do so in the clear understanding that if the judge or the courts are aware of the House of Lords decision of a few weeks ago, then they are bound to fail.

The argument goes like this. First that the U.K.'s policy of deterrence implies a threat to use Trident. Second, a threat to use force that is illegal, is in breach of 2.4 of the UN Charter. Third, that a threat to use Trident is in breach of the intransgressible requirement of the principle of distinction between combatants and non-combatants or the principle of proportionality in *jus ad bellum.* Fourth, as such, the U.K.'s possession of Trident is an international crime. Fifth, an international crime becomes incorporated into domestic law and becomes part of our domestic law without anything further being required and particularly without parliament legislating. Lastly, an activist is therefore entitled to rely on the defence that he or she was using reasonable force in the prevention of a crime.

There are a number of problems with this argument. The first obvious problem is that one cannot point to the ICJ Opinion to say that Trident does breach customary international law, and that, therefore, there is an international crime. The case I am referring to is the case of the 29 March 2006. This is the case of Margaret Jones in the House of Lords. It is therefore the authoritative ruling on this. It concerned a number of cases where activists had broken into bases, including RAF Fairford, in an attempt to stop the preparation of planes etc for bombing raids during the Iraq war. The activists tried to argue that the crime of aggression under international Customary Law was an international crime, and was therefore, incorporated into U.K. domestic law without anything further being required. That argument fell flat on its face. Lord Bingham referred to a passage from Sir Franklin Berman saying, "international law could not create a crime directly tryable in an English court without the intervention of Parliament" It effectively said that this would be giving the executive far too much power and the sky would fall in if this was so. That is the position and that will remain the position for the foreseeable future.

One of my messages to activists is that one needs to be much more subtle about how one puts these arguments. In the Fairford case, the activists argued that there was a crime of aggression that was part of customary international law that was automatically incorporated into U.K. domestic law. I wonder whether they would have got further if they had argued that what they were interested in doing was stopping the war crime of dropping cluster bombs which are inherently indiscriminate, and therefore, breaching an intransgressible principle of international humanitarian law.

The fifth and last lesson is that lawyers can, and should, be criticised for undue reliance on litigation. My view, and I'll expand on this, this afternoon, is that one needs to use international law in a much more creative way. In the U.K., for the

first time ever, the issue of whether or not a war was illegal has become a matter of huge public debate. That public debate continues and I believe that it has done our Prime Minister, Tony Blair, enormous damage. The public debate about international law didn't just magically happen because the media decided this was interesting. It happened because civil society helped to make it happen. I think this is the key to nuclear weapons.

I think that in the U.K. at least, the NGO community have manifestly failed to engage public consciousness in the key issue. How can we spend £35-40 billion of our money, instead of spending it on education or health, when that activity is clearly unlawful? If one interrogates the facts of Trident in terms of its blast, heat, radiation effects, etc, rather than trying to extrapolate from the ICJ Opinion some general principle about all nuclear weapons, one is left with the very clear conclusion that of course Trident could never be used in a way that was lawful. It is way too big. That is the opinion of Professor Christine Chinkin and Rabinder Singh QC issued in December 2005. That, to me, is where our efforts as lawyers and activists should be focussed, trying to get it through to the public in an ideological struggle that what we're about to do is completely unlawful. I don't particularly see at the moment, where litigation on these issues fits in with that struggle.

Nuclear Weapons and German Courts

Peter Becker

Peter Becker is the First Chairman of the German section of IALANA

My report concerns one of the most important decisions a German court has ever made: the ruling of the Bundesverwaltungsgericht, the highest Federal Court of Administration, on June 21, 2005. A member of our Academic Council, Dr. Dieter Deiseroth, belongs to the senate, which delivered the judgment. It relates to the case of a high officer with the rank of major who opposed an order to provide logistic support for the invasion by the United States and the U.K. of the state of Iraq. This case was submitted to a military court where the soldier was punished. But his appeal to the Bundesverwaltungsgericht was successful. He was found to be not guilty and went free. I want to outline the main points of the decision and show how the decision might be useful in other areas.

The Case: In April 2003 a major of the German Bundeswehr refused to carry out two orders from his superior to collaborate on the development of a military software programme (SASPF). He stated that he could not reconcile following orders which supported acts of war against Iraq with his conscience. At the same time he asserted that before issuing the order his superior had not been able to rule out the possibility that working on the project might support the participation of the

Bundeswehr in the war against Iraq which he saw as contrary to international law. In this context he criticized the fact that members of the Bundeswehr were stationed in Kuwait, that German soldiers were taking part in AWACS flights and guarding U.S. bases in Germany, and that overflight and landing rights had been granted by the German Government to the armed forces of the USA operating in Iraq. He considered these to be acts of assistance contrary to the constitution and international law.

The Bundeswehr started an inquiry. One part of the inquiry was the committal to a military hospital to test his state of health including even his psychological state. The doctors found nothing wrong with him.

The Federal Military Court (Truppendienstgericht) demoted the officer to the rank of captain (Hauptmann) because of his disciplinary offence. He appealed against this and filed an application for acquittal. The military disciplinary attorney (Wehrdisziplinaranwalt) also filed an appeal and demanded that the soldier should be dismissed from the army. The Senate has acquitted the soldier because it could not be proved that he had committed a disciplinary offence.

The Ruling: The Court of Administration summed up the situations in which a military order is not binding. Legal limits to obedience result from the Basic Law *(*Grundgesetz, GG*)* and the Act Concerning the Legal Position of Soldiers (Soldatengesetz, SG*),* which can be summarized in seven sub-groups. Above all a soldier is not compelled to carry out an order if it is contrary to his fundamental right to freedom of conscience (art. 4 para. 1 *GG*).

A decision of conscience is any serious moral decision, i.e. oriented to the categories of "good" and "evil", which the individual in a particular situation experiences as binding in and of itself and creating an imperative inner obligation, with the result that he could not act against it without a serious moral dilemma. Fundamental elements of this decision – this is very important – are human rights and the basic principles of international law.

There were and are serious legal concerns about the war started on March 20, 2003 by the U.S. and the U.K. against Iraq because of the prohibition of the use of force under the UN Charter and other applicable international law. The governments of the U.S. and U.K. could not justify their case for war either under empowering resolutions of the UN Security Council or under the right to self-defence granted in Article 51 of the UN Charter.

Neither the NATO Treaty, the NATO Status of Forces Agreement (SOFA), the Supplementary Agreement with NATO, nor the Aufenthaltsvertrag (Agreement concerning the presence of foreign armed forces in Germany, AV*),* provide an obligation on the part of the Federal Republic of Germany to support acts by NATO

partners which are contrary to the UN Charter and applicable international law.

A very important indication was given by the Court when it showed that basic principles depend not only on the "ethical minimum", but refer to the social and ethical meaning of law. In a democratic state based on law international law must inform conscience.

So this was the decision made by the colonel. The Court refers to a letter he wrote to the Ministry of Defence and the office of the Chancellor where the he discusses the difference between President Bush's decision and his. President Bush, he says, claimed that God himself had instructed him to start the war. The colonel was deeply concerned about this hubris. He said that *his* God was completely different from this. He cited the "Prayer of the United Nations" and "Prayer no. 62" from the Catholic bishops' handbook which listed the legal and the moral duties of a soldier.

What conclusions can be based on the decision? First of all the German Government acted illegally in supporting the war against Iraq by opening German air-space for American military aircraft. Any state which uses German infrastructure for such logistics acts against the agreements on stationing military troops in Germany. The rights arising from such a treaty are based on the principles of international law and the treaty states are not free to violate it. The case therefore provides a very precise legal restriction on the handling of future conflicts.

Any soldier in the Bundeswehr can oppose military orders which are contrary to international law. In future, cases similar to this one must end in a similar result, for example AWACS flights in Germany which are involved in so called "nuclear sharing".

The case is very important for education and training in the Bundeswehr. Soldiers must learn that not all military orders are legal. Even more importantly superiors must seriously consider whether the orders they give are lawful. The main message is that military force is not exempt from the law but part of the rules of public administration.

The decision is also very important for soldiers studying in the universities of the Bundeswehr in Hamburg and Munich and for all legal high schools in Germany. The law of war is *subject* to teaching and examinations. Future judges and lawyers should have a feeling for the importance of such obligations. I estimate the judges and the lawyers and even the citizens involved with such cases number some hundreds.

Finally, the decision is binding on all courts, both the penal courts and the Courts of Administration. Any person accused of illegally entering a military facility or stopping the flow of traffic where, for example nuclear weapons are based or from

which logistic aid for the Iraq war was given, can refer to the fundamental right of freedom of conscience and to his right to oppose military sup-port for the war against Iraq, because this aid is against international law. My colleague Otto Jäckel will report on some of these cases.

Reflecting on all this we must learn that starting and supporting wars are subject to human rights law and international law. The case is therefore a milestone for IALANA and a milestone for the rule of law.

Otto Jäckel

Otto Jäckel is the Deputy Chairman of the German section of IALANA

I would like to speak about the freedom of conscience as well and I therefore invite you to follow me to the small German state of Rhineland-Phalz. It is the only German state which stores nuclear weapons. The weapons are located predominantly in the Büchel air base in the Hunsrück Mountains where U.S. American B61 nuclear bombs, many times more powerful than the one dropped on Hiroshima, lie in storage. These weapons are guarded by U.S. armed forces and on a daily basis German air force pilots practice the transport and delivery of the weapons.

Since the release of the 1996 ICJ Advisory Opinion there have been many discussions, seminars and meetings in universities, churches and trades union groups where the meaning of the ruling was discussed. I personally spoke about the ICJ Opinion and the necessity of a convention on nuclear weapons in universities, union gatherings and at Christian peace activist meetings. Twice, I even had the opportunity to speak from the altar of a Catholic church.

Perhaps this contributed to the fact that the German peace activists believed in our position which is that the Court's Opinion is binding. Concerning this we can refer to a 1952 judgment of the Federal Constitutional Court. I quote, "If a court is ordered by the law to deliver an Advisory Opinion, it is acting as a court, although an Advisory Opinion does not have the same effect as a judgment." The material content, however, is equivalent to a court judgment.

Tornados of the 33rd Fighter-Bomber Wing of the German Air Force are located at Büchel. On a Sunday in April 1997, there was a demonstration of several hundred peace activists which ended in front of the main entrance of the base. This took place under the motto, "Abolish Nuclear Weapons". While I and an IALANA representative spoke to the demonstrators about the Advisory Opinion, six people climbed over the fence in order to inspect the barracks. As disarmament inspectors, they wanted to know if the nuclear bombs were deployed there. They also wanted to inform the soldiers on the base of the illegality of this deployment. This led to

their arrest by military police and an accusation of trespass before the criminal court in Cochem on the River Mosel.

I pleaded the case on behalf of the activists before the Court. After explaining the content of the Advisory Opinion I referred to Article 25 of the German constitution, whereby the common rules of international law are part of federal law. This has to be strictly followed by the courts, the government and the administration. The director of the court responded, "I really do not know if there are, in fact, nuclear weapons deployed at Büchel, but if this is really the case, the Federal Government would certainly have been informed about this and would have given its consent." The possibility that the German Federal Government might act in an illegal way did not enter his mind.

The Court believed that the ICJ Advisory Opinion consisted of only a few sentences. I quote, "By the way the Advisory Opinion doesn't say that the deployment and use of nuclear weapons is a breach of international law in every case. However, it said, among other things, that in view of the current state of international law and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence in which the very survival of a state would be at stake." We all know this sentence so well. It was used to justify the B61 nuclear bombs at Büchel.

