

WORLD COURT PROJECT



International Launch

Geneva, 14-15 May 1992



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INTERNATIONAL
PEACE BUREAU



IALANA
INTERNATIONAL ASSOCIATION
OF LAWYERS
AGAINST NUCLEAR ARMS



IPPNW
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Physicians
for the
Prevention of
Nuclear War

WORLD COURT PROJECT - INTERNATIONAL LAUNCH

TABLE OF CONTENTS

INTRODUCTION.....	1
ESTABLISHING A NORMATIVE ORDER	
Saul Mendlovitz.....	2
KEYNOTE ADDRESS	
Nathan Shamyurira.....	4
NIGHTMARE WEAPONS IN A NEW WORLD ORDER	
Prof. Richard Falk.....	6
THE WORK OF IALANA	
Stig Gustafsson.....	10
THE WORK OF IPPNW	
Dr. Robin Briant.....	13
THE STATUS OF NUCLEAR WARFARE UNDER INTERNATIONAL LAW: THE	
ARGUMENT IN HUMANITARIAN, ENVIRONMENTAL & HUMAN RIGHTS LAW	
Justice P.N. Bhagwati.....	19
PRESENTATION OF THE MACBRIDE APPEAL BY LAWYERS AGAINST	
NUCLEAR WAR	
Colin Archer.....	29
ROLE OF THE INTERNATIONAL COURT OF JUSTICE WITHIN THE UN	
SYSTEM AND THE SIGNIFICANCE OF ADVISORY OPINIONS	
P.J.I.M. de Waart.....	31
ATOMIC BOMB VICTIMS' APPEAL	
Satoru Konishi.....	37
ON THE DANGER OF LOW-LEVEL RADIATION ABSORBED BY THE BODY	
Shuntaro Hida.....	41
OBTAINING A MAJORITY: WORKING WITH GOVERNMENTS AND POLITICAL	
PARTIES	
Scilla Elworthy.....	44
IMPLICATIONS OF THE WORLD COURT PROJECT FOR PROLIFERATION	
Sven Hellman.....	48
MOBILISING CIVIL SOCIETY	
Katie Boanas-Dewes.....	51

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Introduction

Are nuclear weapons illegal? According to the 11,000 lawyers who signed the McBride Appeal, nuclear weapons are indeed illegal under existing international law. However the nuclear weapons states disagree. An exciting initiative to take the case to the World Court, and hopefully prove them wrong, was launched by IPB at the Palais des Nations, Geneva, May 14-15.

The World Court Project is seeking an advisory opinion from the International Court of Justice on the legal status of nuclear weapons. A statement by the World Court that nuclear weapons are illegal would strike a powerful blow against current deployments and proliferation of nuclear weapons.

The idea was initially put forward in 1987 by Harold Evans, a retired judge from Aotearoa (New Zealand). Recently there has been an increase in interest in the idea from both non-governmental organisations and diplomats.

The public launch, co-sponsored by IPB, IALANA (International Association of Lawyers Against Nuclear Arms), and IPPNW (International Physicians for the Prevention of Nuclear War), brought together over 100 lawyers, scholars, peace activists and diplomats from 32 countries for a seminar on the initiative, to launch two books about the project, and to plan the campaign.

Parallel Launches

Simultaneous launches of the World Court Project were also held in a number of countries. In Aotearoa (New Zealand), a statement supporting the initiative was signed by 84 prominent personalities including 22 Members of Parliament, 3 Queens Counsellors, 9 mayors, 2 ex-Prime Ministers, an ex-Attorney General and an ex-Governor General. In Helsinki an IALANA conference was held in the context of the NGO programme around the CSCE Follow-up meeting. In London there was a press conference in the House of Commons. In Calcutta, Indian CND held a meeting with distinguished speakers including the former Mayor, a senior advocate of the Calcutta High Court and the president of the Indian Lawyers Association.

WCP Book Publications

The 2 new books which were launched at a press conference on May 15 are:

- * The World Court Project on Nuclear Weapons and International Law, by Nicholas Grief - a legal memorandum intended as a tool for lobbying governments. Available at \$7 + post from IALANA, PO Box 11589, 2502 AN Den Haag, Netherlands.
- * From Hiroshima to the Hague, by Keith Mothersson - a comprehensive guide to the World Court Project for citizen groups and activists, 200pp, available from IPB at 24 SF (institutions) 18SF (individuals), 10 SF (bulk) + post.