Since 1997, there have been more developments concerning the Advisory Opinion in the Rhineland-Phalz courts. In 2004 a peace activist, Hermann Thiessen, handed a leaflet to military personnel of the 33rd Fighter-Bomber Wing at Büchel. It said, "Refuse to take part in illegal nuclear sharing." He pointed out that according to the latest version of NATO nuclear strategy Tornado fighters deployed there could take part in a pre-emptive strike using nuclear weapons against countries in the so-called 'axis of evil' such as Iran, Iraq and North Korea. The deployment of these U.S. weapons on German soil and their possible transfer to German pilots would be a breach of international law. He argued that the training programme is already a breach of the ICJ Advisory Opinion and of Article II of the Non-Proliferation Treaty. Pilots should refuse to follow such orders.

After the Cochem court had convicted Theissen the Appellate Court in Koblenz acquitted him. During the hearing a rare thing occurred. The state attorney and I as the defence lawyer agreed that the Court had illegally misrepresented the facts. We only disagreed with the judicial estimation. In my pleading I referred once again to the content of the Advisory Opinion and the recently published decision of the Federal Administrative Court which was the subject of Peter Becker's presentation. The Court confirmed the acquittal and stated, among other things, that the soldiers had only been requested to re-think their position as regards nuclear

participation between the U.S. and Germany. It did not see the leaflet as a direct command to disobey military orders, but only as a request to sharpen their conscience. This was combined with a personal belief by the accused that if one listens to one's conscience, one can only come to the conclusion that nuclear participation cannot be justified. The Court did not mention the ICJ Advisory Opinion explicitly but the presiding judge stated that the judges had studied the Opinion intensively.

The 2004 decision took place in a partially changed political landscape. The Free Democratic Party proposed to Parliament that the nuclear weapons stationed in Rhineland-Phalz should be removed. In doing this they challenged the Greens who had not done much about nuclear weapons once they became part of the Government even though their roots were in the peace and anti-nuclear movement. In addition the withdrawal of nuclear weapons had been debated in the Rhineland-Phalz Parliament. The combined effects of these developments created an atmosphere which made it possible for the judges to decide in favour of the accused.

Meanwhile, the U.S. administration had declared that the withdrawal of nuclear weapons from Germany should be decided by the German Government itself. This declaration alarmed the Christian Democrats. After the French President Chirac had openly threatened Iran with a nuclear strike in January, Chancellor Angela Merkel quickly declared that the steps which were to be taken against Iran had been co-ordinated quite closely between Germany, France, and Great Britain.

A few days later, Rupert Schultz, a former defence minister in the cabinet of Helmut Kohl, said "In Germany we have to debate the question of our own nuclear deterrence completely anew. It would be politically irresponsible not to do so." Although his pleading for Germany to have its own nuclear weapons has been criticised by other Christian Democrat politicians and by the other parties, one has to take into consideration official German policy which still depends on a Government declaration to Parliament in 1993 that, "Euro-based nuclear weapons still play an important role in the peacekeeping strategy of the Alliance because conventional forces alone cannot guarantee the prevention of war. Therefore the German Government will not renounce the option of first-use of nuclear weapons." Given this position, Germany breaches Article VI of the Non-Proliferation Treaty, every day.

The 1996 Advisory Opinion has provided us with important arguments, but because it retains the possibility of the use of nuclear weapons in an extreme case of self-defence, it remains a dull sword. A new, clearer judgment from the Hague would help us very much, especially in view of the intensifying Iran crisis, to come closer to the goals of Bertha von Suttner after whom one of the buildings of this Parliament is named. Lay down your weapons!

Defending US Nuclear Resisters since the ICJ Opinion

Anabel Dwyer

Anabel Dwyer is a U.S. lawyer and a board member of the New York based Lawyers Committee on Nuclear Policy. She is one of the few lawyers in the U.S. and the U.K. willing to work with nuclear resisters in court in very difficult circumstances.

I do not have happy news from the United States. I am glad to hear that there is progress in Germany although the United Kingdom seems to have the same problems as we do.

The International Court of Justice (ICJ) stated what the law is. The "hedge" at the end of the Opinion was the result of the Court not reviewing each weapon individually. It is clear that Trident, Minuteman III and the B61 cannot be used legally and therefore cannot be threatened to be used legally either.

Non-violent nuclear resisters expose a weapon of mass destruction whose threat or use is illegal and criminal. These resisters assert not just a privilege and a right, but also a duty, to facilitate non-violent disarmament in good faith. The ICJ affirmed that non-violent nuclear disarmament is the obligatory remedy for the crime of using, or threatening to use, nuclear weapons. This remedy changes the way the law operates. It addresses the question of how the rule of law is implemented - whether through use of force or through agreement and consensus. The existence of nuclear weapons threatens our existence and forces us to confront this question. The ICJ Opinion confirms that because nuclear weapons are inherently indiscriminate the rule of law must be implemented through agreement and not through use of force.

We start from the principles and rules that render any threat or use of nuclear weapons, in general, or of a particular nuclear weapon, illegal and criminal and that the remedy is their non-violent exposure, inspection and elimination. A Nuclear Weapons Convention is based on this presumption. The question is one of how we can create the political will to bring about the necessary conditions of transparency, irreversibility and verification. Non-violent direct action can help this to happen. Resisters in the United States have recognised the criminality of nuclear weapons and their duty to act non-violently to solve the problem. The court cases I have been involved in illustrate the problems they face. The courts consistently argue that there is no duty or privilege to avoid complicity with an ongoing threat, or to point out the continuing commission of Nuremberg crimes, that the harm and danger is not imminent, and that non-violent nuclear disarmament is not even possible.

Three elderly Dominican sisters entered a Minuteman III silo site in October 2002

in Colorado. In this corner of North Colorado stand 43 of the U.S.'s 500 Minuteman III missiles all on hair-trigger alert. Each missile carries a nuclear warhead intended to unleash heat, blast and radiation 20 times greater than the Hiroshima bomb within minutes. In addition, these missiles and bombs poison the environment during the manufacture and could be launched accidentally. If used they would kill civilians and poison the earth, air and water with radioactive fallout. The recent U.S. Nuclear Posture Review had made it clear that the U.S. is engaged in active steps for use of these uncontrollable weapons, a clearly illegal threat.

On October 6 2002 the nuns carried out a citizens' inspection of a Minuteman III missile silo site in Northern Colorado through a non-violent exposure, inspection and symbolic disarmament. They were highly educated about the ICJ Opinion, the laws of war and the characteristics of the Minuteman III. The nuns cut two fence links and two chain links, walked into the silo site and put a little of their own blood and crosses onto the silo cover and sang and prayed for 45 minutes before Air Force authorities appeared.

They were charged and convicted of sabotage, interference, injury, obstruction of the national defence and destruction of government property over $1000, all major felonies, and endured prison for 41, 33, and 30 months respectively. For three additional years, they remain under draconian probation conditions amounting to house arrest. I was asked by the nuns to be their coordinating defence attorney in an official capacity as Advisory Council.

The trial judge disallowed the expert evidence and exhibited numerous misunderstandings of the directly relevant rules and principles of humanitarian law based on real denial of the facts. It is delusional to deny the Minuteman III on high-alert presents an ongoing illegal and criminal nuclear threat. The trial judge held that there is no need to relate the criminal statutes of sabotage or destruction of property to the War Crimes Statute, treaties or International Humanitarian Law because there is no *jus cogens* offence being committed or threatened by the U.S. Air Force. We appealed the sabotage conviction because of the over-broad definition of national defence which found no legal limits to Presidential war powers. We also pointed to lack of evidence to establish the requisite specific intent to commit the crime of sabotage and argued that the Sisters were entitled to a good faith jury instruction.

The trial court said that in this case the defendants had myriad lawful avenues to further nuclear disarmament and added, "The fact that the defendants were unlikely to effect the changes they desired through legal alternatives did not mean that those alternatives did not exist." What nonsense! Such a ruling presupposes that non-violent nuclear disarmament is neither an obligation nor even possible. This assumption, together with a denial of the reality of nuclear weapons and

refusal to apply the universally binding rules prohibiting the threat or use of these particular weapons, leads Federal courts to ignore International Humanitarian Law even when it is codified by the U.S. Criminal Code and ratified as treaties. This blindness reveals the deeper struggle - that between security through force or security through care for each other and our common environment. U.S. courts have yet to accept that non-violent nuclear disarmament is practical and normal, that it conforms to common norms.

We also lost because the court held that the Minuteman III comprised a legitimate military mission. The Defendants' arguments that the high-alert Minuteman III is well outside any legal military mission were completely ignored. The nuns were guilty because the Sisters were "subordinating the requirements of law to one's personal view of morality". "No individual or group is above the law," the trial court held – except, apparently, the U.S. The court saw no relation of laws problem because it ignored the existence of peremptory rules of law that prohibit any threat or use of the Minuteman III missile and held, "Although their purpose may have been to uphold international law, their action disobeyed the wholly independent federal law protecting government property."

I would like to finish with some specific recommendations:

- We should build a readily available document centre and teams of lawyers who can testify and have model briefs for these cases.
- We should produce fliers that are specific to the legality of particular weapons.
- We should have lawyers willing to design and take part in actions with other activists operating at a high level of publicity and work with them to build an ever-expanding nuclear disarmament coalition.

I would like to end by quoting Phil Berrigan who said, "How will Americans respond when they understand that their government is nakedly lawless before its own law?"

The Aviano Case in Italy

Antonella Pecchioli and Marielena Giorcelli

Antonella Pecchioli and Marielena Giorcelli are Italian lawyers involved in the case against the U.S. military base at Aviano, in Northern Italy. They are also members of IALANA Italy

Antonella Pecchioli

I am a lawyer based in Florence. I work in the same office as Joachim Lau, Vice-President of IALANA Italy. I am here to introduce you to a domestic case concerning the nuclear military base at Aviano, Italy. I will outline the facts regarding this case while my colleague Marielena Giorcelli will talk about the legal issues.

Aviano is a city in North East Italy not far from Venice. On 3 December 1960 a secret agreement was signed between the Republic of Italy and the United States. This agreement stated that the facilities of the airport at Aviano were to be made available to the U.S. The agreement involved the planning and implementation of NATO nuclear strategy, and specifically the development of joint defence planning and joint training of troops and personnel for the use of nuclear weapons. Since then the military facilities of Aviano have been available to the U.S. as a depot for nuclear weapons.

At present there are 50 nuclear weapons in Aviano, including B61(3), B61(4) and B61(10) bombs, and 18 aircraft of the U.S. Air Force. There is enough space for another 72 aircraft of the same type. The nuclear weapons on Italian territory constitute a hazard for the health and the life of the plaintiffs who are local citizens living up to 48 kilometers from the Aviano base. They fear that Aviano is a potential military target from, for example, the Russian Federation. Such an attack would present a considerable hazard to their health. It would increase the danger of cancer and would also risk pollution in the area.

It is said that the weapons at Aviano are tactical weapons for use against a potential enemy force which is superior in conventional weapons. A nuclear response would ensure the success of American and NATO operations and demonstrate their intention and ability to use nuclear weapons to deter adversaries from using weapons of mass destruction.

Marielena Giorcelli

I am also a lawyer, based in Turin and like my colleague, Antonella, I am defending the five people who live near the military base at Aviano against the U.S. government in front of the Court at Pordenone.

In our complaint we have specifically referred to Articles I, II and VI of the Non-Proliferation Treaty. This stresses the obligation of the Nuclear Weapon States not to make nuclear weapons available, directly or indirectly, to any Non-Nuclear State. In addition Non-Nuclear States are forbidden to acquire or have access to nuclear weapons.

We also argue that all states have undertaken to carry out negotiations in good faith in order to achieve complete nuclear disarmament as soon as possible. This is confirmed by the ICJ Opinion. In addition the Opinion states that the threat or the use of nuclear weapons would generally violate the provisions of international law applicable to armed conflict, and particularly of humanitarian law.

We then referred to the American *Doctrine for Joint Nuclear Operations* in order to show that the U.S. has plans to use nuclear arms in any future international conflict even at a regional level or in the event of a threat arising from so-called non-state actors. We argued that the Aviano base must be considered a nuclear target as Antonella has explained. We concluded that to maintain a nuclear threat is unlawful and that the presence of nuclear arms on Italian territory is a danger to the health and life of the plaintiffs who are living near the base. The base is also liable to pollute the surrounding area. This is not just a future possibility. It is a continuing danger. In the event of a nuclear attack the plaintiffs would suffer heavy injuries and be exposed to a high risk of developing lung and kidney cancer.

We also based our complaint on domestic law, particularly on Articles 2043 and 1172 of the Italian Civil Code which deals with non-contractual obligations. The Code specifically states that any act or omission made with willingness or negligence which causes unfair damage to a person obliges the author of the act to provide compensation. In addition, any holder of a property right who has a good reason to fear serious future damage can report it to the Public Health Authority.

Firstly, we asked the Court to try to reach a settlement with the U.S. based on an agreement to remove the nuclear weapons from the military base of Aviano and, indeed, from Italy. Secondly we asked the Court to declare that the presence of nuclear weapons in Aviano is unlawful and liable to yield damages. The claim was then served on the United States through the Italian Ministry of Foreign Affairs. The first hearing was scheduled for today and before we started the meeting Joachim Lau, who is also defending the people of Aviano, phoned us to tell us that U.S. did not attend nor did it submit any written defence. Most probably it will be declared a default of judgment and the next hearing will be scheduled for March 2007.

RETURN TO THE INTERNATIONAL COURT OF JUSTICE

Alyn Ware

Alyn Ware is an International Consultant for the Lawyers' Committee on Nuclear Policy and the Disarmament and Security Centre. He is also the International Co-ordinator for the Parliamentary Network for Nuclear Disarmament

Nuclear weapons have not been used as a weapon in conflicts since 1945. The reasons for this good fortune can only be surmised. The United States, France and the United Kingdom argue that nuclear deterrence has worked. Robert McNamara, former U.S. Secretary of Defense, and an architect of the U.S. nuclear deterrence policy, believes that it is only by luck that the world has avoided a nuclear war. No doubt one of the reasons preventing commanders from using nuclear weapons in conflicts despite serious considerations being given to such use is the general norm against the use of nuclear weapons which has developed in public, political and legal sectors of international society. Up until recently, even the Nuclear Weapon States had indicated that nuclear weapons were a weapon of last resort. This did not by any means eliminate the threat of nuclear weapons use. In fact, the Canberra Commission on the Elimination of Nuclear Weapons concluded that it is not possible to prevent use of nuclear weapons by accident, miscalculation or design, unless nuclear weapons are eliminated.

The situation has become much more dangerous and urgent now because of two key developments. Firstly we have the increasing potential for the proliferation of nuclear weapons to additional States and to non-State actors. Secondly there is the broadening of doctrines by the Nuclear Weapon States to include the threat or use of nuclear weapons in response to the potential development of chemical and biological weapons and also against other conventional targets and the pre-emptive use of nuclear weapons.

The Commission on Weapons of Mass Destruction, chaired by Hans Blix former Head of the United Nations Monitoring, Verification and Inspection Commission (UNMOVIC), warns that "we even see the risk of arms races involving new types of nuclear weapons, space weapons and missiles," and that "the world must aim at achieving a ban on both possession and use of nuclear weapons, in the same way as bans that apply to biological and chemical weapons. All states – even the great powers – must prepare to live without nuclear weapons and other weapons of terror."

In 1996 the International Court of Justice affirmed that the threat or use of nuclear weapons would generally be illegal and that there is an obligation to pursue negotiations in good faith on nuclear disarmament in all its aspects. The NWS have

not reduced the roles of nuclear weapons in their security doctrines in order to reflect the general illegality of the threat or use of nuclear weapons. In contrast, as mentioned above, they are expanding the roles for nuclear weapons and the situations in which they might be threatened or used. Nor have the NWS made any progress on disarmament negotiations. In fact, they continue to oppose (and block) nuclear disarmament negotiations in all of the key international fora including the Conference on Disarmament, Nuclear Non-Proliferation Treaty Review Conferences and the United Nations General Assembly.

These developments, coupled with a waning public memory of the devastation caused by nuclear weapons, is eroding the norm against the use of nuclear weapons and making it more likely that nuclear weapons could be used in a conflict.

A return to the International Court of Justice on the nuclear weapons issue, ten years after the earlier decision, could play a vital role in reversing this trend and providing increased legal weight to help prevent nuclear weapons use and achieve nuclear disarmament. In particular, the ICJ could clarify the different opinions regarding the threat or use of nuclear weapons in specific circumstances thus proscribing many of the developments in nuclear doctrine. And the Court could clarify what is required for good faith negotiations for nuclear disarmament. In doing so it would challenge the current policies of indefinite possession of nuclear weapons and assist in the commencement of nuclear disarmament negotiations.

Ten years has been a grace period overly generous to the NWS. Now is the time to return to the ICJ to ensure compliance with their obligations.

Finally, there has been a disturbing development in the doctrine of preventive use of force to respond to the suspected proliferation of nuclear weapons. Where previously the preventive use of force was generally deemed legitimate only when an armed attack was imminent, overwhelming and leaving no alternative but the use of force to prevent it, doctrines of certain States have developed to include the possible use of preventive force to respond to the suspected development of nuclear, chemical or biological weapons. The invasion of Iraq in 2003 in response to the suspected possession of nuclear weapons is one example of this policy in practice.

More recently it has been asserted that the use of nuclear weapons in such preventive strikes is also being considered. The ICJ could play an important role in helping prevent such preventive strikes, including the preventive use of nuclear weapons, by affirming their illegality.

The international situation regarding nuclear weapons has become very bleak. There is a continuing threat of proliferation of nuclear weapons to new States and non-State actors. The current Nuclear Weapon States have halted the progress towards nuclear disarmament that was started following the end of the Cold War, and are instead expanding nuclear doctrines thus increasing the possibility that

nuclear weapons could be used. The key international nuclear disarmament forums – the Conference on Disarmament and the Non-Proliferation Treaty Conferences – are blocked, despite an increasing potential to adequately verify nuclear disarmament agreements and resolve disputes without the recourse to nuclear weapons.

In this context an advisory opinion from the International Court of Justice on the compliance requirements of States with their nuclear disarmament obligations and on the illegality of existing nuclear policies and practices, could provide significant legal and political impetus to move the Nuclear Weapon States to reduce the threat postures for their existing arsenals and begin negotiations which would eventually lead to complete nuclear disarmament.

There are numerous considerations whenever a case of such import is contemplated, including the nature of the questions asked, the many variables that could affect the outcome, and the impact this outcome will have.

In considering the nature of the questions asked, it is important to emphasise that the Court would not be asked to re-examine the 1996 opinion. This would not be an appeal. Rather, the Court would be asked to consider implementation of the obligations and law as determined in the 1996 opinion. Thus, the request to the Court will not face the danger of returning an opinion that is less restrictive of policy and practice than was the 1996 opinion. Rather, it will advance the 1996 opinion by asking the Court to expressly condemn specific policy and practice which is not consistent with the 1996 decision, including non-implementation of the disarmament obligation.

In considering the many variables that could effect the outcome – the current state of international law, the policies and practices of the NWS, the leanings of the judges – one could be confident of a positive result that will considerably advance the legal norms against nuclear weapons and provide a very strong impetus to advance nuclear disarmament.

The impact of an ICJ Opinion will of course rely as much on how it is advanced and used by non-nuclear governments, media, non-governmental organisations, and wider civil society including mayors and parliamentarians. The fact that significant representatives of these sectors are already calling on States to demonstrate good faith compliance with the nuclear disarmament obligations affirmed by the Court in 1996 indicates that a ruling from the Court will be picked up and used widely and effectively.

It would thus appear that there is much to gain and little to risk in using the 10th anniversary of the 1996 ICJ Advisory Opinion on the legality of the threat or use of nuclear weapons to return to the Court requesting an advisory opinion on compliance with nuclear disarmament obligations and the legality of specific nuclear policies and practices.

Jacqueline Cabasso

One of the things that's valuable about being at an international meeting like this is hearing and understanding the various perspectives from the different countries and political systems that we come from. Alyn Ware very much reflects the New Zealand experience and I reflect the American experience. It is difficult to overstate how extremely under siege and paralysed we feel in the United States at this time, and perhaps a little bit hopeless, although we never give up. The question of returning to the Court raises in my mind a fundamental question which is the very viability of the United Nations, because it is under attack by the U.S. government and because the American people don't know anything about it.

I want to remind you that the International Court of Justice found unanimously that, "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". This is the authoritative interpretation of Article VI. The ICJ's Opinion was in part the combination of a massive civil society campaign, which I believe was motivated in part by the sense of hope and possibility that arose in the wake of the unexpected collapse of the Soviet Union and the end of the Cold War. The Opinion in turn inspired civil society and governments to press for meaningful progress towards implementation of the Article VI disarmament obligation, including the 13 practical steps agreed as the outcome of the 2000 NPT Review Conference. Today, as recognised by the Blix Commission on Weapons of Mass Destruction, the Nuclear Weapon States, led by the U.S., are demonstrably violating the Article VI disarmament obligations. In this sense it seems like an opportune moment to return to the Court for a follow-up Opinion. But, in the wake of changed geo-political circumstances following the September 11 terrorist attacks, including an almost unbelievably arrogant militaristic and unilateral U.S. government, the sense of hope that appeared at the end of the Cold War has been replaced in many quarters by a sense of fear, powerlessness and cynicism.

I want to pose some questions to think about in our on-going discussions. The global nuclear abolition movement could really use a unifying campaign with an objective that may be achievable in the short term. However, I think we face some really tough questions. First of all, the fundamental one; "What are we trying to accomplish?" Simply asking for the abolition of nuclear weapons is not enough in today's world.

Next: "Is campaigning for a return to the ICJ the right vehicle?" We seem to have a good chance of a positive outcome, but will it make any difference? Can we convince people that it will make a difference? Can we mobilise global public opinion again on the scale that will be required to pull this off?

I'm most interested in the last question; "Is returning to the ICJ a useful and viable vehicle for raising public awareness about the grave nuclear dangers that we face and their interconnectedness with other issues?" Obviously this varies from country to country. I'm very encouraged to hear today the rising resonance that the question of trying to get the U.S. nuclear weapons out of NATO countries has, and the possibility of that as a wedge issue. Certainly there are issues in the U.K. and the possibility of major public mobilisation against Trident replacement seems very hopeful. Positive developments like these could benefit very significantly from another ICJ Opinion.

I want to make a footnote here. There is some danger here. We cannot be naive and think that simply getting another legal Opinion from the Court is going to totally solve the problem. We have to acknowledge some of the other drivers of this seemingly intransigent nuclear threat. We can certainly include trans-national corporate profiteers. There are many dimensions to the nuclear problem. One of our avenues is the legal one, but we have also talked a lot about the immorality of nuclear weapons, and I was trying to think whether corporate practice and greed are part of immorality or whether they belong to a separate category.

We do need to consider those things and I just want to offer what we're trying to do in the U.S. this year in connection with the August anniversary of the U.S. atomic bombings of Hiroshima and Nagasaki. We are calling for No Nukes, No Wars and No War Profiteering. We are acting in support of indigenous rights, because August 9th is the UN day of indigenous peoples. We're specifically focusing on the Baxo Corporation and asking people to go to nuclear weapons sites and Baxo Corporate HQ because this makes the link between anti-nuclear and anti-war global justice movements. This particularly connects to the Iraq war because Baxo was involved in developing the atomic bombs dropped on Hiroshima and Nagasaki and today manages most of the nuclear weapons sites in the U.S. Baxo has built the majority of nuclear power plants in the U.S. and around the world. Baxo built the petro-chemical plants that allowed Iraq to make chemical weapons used against Iran and Baxo was originally contracted to build Iran's first nuclear power plant. According to a top official with the new Iraqi government Ministry of Education, "The impression we get is that Baxo is more powerful than the U.S. army." Certainly we're not going to ask the Court to rule on Baxo, but we need to keep in mind parallel campaigns that are going to connect the dots and make us pursue some of these other avenues to take on nuclear weapons.