IPB Centenary and McBride Appeal

The launch also coincided with the 100th anniversary year of IPB. A centenary celebration and exhibition on the history of IPB was held on May 14. The celebration included the presentation to Antoine Blanca, Director General of the United Nations Office in Geneva, of the McBride Petition, an appeal by over 11,000 lawyers expressing their belief that nuclear weapons are illegal.

World Health Assembly

Immediately prior to the launch, the World Health Assembly met, also in Geneva. On the agenda was a resolution initiated by Colombia and co-sponsored by 13 other nations, requiring the World Health Organisation to request an advisory opinion from the International Court of Justice on the legal status of the use of nuclear weapons.

The efforts of a strong IPPNW lobby group, including an ex-Director of Health from Aotearoa, were countered by even stronger pressure from the USA. The result was that the resolution was halted in a sub-committee (6 votes against, 3 for and 16 abstentions) and thus never made it to the Assembly floor.

Nevertheless, IPPNW are delighted with the progress made over a very limited timescale, and are convinced the resolution can be put again next year, and that the building of support from citizens' groups around the world will help counteract US opposition. A special report on proceedings at the World Health Assembly is available from IPPNW.

Campaign Planning

Two meetings were held to plan the campaign and establish an organisational structure for the World Court Project. Main decisions reached:

* That the WCP aim for 1993 to put the resolution to the UN General Assembly seeking the advisory opinion;

* That we press for the inclusion of use and threat of use of nuclear weapons in the General Assembly resolution, and accept that it is appropriate for the World Health Assembly resolution to include only use of nuclear weapons;

* That an international Steering Committee be established, initially comprising: Colin Archer (IPB), Katie Boanas-Dewes (NZ Foundation for Peace Studies), Rob Green (WCP-UK), Saul Mendlovitz (Lawyers Committee on Nuclear Policy, NY), Michael Christ (IPPNW), Willemijn Straeter (IALANA), with power to co-opt others.

Outreach to citizens groups

IPB has taken on, as its major contribution to the campaign over the next year or more, the coordination of outreach to non-government groups worldwide. A huge task! We need everyone's help in making contacts with the thousands of civil society organisations around the world. Naturally IALANA and IPPNW will be working especially with their professional constituencies, and we hope other sponsoring bodies will offer to develop outreach in specific sectors and countries.

To assist this effort, the Steering Committee decided to produce a general purpose brochure for the public on the World Court Project, together with a model Declaration of Public Conscience. This will be available in large numbers from the IPB secretariat. (Please enclose a contribution towards costs). French, German and Spanish translations are being prepared, and others will follow. Distribution of the brochure may prove an important way to raise funds for the Project.

Establishing a normative order

Saul Mendlovitz, USA
UN liaison officer for IALANA

We meet in a celebratory mode and mood as we come together to celebrate the local host the IPB, its centennial year. It is the oldest and broadest international peace network. Some 13 of its members, the last 2 being Alva Myrdal and Sean McBride, have received the Nobel Prize and the organisation itself received the Nobel Prize in 1910. Indeed one of the early members of the IPB, Bertha von Suttner, was the person who convinced Mr Nobel to set up the Nobel Peace Prize.

So 100 years of working at peace and demonstrating that capacity in a very active and forceful fashion makes them a marvellous host for this occasion and I would like to underscore one point with regard to their activities. They have taken very seriously the notion that war may be eliminated as a human institution; that it is possible

to demilitarise the globe. So whatever project they take up is in the context of a serious abolitionist movement with regard to war and with concerns for justice and decency. And so I am delighted that we are able to honour them and it is part of their practice that in celebrating we work, that is, there would be no celebration for the IPB if we did not engage in activities that would promote those aims, and so we come together on the World Court Project.

Now it is true that this is the international launch, that is, there are three sponsoring groups: IPB, IALANA, and IPPNW, (the latter also being a Nobel Prize winner in 1985), as well as a fair number of other citizens' groups and associations, particularly in Britain and New Zealand, who have been very active in promoting this notion of a World Court Project.