The questions posed to the Court must be easily understood by the public, by the judges, by the members of the General Assembly, and by members of national legislatures. The question, or questions, must be framed in a way most likely to elicit a favourable Opinion, bearing in mind the incredible U.S. intimidation that

we remember from the last time and can only expect to be more intense this time. With that in mind, I think we should be working from the cleanest, clearest, most unanimous finding of the 1996 Opinion. It therefore makes more sense to me to focus on the "good faith" implementation of the disarmament obligations. I am very afraid, as someone who deals a lot with nuclear doctrine, that if we get into these "use doctrines" there's a great danger of muddying the waters. These doctrines are complex, difficult to understand, and partly secret. I think that the governments of the Nuclear Weapon States can and will fall back on that as they always do. "We can't tell you what we know. That isn't really what our doctrine is. It may seem like that to you". In that sense their very existence seems to contravene the meaning of "Good Faith". I think that that's our strongest case. Another concern I have is that if the "use doctrines" are singled out for individual rulings, it may seem to give weight to partial or limited support for certain aspects of disarmament which may de-rail us from the main objective.

One thing I have picked up on here is the possible resurgence of movement in Europe, regarding getting U.S. nuclear weapons out of NATO states. This, together with the campaign for return to the ICJ and the anti-Iraq war sentiment, could spark a corresponding movement in the United States in much the same way that European opposition to the deployment of Cruise and Pershing missiles did in the 1980s.

Finally, throughout this conference and in other recent international forums, I've seen themes that seem to resonate. One is the question of "good faith" and we're going to hear more about the Mayors' "good faith" challenge later today. The other is the recurring question about redefining security in human and sustainable terms, and we heard again about the IPPNW Australia, "ICAN" campaign. I think that if we can locate a return to the Court campaign more broadly in those two themes, then we'll have a greater chance of success.

I'm going to end with a very short quote. At the Vancouver Peace Forum there was an exhibit about transforming war to peace through art at the Anthropology Museum and there was an outstanding quote from Jimmy Hendrix, "When the power of love overcomes the love of power, the world will know peace."

Peter Weiss

First of all I want to thank Annabel Dwyer for her invitation to send me to gaol and I assure Annabel that I have been to gaol as a result of demonstrations against the Vietnam War and the bombing of Cambodia. I agree with Phon van den Biesen that people who have reached their 80th birthday, as I have recently, are in a position to turn over some of those obligations to people under 35.

Secondly I want to honour somebody in our presence today. Peter Becker talked about that remarkable and hugely important German decision on both the right of conscience and the illegality of the Iraq war. The judge who wrote most of that decision and convinced his fellow judges to go along with it is sitting right there, and it's Dieter Deiseroth and I think we owe him a great debt.

Thirdly I want to give you a piece of good news from the United States. That's an unusual thing these days. The decision of the Supreme Court of the United States last year in the Hamdan case is also a hugely important decision in favour of international law. It has as usual been misread and misrepresented by the press in dealing only with the question of whether tyrants have to approve the military commissions that have been set in place by the administration. That is an important part of the decision. A more important part of the decision because of its reach and its effects on future cases is the re-affirmation by the Court that Article 3 of the Geneva Convention applies to all persons captured in the course of armed conflict. Therefore, the position of the United States that the Geneva Conventions don't apply to the people in Guantanamo is absolutely wrong. That is a five to three decision and there is language in that decision that upholds the primacy of international law over the kind of gobbledygook that we have been getting from the administration about national security trumps everything. So every once in a while there is something to applaud, even from the United States.

Now for the subject in hand. I want first of all to thank Alyn for the massive job he has done and the research that he has produced. It is the kind of information that all of us working on a return to the Court are thinking about and will be able to use. I want to say in passing that this is not an official IALANA document because we have not had a chance to deal with it.

I agree with Jackie that if and when we go back to the Court we have to do it in a manner that will prompt diplomats at the United Nations to go along with it, that will explain clearly to the public what we are doing, and that will be likely to result in a favourable outcome. I think the way to do that is to focus on the failure of the Nuclear Weapon States to even begin to comply with the general good faith obligation that was unanimously put forward by the Court at the end of its Opinion. This was remarkable in that the general obligation was not even addressed in the question.

What the Court does in its Advisory Opinion is to answer a question. They did answer the question about illegality but then they went on and said something that wasn't asked of them, because they felt so strongly about it, and they talked about the general obligation to pursue and bring to a conclusion (and those words are very important because they were added to the obligation that already exists in Article VI of the Non-Proliferation Treaty). Article VI says that there is an obligation to negotiate in good faith for nuclear disarmament. Paragraph F of the final statement of the Court added the words, "and bring to a conclusion these negotiations". It also added the words, "in all of its aspects". In other words, not just nuclear disarmament which could mean going down from 30,000 weapons to 20,000 weapons. They said, "nuclear disarmament in all its aspects" which is Aesopian language, if you like, for total nuclear disarmament.

My view is like Jackie's that this should be the only question asked of the Court. It is not that the other questions that Alyn mentioned are not important, but they have two disadvantages in my view. One is that they are complicated and there-fore will lead to a lot of discussion back and forth among countries inclined to go along with a Resolution asking for an Opinion by the Court. Perhaps more importantly they will serve to delay what we are all asking for considerably. That is the commencement of the negotiations. If we ask the Court, "What is the law on power sharing, or rather on nuclear sharing?" the Court may say that's a violation of the Non-Proliferation Treaty, which it is. Later the nuclear states may want to look like they're doing something about that, they're going to negotiate about it for 5 or 10 years and then eventually they may do something about it. In the meantime the principal objective may be pushed into the background. The principal objective is to get the damn negotiations started. We have a Nuclear Weapons Convention that we can present to the countries if they ever get to that point, not as something to take or leave, but as a demonstration of the fact that negotiations for nuclear disarmament in all of its aspects are possible. A positive outcome of those negotiations is possible. It certainly won't look exactly like the Convention which we in civil society produced after three years of work, almost 10 years ago now, but it will give the lie to the point made by diplomats for Nuclear Weapon States that this is such a complex problem that there's no point in even starting it. That's my view and I'm very much in favour of going back to the Court with that question. I think probably more so than Jackie who raised some important questions whether this should be the end all and be all of our activities in the foreseeable future. My answer to that is "No, it shouldn't be." But I think the process of going back to the Court could be a rallying point for the movement, and I certainly think that a favourable decision from the Court, namely one saying, clearly, that the Nuclear Weapon States are in blatant breach of their obligation to commence negotiations in good faith, would be a further impetus for the movement. That's all it will be.

One of the things I agreed about with Steven Haines yesterday is that no matter what the Court says, the nuclear weapon countries will not pay any attention to it. We have to be aware of that. But what they will have to pay attention to is the rising movement of the people of the world to be rid of this terrible thing hanging over their heads. This is not only the threat of a nuclear exchange, whether by intention or accident, killing millions and millions of people, not to mention the environment, but also the fact that nuclear weapons have now become the justification for war. I think we ought to go back to the Court. I think we should start as soon as this conference is over, to begin to discuss how to do that.

There's one other reason for going back to the Court, and that is the decline of respect for law in the world. One of the lawyers who appeared in the 1996 case for the United Kingdom, Philippe Sands, has written a book called. "Lawless World". It came out last year. It is a terrifying book to read. It's about what Judge Weeramantry, in his writings, has called, "the long millennial climb towards a world of law which is now in danger of being reversed". When you have something as important as the general obligation clause in the 1996 Advisory Opinion which has been disregarded, disrespected, ignored, by the countries to which it is addressed, it adds to the general disrespect for international law in a world in which power seems to be the ultimate be-all. I want to end with a quote from President Bush. He said, "We must keep the most dangerous weapons out of the hands of the most dangerous people".

GOING TO THE ICJ AND CIVIL SOCIETY

Opening Remarks by Cora Weiss

Cora Weiss is President of the International Peace Bureau and the Hague Appeal for Peace

We're gathered together to talk about what mere mortal citizens, who constitute civil society, can do about preserving the world for our children and our grandchildren.

Part of my history started at the Aldermaston March with Peggy Duff and I've been marching ever since.

IPPNW, IPB and IALANA, three major networks of civil society, mobilized public opinion to support the World Court case at the Hague in 1995. That successful experience supported our decision to come together again, joined by the World Federalist Movement, in October 1996 because the United Nations was not going to hold the last summit of the last decade of the last century, as they were supposed to, on the question of peace. We civil society citizens would do it. And there was born the Hague Appeal for Peace. We had an extraordinary conference in the Hague in May 1999. There were a number of developments from this, including a global campaign for peace education and the Hague Agenda for Peace and Justice for the 21st century which is a 50 point programme for getting from a Culture of Violence to a Culture of Peace.

In conjunction with going to the World Court we would do well to consider the 60 recommendations of the Blix Commission. We must publish them, reproduce them, and go out and teach about them, to keep that report on weapons of mass destruction alive and not let it die the death of the Canberra Commission. We must use those recommendations with mayors, local and national governments and civil society organisations to make sure that those 60 recommendations are implemented.

Let us remember our friend Joseph Rotblat who said that during the nuclear age the human race has become an endangered species. He went on to say, "I believe that we must … seek to abolish war itself. ... This aim, intrinsic to the Russell-Einstein Manifesto, will take us on a long hard road. It does not necessarily mean pacifism as that is generally understood, but it means choosing to seek a world with "continual progress in happiness and wisdom," a world in which morality, law and mutual respect govern the relations between nations, and no nation uses military power to impose its will on others."

The Mayors for Peace 2020 Vision Campaign

Dr. Tadatoshi Akiba

Dr. Tadatoshi Akiba is the Mayor of Hiroshima and also the president of Mayors for Peace, which in November 2003 launched an Emergency Campaign to Ban Nuclear Weapons, now known as the 2020 Vision Campaign

Thank you very much for your introduction and brief history of people's struggles towards peace and a nuclear-free world.

First of all I would just like to mention that listening to Cora reminded me that I followed in her footsteps. In 1958 when the Aldermaston marches started I was in Japan and at that time the name Aldermaston stood in my mind for the people's wish to rid the world of nuclear weapons. For the first time this year I stood at the gate and realized that it is not only a symbol of your struggle and our struggle, but that it is a facility where hundreds or thousands of nuclear weapons have been created. I shuddered. I had only one question to ask at the gate: "When will this facility be turned into a facility where nuclear warheads are dismantled and fissile materials degraded so that all nuclear weapons will be abolished by the year 2020?"

I was in New York last year and in the Hague in 1999. At those important meetings, I gained energy from everybody who is making Hiroshima committed even further to the common cause of creating world peace.

I would like to thank you, Cora, and all the organizers. I would like to thank George Farebrother, World Court Project, and Hans Lammerant of Bombspotting, for organising this wonderful conference. I'd also like to thank the sponsoring organisations represented here by Ron McCoy, President of IPPNW, Cora Weiss, President of IPB and Judge Weeramantry, President of IALANA and many friends such as Kate Dewes, Jackie Cabasso, Gisela Kallenbach and Caroline Lucas. The last two women are using their great skills for us in the European Parliament and I would like to thank them especially. I truly feel I am among my friends.

Let me start by thinking about Hiroshima again, not just in 1945; but also about what happened there in the 1980s. We thought about many cities becoming the victims of nuclear weapons. At the same time the thought of Hiroshima being destroyed by a second nuclear attack was too horrible to contemplate. The thought of Nagasaki being struck again is truly sickening.

However, the good people of Hiroshima and Nagasaki, especially the survivors of 1945, the Hibaksha, cannot endure the thought of your city being destroyed too. I think I can quite safely assume that you share a similar desire. Today I'd like to ask

you, and especially the young people among you, to imagine what would happen if a nuclear weapon were used against your city. There are two reasons why I'm asking you to do this exercise. One is that 61 years after the bombings of Hiroshima and Nagasaki, this may be the only way that young people might understand the horrors of nuclear war realistically. As a result you can conclude that obliterating an entire city is a crime against humanity. By any measure, any use of nuclear weapons would be illegal, but in the proximity of a city it would be a war crime. Cities are by definition populated by civilians, many of them children and elderly people. Every civilised person would agree that, "Thou shalt not kill children." Nuclear weapons not only kill children in thousands or hundreds of thousands or even millions, they irradiate foetuses and thus cause microcephaly, crippling or life-threatening deformities, or stillbirths. They are the most infernal invention ever to come from the mind of man.

Any use of nuclear weapons which exposes civilians to blast, fire and radiation on a massive scale is a war crime. It follows, as the ICJ made clear 10 years ago, that the threat to do so is also illegal. Even if the intention is expressed only in conditional language states are not exonerated from this prohibition.

Cities are not targets. While we can hope that terrorists take heed of this message and that somehow in their heart of hearts their cruelty knows some limit, we can surely expect our governments to respect this stricture. I repeat, cities are not targets.

The other day I spoke at the Peace Palace. I used the occasion to formally launch the second phase of the Mayors for Peace 2020 Vision Campaign. The first phase of our campaign introduced our 2020 Vision into the international diplomatic debate on nuclear weapons, thus reviving the vision of a nuclear-weapon-free world while stirring hope that it can be achieved by the year 2020. But the international community was unable to make use of the excellent opportunity afforded by the 2005 NPT Review Conference to begin realizing this goal. After making the best effort possible, in good faith, with the support of citizens and leaders alike, we regretfully have to conclude that good faith is lacking in certain quarters.

We are therefore calling the second phase of our 2020 Vision Campaign, "The Good Faith Challenge." We are asking every person without exception to practice good faith and to challenge others to do likewise.

Briefly there are two main arenas in which good faith is absolutely and sorely needed. In the diplomatic arena the obstruction of negotiations about all aspects of nuclear disarmament must cease immediately. Negotiations must be conducted in the spirit of compromise and respect. Agreed measures must be brought into force rapidly and implemented scrupulously. It is ironic that the first nuclear arms control measures agreed upon after the ICJ ruling, the Comprehensive Test Ban

Treaty, has still not entered into force. Some of your governments have signed and ratified it, but one State has declared that it does not intend to ratify it even though it was the first to sign; and so the treaty languishes in limbo. I don't have to mention which country it is.

Unfortunately a very long list of such counts could be levelled against the United States. However, it is by no means the only violator, just the biggest. The other arena in which good faith must prevail is in the reliance upon nuclear weapons by nations or alliances. If nations are working in good faith to eliminate nuclear weapons and their reliance upon them, then they should not be making long-term investments in nuclear weapon systems and they should be curtailing the threat of use of nuclear weapons. Where we find a country offends, we must object. We must challenge these misdirected funds and misconceived policies and label them for what they are - indications of bad faith.

NATO will hold a summit later this year on 'transforming' the alliance. I will give you one simple criterion for judging whether or not there is anything to this transformation. Has NATO found the capacity to foresee the end of reliance on nuclear weapons? We led a delegation to NATO headquarters yesterday and talked with officials. We told them about the Good Faith campaign we are mounting and also about another important pillar of our activities for the coming years, which was formally announced in the City Hall of the Hague a few days ago. We are calling this the "Cities are not Targets" campaign. The acronym is CANT. Over the coming years Mayors for Peace will co-ordinate local, national and international efforts to uphold the proposition that the use of nuclear weapons in lethal proximity to cities must be explicitly ruled out by all nuclear states.

I must make a disclaimer. Do not make the faulty deduction that we have no problem with nuclear weapons being used beyond lethal range of cities or, for that matter, that the non-nuclear destruction of cities does not concern us. We are against any and all use of nuclear weapons anywhere and we are against war. We are not looking for "more humane" warfare with our 2020 Vision. We aim to challenge the very foundations of nuclear policy as inherited from the Cold War and as elaborated even today.

At the national level this year's U.S. Conference of Mayors has stolen a march on us. Following the initiative of our North American Vice-President, Mayor Don Plusquellic of Akron Ohio, and with the support of, among others, our colleague, Mayor Tom O'Grady of nearby North Olmsted, the Conference adopted a resolution enshrining the Cities Are Not Targets principle. We aim in the coming year or two to have national Mayors' Associations in country after country adopt similar resolutions. Locally we will be encouraging sister cities to support across borders each other's demand to be ruled out as targets and internationally we are prepared

to take it to the United Nations and, if necessary, to the International Court of Justice.

We will not rest until the utter wrongness of using nuclear weapons against cities has been accepted universally. Cities are rising in mutiny against being held hostage to Mutually Assured Destruction. That MADness must stop. Nor will we rest until nuclear weapons are eliminated. A great test of democracy lies ahead when the great majority of people in every nation, through the cities of the world, are saying, "change has got to come." Our Governments will have a choice to make. Do they say, "too bad but we cannot do anything about nuclear weapons." Or do they acknowledge that their policies have been rejected and must change.

Your engagement in this issue will be the decisive factor. Together we will succeed. At the Peace Palace I noticed the common use of the words, City, Citizen, Civilian and Civilization. In such an august setting I resisted the temptation to coin a new word, but with your permission I would like to offer it to you now - *Civicide.* Civicide is the murder of a city and potentially civilization itself. Nuclear weapons have been invented, have been used, and have proliferated with the intent of committing civicide. Let us all accept the challenge of prohibiting civicide and eliminating the means of committing it. As the U.S. Conference of Mayors declared in 2004 and reiterated in its recent resolution, "Weapons of mass destruction have no place in a civilized world."

Finally, is it realistic to hope that we can eliminate nuclear weapons by 2020? We must all make a good honest effort towards that. I'd like to quote a Hibaksha who told me that "A 2020 Vision Campaign is all very well but the only problem with that is that it is 2020. You have to make it happen sooner because my life may not last that long." I'd like to answer that Hibaksha by saying, "Yes we have made it sooner than 2020 as you requested" and for that I hope that all of us will get our resources together. Thank you very much.

Citizens' actions and the legal case against nuclear weapons

Phil Shiner

I would like to address the issue of "how do we build a groundswell of public opinion?" It seems to me that what preceded the Opinion in 1996 was indeed that groundswell. I also want to suggest that the international law arguments can be put in a different way and not just be confined to the Court arena.

I fail to understand why the U.S. should be seeking to undermine the UN. An analysis of what has happened since 9/11 tells us that things are going incredibly well for the U.S. and the U.K. Let us take just one aspect. On 22 September 2001, a few days after 9/11, the Security Council was persuaded for the first time to pass legislation. It was Resolution 1373. It provided that all states should engage in a range of measures to combat terrorism. That trend has been followed on several occasions. Resolution 1546, passed just before the Coalition Provision Authority left Iraq, contains some extraordinary things. John Bellinger, speaking in San Remo last year, openly bragged that he and his colleagues in the U.K. legal service before the war and occupation, faced up to what International Humanitarian Law would not allow them to do. It would not allow them to re-write the Iraq Constitution, nor would it allow them to use the proceeds of Iraqi oil on rebuilding contracts, and lastly it would not allow them to engage in preventive detention once the occupation was over. Resolution 1546 and the letters attached to it shows that the Security Council, because it is dominated by the U.S. and the U.K., was persuaded to allow all of those things. I know this because one of my clients, a British national, was detained in Baghdad in October 2004 and is still detained by U.K. forces in Basra even though the intelligence on him does not support any criminal charges. The Court of Appeal in late March said that Resolution 1546 had simply displaced his right not to be detained without charge. Further, every time the Security Council says that it is acting under Chapter 7 to maintain peace and security, the effects are the same. Resolution 1546 had the effect of displacing violations of Iraqi human rights by the Coalition Provision Authority which basically administered the country from 22 May 2003 to 28 June 2004.

There are many other issues about the way the Security Council is operating. It is unsurprising that what is lawful within international law has become highly contentious. We were staggered that, for months before we went to war, the question of whether or not this would be lawful was almost the No 1 item on the public agenda. Three years later that issue is still very prominent.

Personally I would be opposed to launching into an effort to take the issue of nuclear weapons back to the ICJ. I think a much better use of international law would be to try and undermine the legitimacy of countries like the U.K. and the

U.S. I find it staggering that in the U.K. the public has just not engaged with the issue that we are going to spend an extraordinary amount of money on something [Trident Renewal] which is manifestly unlawful. I think that NGOs and lawyers have let the side down because we have not got that message through. I was reading again the challenge that Judge Weeramantry gave all of us in the legal profession in Tokyo five years ago, when he said, "the collective strength of the legal profession, particularly of international lawyers, is much more than we might imagine", and talked about having a common discipline: "That discipline speaks to them in no uncertain terms. They bear an enormous responsibility for trust towards humanity." I quite agree with that. One of things I'm going to talk about is our People's Tribunal. One of the four people who sat on it was Judge Weeramantry so we take him seriously.

Unfortunately, as an example of whether civil society is engaged in the issues of nuclear weapons or not, one only has to look at the legal profession in the U.K. who, apart from a tiny number of exceptions, is simply not interested in nuclear weapons. They are interested in Extraordinary Rendition, Guantanamo Bay, Preventive Detention in Belmarsh and a range of things; but they are not at all interested in nuclear weapons. I think they should be interested and the public should be interested.

I think one way of attacking that problem is to use international law in a more creative way. If we are talking about creating a groundswell of public opinion, then we are talking about an ideological struggle. That was what was going on before and after we went to war. The Government was saying over and over again that whatever they do will be in compliance with international law. A number of people, in a range of different ways, set out to undermine that proposition. One of the things we did at Peacerights was to hold our first People's Tribunal in October 2002. We ranged a top QC against another top lawyer in front of a top professor. The arguments were all about whether one could go back to Resolution 678 at the beginning of the first Gulf War, which as you all know, became the revival doctrine which is what it all turned on. I will believe until I die that kicking off that debate before the war had started helped. Apart from getting publicity and having an opportunity to air our views on national radio and in the press months before the war started, it also meant that there was a team of people, including CND and other NGOs, and some leading comedians and lawyers, who were all ready with the arguments and with the network.

Within two days of Resolution 1441 we had decided that we were going to go to court and that's what we did. CND lost that case because the Government argued that it was not justiciable. I don't think we lost a lot because much of the public's attention since the war has focused on whether or not the Attorney General could

be forced to disclose his opinion. Eventually it was leaked by Downing Street. It didn't surprise me when I read it, that he was very concerned about the threat that CND had posed and he was warning the Government that there might well be an issue of war crimes if the Government went to war without a Resolution or if they conducted that war in a way that was not in compliance with international humanitarian law.

The second People's Inquiry carried out by Peacerights was indeed a war crimes tribunal where we gathered together 8 leading international law professors. As a result of that a formal complaint was made to the International Criminal Court prosecutor, who is still having to deal with the issue of what he's going to do about it. This tells me that the use of people's tribunals is an idea whose time has come. States do not have singular control of the law and if states parties fail to enforce the law, or take actions that erode it, then civil society can and should step in to ensure that the state's interpretation of the law is challenged.

There was a total of 20 People's Tribunals about war crimes in Iraq which culminated in Istanbul in June 2005. I like to think that our Peacerights Tribunal on war crimes contributed something to that process. Our third People's Tribunal took place in November 2004. Unsurprisingly it concluded that there was no question that the Trident nuclear weapons system could not be a proportionate use of force and would therefore be outside *jus ad bellum.* Nor could it meet the intransgressible principles of international humanitarian law and therefore it was in breach of *jus in bello* as well. What is perhaps more important is what can we do with that report to try and engage public opinion on the issue. We have tried to follow it up. A year after the report was commissioned, I instructed Rabinder Singh QC, a top human rights and international law QC at Matrix Chambers, and Professor Christine Chinkin, to write an Opinion. We plan to ensure that every MP has that Opinion in front of them and is explicitly aware when they come to vote that they are voting for something which on the advice of leading counsel and a top international law professor, is manifestly illegal. We take the view that this makes a big difference. If something is unlawful how can it be politically and morally acceptable? How can it be a good use of public money for us to spend so much in the U.K. on something that's unlawful?