But it may be sensible in speaking of the launch to go back to some origin points. One origin point may very well have been Emmanuel Kant in 1798 'On Enduring Peace', but I will leave to historicists as to where exactly to begin. Let me begin with what I think is a singularly unique historical event that took place in the period between 1944 and 1945.

In 1944 the atomic bomb was exploded in Los Alamos, and in the period between that explosion and August 6 and Aug 9 1945, ie before Hiroshima and Nagasaki, there was a group of scientists who, seeing the potential devastation of that bomb, went to General Groves and asked him to bring to the attention of President Truman the possibility that this bomb be used as a demonstration some place in the world rather than over a civilian population or even a military population; that the bomb was so awesome that we should not move ahead with it as a weapon. Now there may be other instances in the history of the development of weaponry where the individuals who developed the weapons were so taken aback by it that they at the time of initiating the weapon itself suggested the inhibition of it. I have not done a historical research, but none comes to mind easily.

So I'm struck by the fact that at the very outset of that weapon there was a normative statement "we ought not to use this weapon". To be sure we used it twice. Physically used it twice. But immediately afterwards if you recall, both Winston Churchill and Harry Truman said in their memoirs "This is a weapon that goes far beyond any other weapon we've had and we need some way to control it". And in fact the Baruch-Lilienthal Plan of 1946-47 was an attempt to inhibit, to set up a normative regime that would prevent the use of that weapon.

Now one might argue that for some 47 years now we have prevented the use of that weapon. Although as Daniel Ellsberg and others are fond of pointing out, and I think accurately, that weapon has been used. Through the threat to use nuclear weapons in a political, strategic and military sense Ellsberg argues that it has been used a minimum of 6 times - some people say 15 times - and that threat is a use of the weapon.

So we come here today with an origin point that has a normative impulse. There ought to be a rule which says "you cannot use nuclear weapons", and indeed there ought to be a rule which says "there ought not be nuclear weapons at the disposal of nation states, at the disposal of anyone to use".

If you take the period from 1946-47 down to the present, you will find there has been a normative project which has been taking place. In 1957-8, George Schwartzberger and President Nagendra Singh of the ICJ wrote some important treatises on the illegality of nuclear weapons. In 1961, there was a resolution passed by the General Assembly that the use of nuclear weapons would be illegal. In 1979 through 1991 we've had a series of GA resolutions talking about the illegality of the use of nuclear weapons, it being a crime against humanity, and there's been an attempt to establish a regime in which all the nations of the world would sign up and say that the threat or use of nuclear weapons was illegal under international law and a crime against humanity.

We come here together to discuss the possibility of having the World Court, the highest authoritative judicial tribunal the globe has, express or imprint the normative legitimization of our view, namely that the threat or use, indeed the possession and manufacture perhaps, of nuclear weapons are illegal under international law and may indeed be criminal. For the next 2 days we will look at the political, legal, social and cultural issues that arise out of these matters.

We are very fortunate to have a full panoply of people who are not only academic experts, but also social activists in the best sense of that word, who have been promoting the notion that there is a normative order which can be established in our lifetime, before the end of this century, in which nuclear weapons will no longer be available for nation states to use or threaten to use.

Nathan Shamyurira, Minister of Foreign Affairs, Zimbabwe

At the outset, I would like to express my profound gratitude for the kind invitation extended to me by the organizers of the World Court Project. The fact that this event coincides with the one hundredth anniversary of the International Peace Bureau (IPB) is in itself very symbolic. The one hundred years that have passed since the formal establishment of the IPB are a living testimony of the strenuous efforts of men and women, who were concerned with the future good government and physical survival of mankind. The fundamental concerns of war and peace that inspired the founding fathers then, are still on our agenda today, albeit with extreme complexities and dangers. Indeed, it was in recognition of the stirring efforts of the IPB in the struggle against war and wanton destruction that the first Nobel Peace Prize was awarded to Frederic Passy, a member of IPB Council, together with Henry Dunant, founder of the Red Cross. Today, in this changing world, the IPB stands out as a pillar of stability and common sense.