I don't have a template on what we do to create that groundswell of public opinion. I'd like to think that some of our efforts at least should be focused on the ideological struggle. I think it would be a big mistake to spend more than a proportionate amount of our effort to take this matter back to the ICJ. My own view is it won't achieve anything. After 37 years of occupation by Israel of Palestinian territories, including East Jerusalem; after innumerable General Assembly Resolutions condemning Israel's continued violation of the Geneva Con-

ventions, after Security Council Resolutions, after Resolutions by the European Union, the contracting parties to the Geneva Convention and after 11 separate Resolutions under the Uniting for Peace process, eventually the matter was referred to the International Court of Justice. The strength of that Opinion took me by surprise. The ICJ identified 11 separate breaches of international obligations by Israel, including many which are *ergo omnis* obligations, and then identified seven different obligations for other states including the right to self determination. So then what? The Security Council has ignored that Opinion. The Israelis have ignored the Opinion. The General Assembly appears to be paralysed and doesn't know what to do next. So I'm not sure in my own mind where that takes us. On paper one would think that the ICJ Opinion on the occupied territories would have been a turning point; but the U.K. Government has not just continued to deal in arms, inviting Israeli arms companies to a London arms fair, where some of the companies engage in the manufacture of instruments of torture, it has approved double the amount of export licences. As far as the U.K. Government is concerned the ICJ may as well not have bothered.

A factor I think we need to bear in mind is whether it is really worth all the effort and the opportunity cost of just litigating it again. I note over 10 years how convenient it is that our Government simply trots out the same argument, that their nuclear weapons programme is justified under the extreme circumstances of self-defence cop-out. So I think there's a risk that we might well make matters worse. I am urging caution that, as Peter Weiss said, "It's not the be all and end all". I think that whatever else we do, we need to do a great deal to build that groundswell of public opinion.

The Co-ordination of Direct Action, Political Campaigning and the Courts

Hans Lammerant

Legal professionals are often focussed on winning court cases and getting their arguments across in a legal procedure and they have good reasons for this. But legal arguments function in a broader political field and can be used in very diverse ways. Ultimately, nuclear weapons will be removed by a political decision. This political decision can be influenced by decisions of judges or by legal arguments, but there is no straightforward causal link.

It is often difficult to use legal arguments against nuclear weapons with politicians. The legal argument is a black-or-white issue: legal or illegal. It leaves no room for the slower process of negotiation, compromise and bargaining. The result is that the legal arguments in themselves are often not useful in political discussion and you have to provide friendly politicians with other viable political arguments.

The problem, therefore, is to create enough pressure to bring the political decision nearer. The legal system is part of the political battlefield and will influence the means used to build up that pressure. The political debate is a very narrow, limited arena. What is on the agenda, and which arguments can be raised, is well guarded. You have to fight your way in. It is not enough to be right. The argument also has to be put in the right way. The legal argument is useful for this, but only as a building block for a political strategy.

In Belgium we have been relatively successful with such a political strategy based on legal arguments. Our power-building tool has been Citizens Inspections strengthened by other activities based on the legal case against nuclear weapons. The political results have been visible in the slow but steady rise of the nuclear weapons issue on the Belgian political agenda.

First of all, Parliamentary questions were raised. During the NPT Review Conference in 2000 an initial limited resolution was passed by Parliament, while more controversial issues were raised in the debate. The Prime Minister made an attempt to provide more transparency, but this was blocked by a quick intervention from the NATO Secretary General. Nuclear weapons became an issue again in party programmes and not a single Belgian political party now dares to defend the necessity of keeping nuclear weapons in Belgium. During the formation of a new government in 2003 the nuclear issue was on the table and had a place in the government agreement. In 2005 both chambers of Parliament voted for resolutions on nuclear weapons which contained a demand for their withdrawal. This was the result of well-prepared lobbying. All resolutions, and almost all parliamentary questions on nuclear weapons in the Belgian parliament, are drafted by us. But this lobbying would be powerless if it were not sustained by a strategy of action.

At this point I should clarify what exactly we aim to achieve with actions, be it actions of civil disobedience or otherwise. It is to claim a voice in the political debate which cannot be ignored. Some sort of reaction is needed.

The typical ways of dealing with dissent in our societies can be summarised as: divert, ignore or criminalise. There are many ways to divert or channel dissent. These include legal or administrative procedures, a politician who receives you and listens to you with a friendly smile, different forms of consultation, etc. These are all ways in which our society shapes dialogue. There is nothing wrong with it but it has its limits.

Demands which touch on too difficult or fundamental issues do not get through. These demands are ignored and refused any political relevance. This is the mildest form of governmental repression: suppression by ignorance or denial.

If dissent does not allow itself to be ignored, heavier forms of repression or criminalisation are the next option. When you have broken through these three ways of dealing with dissent, you have made it onto the political agenda.

With citizens' actions we gained a voice by entering the nuclear weapon bases ourselves. Demonstrations can easily be ignored, people looking for nuclear weapons on military bases cannot. That demands a reaction. The legal arguments given by the Advisory Opinion helped to shape the action model in such a way that criminalisation became much more difficult. We have never won a court case on the fundamental issue - the legality of nuclear weapons. This is for the simple reason that the judicial system refuses to allow such cases to come to court, so in a sense we have succeeded in disarming legal repression.

The only argument left for the Belgian government against our actions is a huge mobilisation of police and military to close the military sites. Last year's Bombspotting action cost between 1.5 and 2 million Euros for the deployment of 5000 personnel. The Belgian army deploys more people for a Bombspotting action than it ever did in former Yugoslavia. This is the cost the Belgian government is prepared to pay to keep the nuclear weapons off the political agenda. Of course such a cost forces the issue onto the agenda anyway, as I illustrated before. What I want to make clear with this example is that our strategy should not only be based on getting and winning that one trial which will prove our case. Trials which never take place, and even lost cases, can be useful in building up the political pressure, provided that they fit in a well-designed political strategy.

The legal reasoning behind such actions is important. The starting point is our conviction that the nuclear weapons deployed in Belgium are contrary to international law. For the legal reasoning behind this conviction I refer to my talk yesterday. However, the fact that the use of nuclear weapons is illegal does not mean that every action against nuclear weapons is legal. Entering military bases without permission is a crime according to Belgian law. The legal defence of the action is based on Necessity. Belgian criminal law allows, under strict conditions, activities which otherwise would be criminal. A typical textbook example is breaking into a house on fire to save one of the occupants. This amounts to carrying out a minor crime to prevent a much greater crime or danger. Belgian criminal law removes the criminal character of this otherwise minor crime. Similar defences can be found in other criminal law systems.

These actions take place in the spirit of Principle IV of the Nuremberg Principles: "The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him". The fact that our national law forces us to condone the preparation of war crimes does not relieve us from the duty to act against it.

As I said, this does not legitimate every action against nuclear weapons. You need to take a careful look at the conditions for such approval. These can be summarized as:

- the protected interest or law must have a higher value than the law violated,
- there must be an immediate necessity to act, an imminent danger to the protected interest or law,
- the action has to be the only option left to prevent the danger.

Your action must be designed in such a way that it can fulfil these conditions.

The resulting action model will be very dependent on national law systems. This means it is not possible to transfer an action strategy from one country to another. It has to be carefully adapted to the local legal context. For instance, what is conceived as a danger is very dependent on the national implementation of international criminal law. We may be sure that we can prove that the use of nuclear weapons would be a war crime. But is the same true for the deployment of nuclear weapons? How does the national implementation of international criminal law deal with preparatory acts? Belgian criminal law prohibits the possession of material designed to commit war crimes. It criminalises a broad scale of preparatory acts. This makes it much easier to prove that an important crime is being committed and must be stopped. But in other countries it can be much more difficult to prove that the actual nuclear weapons policy is a crime, or at least leads to the necessity to take action.

Procedural law issues can also play a role. The two countries where Citizens' Inspections or similar actions have become a strong campaigning strategy, Belgium and the U.K., have systems which are partially based on jury trials. The main reason why Bombspotting actions are not prosecuted anymore is because the procurator has no other option but a jury trial. A jury is more open to the political context of the case before it and is more likely to judge on the merits of the case itself without caring too much about the precedent they are setting. As a result the procurator fears that he will lose a case before a jury.

What if we are prosecuted and lose a case? One characteristic in all cases on nuclear weapons so far is the avoidance by the judges of the fundamental issue: is the envisaged use of the nuclear weapons, against which action was taken or against which a legal procedure was started, legal or not? I do not know a single case, apart from the Japanese Shimoda case, where the judge has dared to look into this issue.

In all these cases legal procedures are blocked or people are sentenced on other grounds. We can ask ourselves what sort legality is upheld in these cases? A legality which is not able to legitimate itself, a legality which has no other

arguments but the fact it is backed by power? What is upheld are the remnants of the Ancien Regime in our law systems. With such cases you show that the emperor has no clothes. The reigning power can no longer clothe itself with the legitimacy needed in a democracy. Such cases make it visible that the state has a case to answer.

What you can do in such a case is to challenge or to invite - as you wish - the judge to make a convincing judgment. You make it clear that all those judgments which beg the question are not going to stop you from repeating your action and you invite the judge to convince you with a judgment that really deals with the issue, in which case you promise to end your actions. I still have to meet a judge who dares to take this challenge up.

This can itself be turned into a political weapon. The hard job is to build it into a sustainable political strategy which can deal with the consequences of lost cases and still keep up the pressure. This needs a careful look at methods of enlarging participation which minimize legal risks. In Belgium we have used several methods of enlarging participation in our campaign which asked for less engagement than that of confronting the police or the military.

The first thing we did was to take a careful look at the complicity rules in Belgian criminal law. If our action is indeed a crime, instead of a way of preventing crime, these rules define all participants in our crime. Everyone who finances a crime, and who knows he is doing so, is an accomplice.

We turned this into a tool for participating in our action without having to be involved in the action itself. We opened a dedicated bank account and invited everyone to finance our action with at least 1 Euro and to sign a Declaration of Support making it clear that you support our action with full knowledge. This has been a huge success. This Declaration of Support, or Declaration of Complicity, is a way for people to show their conviction that a real crime is happening. The Declaration can be found on our website and we can still use more accomplices.

Another action model is the Complaint Days. We drafted a legal complaint against our government leaders and its officials regarding the preparation of War Crimes and Crimes against Humanity, based on their nuclear policy. We asked people to file this complaint on the same day at their local police station. Each time we had a thousand people showing up and filing a complaint. It was a massive appeal to our judicial system to fulfil its role and to uphold international law against our own government. It was also a way of giving our government the opportunity to act before we took action ourselves.

With this action strategy we have been relatively successful - relatively, because we also realised our limits. We only had an impact on the Belgian government. If

this had been a local issue it would have been resolved a long time ago. Exporting the Citizens' Inspection model proved to be difficult, because it always needs to be adapted to the national context. One way of overcoming these limits is to internationalise our actions. Citizens' Inspections at NATO should not be limited to Belgian activists. They have the capacity to grow into actions supported throughout Europe, with participants from all European countries, which are seen as European actions.

Last but not least I want to invite you to help us in building an international Complaint Action against NATO's nuclear policy. In the month before the NATO Heads of State meet in Riga we want Complaint Actions to take place in as many NATO countries as possible. Just before the summit a bailiff will bring a citizens summons to the NATO Secretary General warning NATO to change its nuclear policy or face further actions. You can find more information about us on **www.bombspotting.org.**

Irenah Klink

Irenah Klink is a member of the German organization Aktion-Vöelkerrecht

My name is Irenah Sophie Klink. I attend the 12th grade of a high school in Heidelberg, Germany and I am a member of the International Law Campaign, a youth group that started to build up a world wide growing people's monument for international law, or as Peter Weiss named it in short form "the Law Wall". Some of you might wonder why I, as a representative of a youth group, am supposed to speak to you, the experts in international law and on the daily nuclear threat. Maybe the answer is quite simple. It is because we took the step of acting on what we feel and understand!