One of the imperatives of the emerging new world order must be the strengthening of international law, and renewed commitment of all nations to use this law in their day-to-day diplomacy, and in all the negotiations for resolving any disputes and problems. It was the recognition and acceptance of this fact that motivated members of the Non-Aligned Movement (NAM) to convene the conference in the Hague in 1989 which proposed and launched the Decade of developing and strengthening international law. We felt that both the United Nations Organizations and international law agencies should be at the centre of the new world order. To be able to do so, we launched the Decade with the solid support and commitment of 110 members of the NAM, and the programme was endorsed by the entire UN membership.

We are now in the process of defining a new role for the NAM to conform with the changed international order. This movement provides us with the only existing framework for multilateral consultations between Asian, African,

Caribbean, and Latin American countries. We find this framework very useful in evolving common positions, especially in those matters that come before the Security Council. The NAM will enhance its role by focusing on problems of international economic trade, especially the growing North-South economic gap; and strengthening the commitment to the use of international law. In the New World Order of today, there should be a shared responsibility for the economic, social and political stability of a world that is truly multilateral and non-discriminatory, and takes into account the growing interdependence and mutuality of interests among the community of nations.

The New Order should foster a democratization of international relations in order to facilitate the participation of all States in the process of international decision-making. This order should be based on strict observance of the objective, non-discriminatory rule of law and on the fundamental principles embodied in the UN Charter relating to the concepts of sovereignty, equality, universality and the acknowledgement of national specificities, while at the same time ensuring the fullest respect for territorial integrity and independence of states, large or small. While the new order must ensure full commitment to the values of democracy, human rights and development, it is imperative that the rule of international law be placed at the center of the international agenda and a supportive international climate be created to facilitate this objective.

Mr. President, Zimbabwe's short political tradition clearly indicates our deeply cherished principle of universal participation, and we have been and will always be committed to the full observance of international law. Zimbabwe joins the international community in welcoming the World Court Project.

The Summit of Security Council members held in New York on January 31 this

year showed remarkably broad areas of agreement among them. The problem that will arise is the definition and identification of those States and persons who are perceived to be threatening or undermining the new world order. To be brief, who are the aggressors? Who are the new dictators? President George Bush has named some, and other world leaders have named others. Zimbabwe chaired the Security Council when difficult resolutions were tabled concerning the Gulf War, and alleged terrorists in Libya. In both situations, it was very difficult to define and identify precisely those at fault, and in what circumstances.

These difficulties only confirm the theme of my brief remarks - that we should take all possible steps to strengthen and develop international law agencies. The supreme agency for promoting international law is the International Court of Justice which you have been promoting for many decades. The NAM meeting at the Hague stressed the need for nations to be required to go to the World Court to settle disputes, and for decisions of that Court to be binding on individual nations. The majority of NAM nations share your desire and concern to strengthen the substance and procedures of the International Court of Justice. Zimbabwe, as a member of both the Non-Aligned Movement and the Group of 77, is greatly pleased with the launching of this Project because it embraces the major principles that we have always advocated for halting the nuclear arms build-up, and the comprehensive programme of disarmament leading to general and complete disarmament under effective international control.

Mr. President, the question of nuclear disarmament has been a subject of debate for a long time now. The importance attached to this issue is clearly demonstrated by the number of countries that have so far acceded to the NonProliferation Treaty. It is however, unfortunate that whilst non-nuclear countries are demonstrating their commitment to the NPT, the nuclear states are showing a lack of enthusiasm for it. This was amply demonstrated during the Fourth Review Conferences of the Parties to the NPT held in Geneva in 1990 when these countries, particularly the USA and UK

adamantly refused to consider a ban on nuclear testing pending the conclusion of a Comprehensive Test Ban Treaty.

In face of the Security Council Resolution 731 imposing sanctions against Libya, Zimbabwe as a member of the Non-Aligned Movement strongly supported the NAM approach (that was acceptable to Libya), which called for investigations and trial within the framework of international law. As you can read from the vote in the Security Council, Zimbabwe was one of the abstaining members and our explanation was simply based on the Charter and fundamental principles of international law. We have always taken a strong stand in condemning international terrorism and we take very seriously our obligations under the 1971 Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. Terrorism has no justification whatsoever and the international community must cooperate to eradicate it. But we do not believe that this can be effectively done by adopting an adversarial kind of justice. Two years ago, Zimbabwe joined the international community in condemning the Iraqi invasion and occupation of Kuwait. This was born out of a sense of outrage and the great importance that we attach to the respect of international rule in relations between states and the observance of total sovereignty. Sovereignty is the only shield that small states have against possible interventions and manipulation by big powers. There should be no room for meddling and interference in the internal affairs of other states, small or large. But, Mr. President, although we condemned the invasion of Kuwait, we did not approve the war aims of the coalition partners in the Gulf war. We were never given a chance to debate those aims or for the UN to direct the war itself. Our role ended when we passed the series of inter-connected resolutions on the Gulf.