Our feeling of not wanting to watch inactively as the promise that was given more than sixty years ago to each and every person to rid of the world from the "scourge of war" is threatened day by day from the smallest despot to the leader of the strongest military nation.

Our feeling that we don't want to accept any longer that this promise, linked to the unlimited declaration of the illegality of any kind of force, is not the most important daily concern of all political leaders. Instead most of them try to realize their own egocentric national interests.

Our feeling that we don't want to accept any longer that instead of making primary health care available to each person in the world billions of dollars are wasted on arms which provide nothing but more suffering.

Our human sense tells us that we should live in a world free of nuclear weapons.

Next month the people of Hiroshima and Nagasaki will remember what happened sixty-one years ago. These people should have the assurance that this will never be repeated, that people will never suffer as the victims of those two nuclear attacks did and still do.

But now the situation is different.

The awareness of our generation, the awareness of the danger, the fear, and the suffering which is brought by nuclear weapons, is unfortunately rather limited. If today, a politician anywhere in the world declares that his country needs new nuclear arms or speaks about renewing the old ones, our generation generally keeps quiet.

We don't want to keep quiet.

We openly express our opinion.

It is our right and our duty to stand up because we are the ones who are affected by all kinds of war, especially in the case of an attack with nuclear weapons. To prevent this we, the people, must declare our determination to protect peace in the world through international law.

We understand that international law is not just for politicians and governments; it is for all the people. Therefore, if international law is violated or if its further existence is threatened, we, the people, the owners of this international law, need to stand up for our rights!

The past has taught us that we have to act responsibly towards international law. To do that, it is important that we, each and every one of us, stand up for a non-violent and a nuclear weapon-free world.

We think that we need to tell the people, especially our generation, about our international rights for a world without war, a world without any nuclear weapons, and about the unimaginable cruelty of nuclear weapons in order to prevent further suffering.

We must reawaken the consciousness in the people and remind them of the important development in human culture that took place in the UN Charter which banned the use of force more than 60 years ago!

We need to make plain to ourselves, the young generation, that the situation on the labour market is not the only thing which is going to influence our future, but that there are, despite all, even bigger threats to all of us.

The effects of atomic bombing which last long after the bombing itself, are what is going to affect us and the generations which will follow us. Therefore it is essential that everyone stands up for a peaceful and non-violent world today.

But we see:

The power of today's weapons is getting stronger and stronger. The time between the preparation, the launching and the striking of a weapon is getting shorter and shorter. As a consequence of this development, self-defence, which is the only exception to the ban on force, has to be undertaken more urgently than the attack itself. In fact states are claiming the right to conduct pre-emptive strikes. Unfortunately, history provides numerous examples of belligerent nations and their immense creativity when it comes to staging such defence scenarios.

As we already pointed out in our open letter three years ago, that means that the total ban on any war of aggression, as enshrined in International Law, would be suspended and individual nations would be granted the opportunity to carry out a war of aggression in accordance with International Law as long as they managed to justify it as a "preventive" defensive war.

For the future we need to consider that the total disarmament of nuclear weapons in not the end of the problem. Today we are talking about nuclear weapons but even now scientists are sitting in a laboratory developing weapons which are even more powerful and we have no idea how cruel these might be. We should also consider whether the development of weapons which could lead to a violation of the ban on force should be seen as a violation of international law itself.

Today our future still lies in your hands for the most part, in the hands of today's adults. Together with you we, the younger generation, want to form our common future.

We want to live without fear in a peaceful world.

We want to support and sustain international law.

We believe that not only politicians, diplomats and lawyers, but all of us carry the responsibility for the preservation of our international law.

With our Campaign for International Law we want to support our common goal. We know our actions are limited but we are ready to do something from a different perspective.

Thank you for your attention!

Angie Zelter

An Exploration of People's Disarmament and international Law

Angie Zelter is part of Trident Ploughshares and Faslane 365 in the United Kingdom

Trident Ploughshares is a campaign to disarm the U.K. Trident nuclear weapons system in a non-violent and fully accountable way. We have 226 people from 14 countries who have pledged to enter Trident-related sites in the U.K. in order to dismantle the system in such a way that it cannot be used to threaten or harm living beings. Hundreds of others come to the disarmament camps and blockades organised by Trident Ploughshares.

Trident Ploughshares was founded squarely upon the solid foundation of the international war laws and our Pledge clearly refers to the various Declarations, Conventions, Principles, and Treaties that are examined in the ICJ's Advisory Opinion of 1996. And this was done deliberately, in order to use the law to delegitimise nuclear weapons policy.

Trident Ploughshares disarmament actions have ranged from blockades, to fence-cutting, to swimming onto the submarines and destroying equipment; to dismantling a research lab, to disabling military vehicles, to painting War Crime Warnings on military equipment and handing out leaflets to military base workers urging them to "Refuse to be a War Criminal". The majority of the disarmament actions cause minimal damage for maximum court-clogging disruption. But there have also been several attempts at substantial disarmament damage with three groups managing to complete their actions causing hundreds of thousands of pounds worth of damage and delaying the operation of the Trident related equipment. We call all of this damage "disarmament" and "nuclear crime prevention" and we use international law to defend ourselves.

There have been over 2,240 arrests since we started eight years ago. These have led to well over 500 trials and over 2,120 days spent in prison. Hundreds of cases have yet to come to court and, as the local judiciary is unable to deal with all the cases, are unlikely ever to do so.

The people engaged in this practical nuclear disarmament nearly always represent themselves and bring a breath of fresh air into the antiquated legal systems, using normal understandable language, bluntly naming nuclear weapons as terroristic murder machines and stating that the law is not worthy of any respect if it refuses to outlaw state-blackmail and mass-destruction.

The district court at Helensburgh in Scotland continues to be the scene of an

inspiring confrontation. Every trial is important because each one confronts the state where it is most vulnerable – on a major law and order issue, openly challenging the whole legal basis, and thus legitimacy, of the Armed Forces – one of the pillars of the state. The trials are demanding a people-centred law not a state or corporation-centred law. They remind everyone that the law and legal systems themselves have no legitimacy if they do not defend the innocent and weak. The trials show up the hypocrisy and double standards of the U.K.'s system of law and governance. This is why our campaign continues to cause such political and legal ripples.

After one of our actions when three of us disarmed a research barge called "Maytime"which maintains the invisibility of Trident under the oceans, and emptied the whole laboratory, by throwing everything into Loch Goil, we explained, in the Court, that we were entitled to do this under international law. We were acquitted at Greenock, by direction of a brave Sheriff, who said she had heard nothing that showed we had acted with criminal intent. Her judgment shook the establishment as it implied that she agreed that the U.K.'s nuclear weapons system was illegal. And it caused a political and legal furore that led, a year later, to the Lord Advocate asking the Scottish High Court to examine the issues around the acquittal, in an attempt to prevent any other judges from acquitting in the future.

The Lord Advocate's Reference No.1 in the year 2000 asked that four legal questions be considered. The questions were phrased in a very partial and discriminatory manner and were designed to be answered in the negative. However, the Reference gave us an unprecedented opportunity to indict the U.K. government defence policy at the highest levels and to put on record the arguments for the illegality of Trident. Do not underestimate the value of simply putting the arguments, whether we win or fail in the courts. The records of the legal arguments is on the Trident Ploughshares website and also written up in the book 'Trident on Trial – the case for people's disarmament'.

The Scottish Legal System let us all down and did not rise to the challenge we presented it with. It had an historic opportunity to back the rule of law and instead it chose to back state-terrorism posing as self-defence.

However, I think it is important to examine the false reasoning in the Opinion of the Judges of the Lord Advocate's Reference and to refuse to accept it as rational or good law. We need to continue to undermine its legitimacy. Grave errors were made and these need to be challenged. And we should also not forget that we have made some advances and did win some legal points.

One we should not even have had to win, and it is amazing to look back and remember that for so many years the local Procurator Fiscal at the District Court in Helensburgh had got away with statements like – "international law is not real law

and does not apply in Scotland". So, we should celebrate the judgment that "A rule of customary international law is a rule of Scots law". It is directly a matter for the judge. It isn't "foreign law".

We also won the important principle of the Necessity Defence being applicable to rescuing anyone in any place. The Court, in discussing Necessity Defences in Scots law, stated that there was "no acceptable basis for restricting rescue to protection of persons already known to and having a relationship with the rescuer at the moment of response to the other's danger". Likewise "where the place and person or persons under threat from the apprehended danger were remote from the locus of the allegedly malicious damage, we can see no reason in principle why the defence [of necessity] should not be available". These are major clarifications which are in accordance with common sense and morality and it is good that we will not have to waste time in the future arguing such obvious points.

The Court also said that a State which has a deployed deterrent plainly could and might take some step which turned the situation into one of armed conflict, and involved a sufficiently specific threat to constitute a breach of Customary International Law even though it did not connect this with the known facts of Trident sailing into the Mediterranean while the air force was bombing in former Yugoslavia and in Iraq.

And lastly, the Court agreed that intervention against an active threat might be lawful under Scots Law. The Court made an implicit admission of the possibility that if the U.K. were to move from mere general deterrent threat to active threat of use against a target state, then intervention might be legitimate (though not under customary international law), "but any issue of justification would depend not on the mere fact [sic] of any such illegality, but upon the Scots law of necessity, with the requirements inter alia of immediacy of danger and prospects of prevention."

I do not have time to go into detail on the mass of negative rulings that came out of the LAR Opinion, and in any case you can find the detail in the book or on the website. But to summarize they included rulings

- that the disposition and armament of the Armed Forces is non-justiciable
- that a person may not commit an offence in order to stop serious crime as the Court feared that it would "invite anarchy" for ordinary people to take the law into their own hands
- that the extension of the Nuremberg Principles to justify citizens taking action to prevent the most serious crimes known to mankind is not allowed.

Their rulings did not address our claim that U.K. law, not just customary international law, criminalises Trident was not addressed.

They also:-

- failed to distinguish between different necessity cases
- failed to distinguish between legitimate self-defence and reckless threats of mass destruction
- failed to accept that self-help is a necessity
- failed to understand the nature of the risk and made an assumption that Nuclear Deterrence is a harm-free policy
- suggested that civilians have less protection in times of peace than in times of war and refused to take note of evidence that, in any case, the U.K. has been engaged in armed conflict throughout the life of Trident Ploughshares and that throughout the LAR proceedings there was a continuous bombardment of targets in Iraq.

The Judges' Opinion is based upon the same underlying lie as the U.K. Government's position at the World Court, the same lie as deterrence is based upon - that deterrence is just a bluff and that we would never actually use our nuclear weapons, and that they are therefore lawful. The Government does this at the very same time, mind you, as they tell Iraq and other "enemy" states that nuclear weapons would be used - and the Government does not mean, as the Crown pretended in the LAR, just to use them against an isolated group of ships in the middle of the ocean in a crisis situation of last resort to ensure the survival of the U.K. The U.K. does not deploy four submarines with 144 nuclear warheads to use against isolated targets – they are there to threaten mass destruction.

The Opinion is based upon the outrageous justification that threatening mass destruction is lawful in times of peace and only becomes unlawful in times of war when one knows the exact target. This leaves them able to hang on to their nuclear deterrence and their hope that we will all leave it at that and stop asking awkward questions. However, reading between the lines we can detect that Britain feels justified in preparing to break international humanitarian law and is in fact practising daily to break almost every single international convention and law on armed conflict. The U.K. Government said as much at the ICJ Hearings when Sir Nicholas Lyell asked, "If all other means at their disposal are insufficient, then how can it be said that the use of a nuclear weapon must be disproportionate?"

Charles Moxley, a New York City Attorney, sums it all up in his excellent refutation of the LAR Opinion by saying, "The effects of nuclear weapons are not reasonably subject to dispute and were assumed by the High Court. So too, the nature of the policy of deterrence is beyond reasonable dispute. The only real question is whether it is unlawful to threaten to do that which it is unlawful to do. The ICJ answered in the affirmative. The Scots High Court of Justiciary is in error and does damage to the rule of law by its abnegation of this restraint."

I have briefly examined the LAR because it is frequently brought up in cases against nuclear weapons protesters as if this is the last say and as if our international law arguments are no longer valid. We do not accept this and we are continuing to reclaim international law through the arguments of common sense and simple morality put by ordinary people who have no difficulty in recognising that mass murder is a crime.

Trident Ploughshares continues its work and many of its Pledgers have been involved in successful anti-Iraq War disarmament actions that are also using international law arguments to challenge the lawfulness of the war in Iraq. We can see the same pattern emerging of the state and courts manipulating the legal process in order not to have to grapple with the actual evidence of crimes of aggression and of U.K. war crimes.

The state, with the collusion of the courts, is protecting its narrowly perceived interests by retreating behind the smoke-screen of the Crown Prerogative – that iniquitous and outdated discretionary power over the making of war and peace and the disposition of the armed forces. It is as if by invoking this charm they can prevent the Government from being subject to the law. We deserve a better legal system than this. The basis of western democracy is that Governments must be subject to the rule of law and the international laws on aggression and the conduct of wars are vitally over-arching. We must not allow international law to be unravelled any further. The courts have to be challenged again and again to control the unlawful aggressive wars that the U.K. and U.S. are initiating and waging. The activists engaged in protest and disruption at the armed forces bases are providing one of the mechanisms for these challenges.

Many ordinary people are very concerned at the descent into the hell of aggressive war fighting and a new nuclear arms race in order for a few countries to control scarce natural resources like oil and water and judge this not only criminal but also counter-productive. The very use of armed force and war actually depletes these resources on a massive scale and causes huge environmental and societal destruction and poverty – those very issues that we need to be addressing co-operatively in order to survive the challenges of global climate change.

At present we are engaged in a fierce battle for an international legal order that serves the purposes of the people and not the corporate-backed nuclear power states. It is a battle that we are all embroiled in – that is why we are here. We have to keep the issues alive and the debate going, and keep the challenges in the legal system, in the courts, in the public domain.

Which brings me to Faslane 365.

The pressure is rising again in the U.K., with the decision to replace Trident raising

fears of a new nuclear arms race and diverting attention and scarce resources away from the serious concerns – from human rights to climate change – that many of us consider to be the vital challenges for the 21st Century. Faslane 365 is an attempt to move towards sustained civil resistance to allow time for non-violent people – pressure to push the Scottish Parliament to reject Trident and any replacement of weapons of mass destruction.

Building on the success of previous mass blockades of the Trident nuclear base at Faslane, there will be a year-long continuous peaceful blockade at Faslane in Scotland. To make this happen, groups and organisations from Scotland, England, Wales, and beyond are being invited to come and shut down the base for at least one two-day period each during the year.

The purpose of Faslane 365 is to encourage diverse groups and networks to take responsibility for disrupting the activities at the nuclear base where Britain's nuclear weapons are deployed and to draw attention to the dangerous insecurity and waste of resources inherent in the Trident nuclear system. In preventing nuclear 'business as usual' we also intend to highlight our real, human security needs, which will require a very different allocation of resources and action.

In order to do this, Faslane 365 is asking a wide range of local, national and even international groups from all sections of civil society to come to Faslane with at least 100 people committed to stay and make their visions for a just and peaceful future visible for at least one period of 2 days.

We aim to start on October 1st, 2006 – the anniversary of the judgment of the Major War Criminals at the Nuremberg Tribunal. We already have 40 Blockading Groups who have signed for 2-day blocks in the Rota and we are inviting everyone here to consider taking part too. We all need to link our strengths and visions together to make civil resistance strong enough to be really effective.

Faslane 365 is based on the foundation of the international war laws and is specifically invoking Article VI of the Non-Proliferation Treaty. We believe that any replacement of the Trident nuclear weapon system would be in breach of this Article and thus illegal.

Faslane 365 will be the longest blockade ever attempted in the U.K. and we need our European friends to help us. It will provide yet more challenges to the state and the courts and we will need the active support and help of lawyers. There is an opportunity for lawyers to remember the inspiration of the Judges Blockade at Mutlangen, in Germany, in the 80s, and so I invite lawyers and jurists to take part in a Lawyers Block as part of Faslane 365 so they can give their legal opinions directly in their own defence.

I would also like to urge lawyers and IALANA to write a strong refutation of the

LAR Opinion that could be signed by as many lawyers as possible – as a direct challenge to the Scottish High Court and which we can use in court.

Thank you.

Update on Faslane 365:- this campaign, launched on October 1st 2006, has now been going for 6 months, there have been 73 Blockading Groups covering around 101 days and there have been around 695 arrests with only 22 being taken through the courts! New Blockading Groups are signing into the Rota every week and the pressure for change is building up. More information can be found on www.faslane365.org.

George Farebrother

George Farebrother is the Secretary of World Court Project U.K.

It is a delight to see so many people here today. I'd like to give thanks to the people who have helped so much; to Ernst Guelcher and Marilyn Neven who have made everything possible by organising this room in the European Parliament, to Caroline Lucas and her fellow MEP Gisela Kallenbach for facilitating and sponsoring this conference, to Hans Lammerant and Pol d'Huyvetter and Urban Gibson who have helped to enrol our speakers, to our Chairs who have helped our conference run so smoothly; to the Polden-Puckham Charitable Foundation which has helped to finance the conference, and also to members of World Court Project U.K. who, when I asked for an appeal to support this conference financially, responded magnificently.

In 1991 I was mobilised by Kate Dewes at a meeting at the London School of Economics where she told us about the Public Conscience. This set me off on the World Court Project path. The idea that there is a law, as it were, beyond the law, a law based on our natural sense of justice, our instinctive feeling for right and wrong, which we do not need to be a legal expert in to understand – in the sense, for instance, that I am not a plumber but I know a leaky pipe when I see one. That's one of the reasons why we developed the idea of collecting *Declarations of Public Conscience* to mobilise the opinion of ordinary people who believe that nuclear weapons desecrate their own values. I would like to go further and say that in a sense the existence of nuclear weapons is an enslavement, even to members of the states who possess them, for they too are involved in that desecration. We collected lots of Declarations, 3.8 million, and sent them to the World Court.

We are interested in the idea of the follow-up because it depends on something I think that people can understand, that is the obligation of Good Faith. It is easier to

explain than people imagine in a brief conversation. To support this, World Court Project U.K. has developed *Affirmations of Freedom from Nuclear Weapons.* These say: "I do not accept that nuclear weapons can protect me, my country or the values I stand for." They say it in 18 languages and I think they represent the languages of everybody here. I hope so. We will make these available in a worldwide campaign.

In your conference package is a simple explanation of the concept of the public conscience, and an idea of how the Affirmations can be brought to work in other countries outside the U.K. independently. You can make it your own and operate with the ideas you like. *Mouvement de la Paix* and *Stop Essais* have developed a similar idea in terms of a request. This contains an important sentence at the end which is about non-acceptance of nuclear weapons which can be used as evidence to send to the World Court when we go back, just as our Affirmations can be so presented. The bricks in the Wall of Peace also qualify as evidence of citizens underpinning the law with their sense of natural justice and can play an important role in this new and exciting initiative.

The Affirmations are not petitions. They're quite different from a petition. They are essentially personal statements of rejection of nuclear weapons which can be brought to support this important quasi-legal concept of the public conscience. It would be interesting to link it with the Mayors for Peace campaign and if Mayors could encourage their citizens to make personal signatures and thereby contribute towards the public sense of underpinning this, then I think that too would be extremely useful.

CLOSING REMARKS

Gisela Kallenbach

Gisela Kallenbach is a Green Party Member of the European Parliament for Germany. Together with MEP Caroline Lucas she co-sponsored the conference on behalf of the Green/EFA Group in the European Parliament

Thank you for coming here. Our world needs people like you to continue this deeply needed engagement to get rid of nuclear weapons and to get rid of war. It's a good goal to fight for. We need action on all possible levels and areas, using every possible means. We need to raise public awareness through all your peace organisations, through Mayors for Peace, and through the younger generation.

I am also a friend of civil disobedience. I come from former East Germany and was engaged since the early 80s in the so-called citizen movement under guidance of the Church. This was the only way we could resist the system we had in my country. We definitely need lawyers who are brave and creative enough, as I learned today, and we need the courts. We also need Parliamentarians from the local, national and European levels. Elected politicians should push governments to bring about internationally respected conventions which show good faith on behalf of their own citizens.

I am not speaking on behalf of the European Parliament or even of my group. But I can promise you that I will bring some ideas to the Parliament and continue to support you and our common goal. Last year we had a Written Declaration of the European Parliament which commemorated the 60th anniversary of Hiroshima and also supported Mayors for Peace. We encourage those Members who have signed this Declaration to become active in their own cities, as I did in my own city of Leipzig. Our mayor signed in support of Mayors for Peace. So each individual can do something to bring this together. We can look into what kind of Written Declaration we can next lay before the European Parliament. We could also think of initiatives to take up with the Foreign Affairs Committee. If any of you would have a good idea for political action on the European level, please don't hesitate to tell us and we will say what we can do, although is not always easy to gain a majority on certain issues. I will take up the "Cities are not Targets" project and also the "Good Faith Challenge" and we can take some copies of this with us and distribute it among our colleagues. We would need your support to gain a majority. You have Members of Parliament in your respective countries, perhaps from other parties, because the Greens are strong but not strong enough.

I'm convinced that Europe, with all its different institutions, must play a very important role in this issue not only because of our past, but also because of our future. When I was in Hiroshima last year I realised again that Europe can be a good example - what Europe has done after the Second World War. We have now had 60 years of peace. If you look at Asia, for example, there are many initiatives that those countries could take together. Such developments could strengthen the world-wide peace movement. Thank you again for coming and it was a pleasure and honour for me that we could facilitate this conference.

Cora Weiss

I want to thank everyone for your very lively participation and for your obvious commitment to ridding the world of nuclear weapons and I hope that on the way we shall also have a World Without War – WWW. I want to issue an invitation to everybody, and especially to you, Irenah, your fellow workers, to come to Helsinki on September 8-9 where the International Peace Bureau will have its annual Conference and Assembly. The conference is called "Sustainable Disarmament for Sustainable Development". The whole point of the conference is to try to prevent destruction and to protect this world so that you folks can have your turn at managing it better. Everyone is invited but I would like to see the age limit come down.

FREEDOM FROM NUCLEAR WEAPONS

Most people want to live in a world free from the threat of nuclear weapons and many believe that any country which could even think of using them corrupts its own values. This hope has the backing of law. It is scarcely possible to imagine how nuclear weapons could ever be used lawfully and there is a solemn treaty to negotiate in Good Faith for their global abolition.

However, a few states claim that their security depends on nuclear weapons. Thousands of these weapons of mass destruction are still ready to be launched at a moment's notice.

In July 2006 legal experts and civil society representatives met in Brussels to examine the legality of nuclear weapons in depth. They developed proposals for action by citizens to uphold the law, calling on diplomats and politicians to honour their Good Faith obligations. This book records their conclusions and outlines a way forward.

The forces ranged against the view of illegality are truly colossal. However collisions with the colossal have not deterred the law on its upward course towards the concept of the rule of law. It has not flinched from the task of imposing constraints upon physical power when legal principle so demands. It has been by a determined stand against forces that seemed colossal or irresistible that the rule of law has been won.

Judge Christopher Weeramantry at the
International Court of Justice, July 1996

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