Mr. President, all these complex issues could be clarified and peace made more secure, if the role of international law agencies was enhanced and strengthened. In this regard, the promoters of the World Court Project should continue and even step up the work of mobilising public opinion behind the views which they

believe in and have articulated. In order to reach the masses of this world with the right information, it is necessary to harness the support of three key social and political groups. Firstly, those decision makers in national governments who want to change the international system; secondly, those members of the academic community who have been speaking out for change; and, thirdly, activists who have been agitating for change. A network of organizations and associations of concerned

activists and scholars should be established for the purpose of mobilising world public opinion. Lobbying, public presentations, and mass mobilization are necessary means of getting ideas to be accepted and adopted.

Once again, allow me to express my deep sense of gratitude to the IPB for according me the opportunity and the privilege to address this august meeting on this very important issue.

Nightmare Weapons in a New World Order

Prof. Richard Falk, USA

It is for me an inspiration to be here on this notable occasion of the hundredth anniversary of the founding of the IPB, an organisation that has, better than any other, sustained a steady vision for 10 decades of a world without war, of a genuine new world order based on justice, peace and sustainability. I am especially honoured to be speaking at a meeting to launch the World Court Project under these impressive auspices.

I believe sincerely that this Project is brilliantly conceived to raise moral and legal consciousness at this historic time, and to thereby carry to a new level of awareness the struggles of the peoples of the world to emancipate themselves from the curse of nuclearism. International law has in this process a vital role to play.

We are at a crucial stage of the legal crusade against nuclearism. We have an opening in these years after the Cold War that will not last. Either we succeed in the mission to have nuclear weapons (and other nightmare weaponry) eliminated from the scene, or we will almost certainly enter a new era of threat and uncertainty in international relations, one quite likely to result in nuclear and other weapons of mass destruction being used, at least in regional settings.

So we meet here in an atmosphere of opportunity, but also of challenge. Never have we needed more a joint effort, developed not by states and international institutions but by the expression of the crystallised concern of representative groups in civil society. I think the combination of IALANA, the IPB and the IPPNW is itself an expression of the new coalitions of the 1990s that are forming to create a global civil society, that will balance the kinds of power exercised by the state and its collective institutions.

One would have thought and hoped that the end of the Cold War would have been seized by the nuclear weapons states in the West, and especially by the USA, to move in the direction of a much more peaceful world - that is, a world order in which humanity was finally relieved of the prospect that nuclear weapons would some time be used again. Without the pretext of 2 opposed superpowers and their alliances, there no longer exists an enemy to deter, which was after all the main reason that politicians and military commanders gave for retaining nightmare weaponry and the discretion to use it.

But let us be clear from a juridical point of view: that posture of deterrence, based on indiscriminate and genocidal war,

was always immoral, illegal and criminal. It had these properties from the moment of its inception, whether that moment is identified with the demonstration blast at Almagordo in the New Mexico desert or the use of atomic bombs against the cities of Hiroshima and Nagasaki. What has changed is not the illegal and criminal character of this weaponry, but rather the rationalisations that were relied upon over the years of the Cold War to somehow distract our attention from this underlying illegality and criminality. And therefore when the edifice of rationalisation is removed, what remains is the naked embrace of nuclearism, with all its genocidal implications, an embrace that is a daily insult to human dignity, and that poses great danger to the future prospects of humanity.

It is high time to establish a Nuremburg Watch to monitor the criminality of the nuclear weapon states in this period, something that would supplement the efforts of the Human Rights Watches that have done such notable work in the 1980s.

One would have at least expected in this period some gestures of acknowledgement, in the form of a NATO or US declaration of No First Use of Nuclear Weapons, as well as a rapid conclusion of a Comprehensive Test Ban, just as an indication of a good-faith commitment to take account of the end of the Cold War. It is an amusing irony, if it were not such a revelation of the Western addiction to nuclearism, that the years of insistence that a Test Ban was not feasible because one could not verify Soviet tests below a certain level, turns out to have been what most of us thought it was all along - merely an excuse to continue with the arms race. To think that all those myriad studies of verification turn out to have no other purpose than to provide a smokescreen for this underlying impulse, which we now see unmasked when there is no longer the pretension that what keeps the West committed to nuclear arms and their further development is the threat from the East. That was the

old contention. Yet now you have no threat from the East, but you still have the same basic dynamic of the nuclear arms race, and the same insistence that NATO and the US shall retain for itself the discretion to threaten and use nuclear weaponry whenever it sees fit.

Who would have thought that we would come closer at an intergovernmental level to nuclear disarmament and a treaty of prohibition during the last stage of the Cold War in the 1980s, than now? We can take note of the fact the world seemed closer to these objectives here in Geneva back in 1985, and even more so at Reykjavik at the end of 1986, when Reagan and Gorbachev seemed on the brink of an agreement to the phased elimination of all strategic nuclear weapons. It was a very dramatic moment, but interestingly undercut in the West, particularly in the US, by both conservative and liberal mainstream public opinion, that saw that kind of agreement as threatening the consensus that these weapons were needed as part of what it means to be a superpower in the last part of the 20th century.

George Bush, despite all his talk in the last Gulf crisis of a New World Order, can never be accused of wavering in his commitment to nuclearism - his nuclearist credentials are unfortunately impeccable. We have now to conclude that it will be more difficult to get rid of nuclear weapons in the West, than it was to get rid of oppression in the East; that the technologies of destruction are more deeply embedded in our experience and imagination than were the politics of human abuse and domination in the Soviet bloc.

What we find in this period in the aftermath of the Cold War are two exceedingly disturbing kinds of development. The US and other nuclear weapons powers have actually moved ahead to augment the quality of their nuclear weapons arsenals. The US has even gone ahead with nuclear testing and the development of space-based

weapons systems. Indeed, when President Bush in 1990 gave his most encouraging speech, calling for the quantitative reduction of the nuclear weapons arsenal, and committing the US to a unilateral reduction in its own arsenal, he called at that time for the Soviet Union to make a reciprocal gesture. And indeed when the Soviet Union responded, Washington was disturbed because it had been too generous in its response and proposed to do not only what the US was willing to do, but Gorbachev indicated a willingness to go further and move in the direction of complete nuclear disarmament - something that Washington was decidedly not interested in.

In the background of the debate about the Gulf War one disturbingly encountered, for the first time since World War 2, arguments being made by prominent journalists and members of Congress that it might be appropriate to use nuclear weapons in the Gulf War 'to save lives' - the argument was actually made in that terminology and had the support of public opinion at the time. One notes that with the removal of the Soviet Union from the international scene, one effect is to remove the fear of escalation, should nuclear weapons be used in a regional setting.

One of the reasons that nuclear weapons were not used since Nagasaki was that their use would have had unpredictable effects that could in the end result in nuclear weapons being used against the country that first used these weapons. This is no longer the case. One finds in the aftermath of the Cold War a new look at nuclearism in North-South settings that is more dangerous in my view than anything that had occurred previously.

The second development is that the US has set itself up as the nuclear conscience of the world, the arbiter of which countries can have nuclear weapons and which countries must be prevented from having them. In effect, what is being created under the banner of non-proliferation is a system of

nuclear apartheid, where only the white countries of the North can retain this weaponry and any other country is forbidden at the risk of military intervention.

It is quite remarkable that the US has just imposed trade sanctions on Russia and India because they are dealing in technologies that have potential nuclear applications. So here is the extraordinary spectacle of the country that is most associated with nuclearism at the same time purporting to be the conscience of humanity as to who can have these weapons. Never has such a schizophrenic role been pursued in the course of international political history.

We have also to take account of those many individuals who deeply oppose nuclear weapons and the policies that result from them, but seem content with a future arsenal of nuclear weapons that corresponds to some position associated with 'minimum deterrence' - that is anywhere from a few hundred to a thousand or so nuclear warheads in the megaton range. It is called minimum deterrence but it is an extraordinary arsenal of genocidal proportions. One should not be misled by the label.

From our point of view, given our understanding of the unacceptable legal and ethical character of these weapons, this is not an acceptable position. And furthermore it is an unwise one politically. It is an invitation to proliferation and to the development by other countries of chemical and biological weapons of mass destruction. Now is not the time to temporise with criminality nor is it the time to strike yet another Faustian bargain with the Satanic forces of nuclearism. Now is definitely the time to repudiate this weaponry which is illegal and criminal and to do so unconditionally.

Lawyers have a particular strategic role in this struggle, reinforcing for the peoples of this world the central proposition that reliance on nuclear weapons

for purposes of threat or use is a gross form of illegality and a crime against humanity in the Nuremburg sense. The work of the organisations sponsoring this meeting on the World Court Project has contributed to building this consensus. I want to mention the heroic efforts of Judge Harold Evans of New Zealand, who has for so many years tirelessly campaigned for recourse to the World Court as part of the effort to get rid of nuclear weapons and whose health prevents him from being here with us in Geneva. I would also acknowledge the extraordinary contributions of Sean McBride, whose central preoccupation in his work as President of the IPB and with IALANA in the closing years of his life was a dedication to incorporating this consensus on illegality into a binding treaty of prohibition. It was a conclusion that he helped form and reach on the basis of the exhaustive testimony presented to the London Nuclear Warfare Tribunal in 1985.

It is the conclusion that has been repeatedly affirmed by the great majority of governments in a series of General Assembly resolutions spanning the period from 1961 to 1991. Even the General Assembly, the principal framework for the governments of the world, has now been on record for several years, not only in support of the proposition that nuclear weapons and their threat is a violation of international law and a crime against humanity, but they also have been on record as calling for the drafting and negotiation of a treaty of prohibition. It is against this background that one has to understand this World Court Project. Such a consensus reflects the careful attempt to apply the law of war to the question of nuclear weaponry. As all those who have looked at this issue over the years agree, nuclear weapons and their threats violate all 7 major principles of the law of war and do so flagrantly. Let me just mention these 7 principles as a kind of grounding for the claim that these weapons are illegal and criminal:

International law prohibits weapons and tactics that:

- cause unnecessary suffering and aggravated harm;
 - do not discriminate between civilian and military targets and personnel;
 - cause disproportionate damage;
 - produce poisonous results or cause genetic damage;
 - cause widespread, longterm and severe environmental damage;
 - violate the rights of neutral countries;
- or
- produce genocidal effects or violate the Nuremburg Principles.

The way nuclear weapons have been used and are conceived is flagrantly contradictory to all 7 of these principles.

So it may be asked: why is it necessary to go beyond this? We have a clear sense of what international law forbids, and the General Assembly of the UN endorses this understanding. Why then in particular seek an Advisory Opinion from the World Court? The answer is that the struggle against nuclearism is itself a political process that must go through many stages. The General Assembly resolutions can be disregarded by the nuclear weapons States as mere recommendations of a political or moral character. They can be said to have no binding force in law. It is not quite so easy with the World Court. It is the highest judicial body in the UN system, its judges are among the most respected specialists in international law, and have an unquestioned competence to pass judgment on the legal character of nuclear weaponry.

But it can also be said that even a favourable Advisory Opinion lacks a binding quality, that it is, as its name implies, advisory. The US has had little hesitation about rejecting even a World Court decision, in the Nicaragua case, that was a binding decision; and would, it could be argued, pay little heed to a mere Advisory Opinion bearing on nuclear weapons policy. With all the pressure exerted by the US within the UN system at this time, can we be

sure that the World Court would decide against the legality of these weapons? Would not the US and its NATO friends exert tremendous pressure? We must ask all these questions, as part of our understanding of why it is still more than desirable, but necessary, to go ahead at this time.

The reason to go ahead is that a favourable Advisory Opinion is very likely to result - because the law is so clear that professional international jurists could not retain their own professional self-respect if they were faced with these questions and did not decide them in accordance with a tradition that is this clear. So it is quite reasonable to anticipate a favourable outcome, despite political pressures, if an Advisory Opinion was sought. But what is most important is that it would have a mobilising effect on public efforts throughout the world to bring pressure to bear on the nuclear issue. It would move us confidently on to subsequent stages in the struggle against nuclearism. It would move us towards the insistence on a treaty regime of prohibition and on a process of nuclear disarmament that would finally carry the prohibition into effective behavioural norms. It would also allow organisations like IALANA, IPPNW and IPB to mount pressure on governments in nuclear countries and to be more effective in non-proliferation contexts and in relation to chemical and biological weapons.

The Work of IALANA

Stig Gustafsson, Co-President, Sweden

It is a great pleasure and honour for me to be here today on this great day for IPB - to greet you and have the possibility to tell you something of the work of IALANA.

No matter where the world, jurists cannot afford to remain simple spectators wherever the principles of international law are transgressed. Jurists cannot remain silent when law requires that they speak out on its behalf.

With the end of the Cold War and the dissolution of the Soviet Union there is no strategic excuse by way of 'defensive necessity' left to resist or ignore the indictment of nuclear weapons as illegal and criminal. To insist, as the nuclear weapons states do, on retaining this arsenal, and on seeking to develop ever-more advanced systems, is to be caught up in a vicious cycle of militarism.

As lawyers and citizens we must refuse to be silent or ignore the persistent dangers of nuclear weapons. The developments of the last 5 years demonstrate our inability to anticipate the twists and turns of history. The next 5 years could produce many unpleasant surprises: civil war in the former Soviet Union, regional war in the Indian sub-continent; renewed war in the Middle East, related to the spread of Islam, to oil or water, or to the security of Israel.

We cannot assume that nuclear weapons will sit in their arsenals and rot. We need to join forces and mount a campaign to rid humanity once and for all of this nightmare weaponry. To proceed with the Advisory Opinion would be a crucial contribution to these results. It is a most realistic project of the groups sponsoring this conference; and it is a most necessary part of the human struggle of the peoples of the world to bring enough pressure on governments to end this curse of nuclearism while there is still time.

Already in the New York Anti-Nuclear Declaration of 1987 - which also was the beginning of the formation of IALANA - it is said that the use or threatened use of nuclear weapons would violate existing international law and constitute a severe crime against humanity. During the last 45 years it has been our common fate to live under the nuclear threat, under the risk of total destruction of civilized life on earth.

Lawyers have begun to apprehend that they have an important task within the movement for nuclear disarmament. The great inspirer for us lawyers was Sean MacBride, the Nobel Laureate and Foreign Minister of Ireland. He succeeded in obtaining the signatures of thousands of leading international figures to his International Appeal called "Lawyers Against Nuclear War". He also took the initiative to the London Nuclear Warfare Tribunal in January 1985 which was an examination of the legality of nuclear weapons.

Lawyers have now established organizations against nuclear war and for nuclear disarmament all over the world. When we announced the formation of a worldwide Association of Lawyers against Nuclear Arms, the IALANA, in April 1988 in Stockholm, we also agreed that the organization should be guided by the following principles, which also are to be found in the preamble to our statutes:

* that nuclear war would destroy life as we know it, and is therefore contrary to the most basic of human rights, the right to life;

* that the use or threatened use of nuclear weapons violates existing international law and constitutes a crime against humanity and against peace;

* that because nuclear war is the ultimate negation of the rule of law, lawyers have a special responsibility to prevent nuclear war and to enforce, develop and strengthen the international legal order.

The most important task that IALANA has to fulfil is to mobilize lawyers, teachers of law and judges throughout the world to join in the struggle against nuclear weapons, both as citizens and on the basis of their professional capacity. A gathering like this is extremely important also in the work of raising legal consciousness.

What can lawyers do? Let us see what IALANA has done since it was formed in 1988:

SUMMARY OF IALANA ACTIVITIES from 1988

April 8-9 1988

Inaugural meeting and foundation of the International Association of Lawyers Against Nuclear Arms (IALANA) in Stockholm, Sweden

22-24 September 1989

First World Congress in the Hague, Netherlands. More than 20 lawyers from 30 different countries all over the world attended. The most important document from that Congress is the Hague Declaration.

In that declaration IALANA among other things invited lawyers throughout the world to sensitize "the public conscience" to the incompatibility of nuclear weapons with international law and to utilize their legal processes to build up a body of law dealing with various aspects of the problem.

More specially, IALANA appealed to the Governments of all States members of the United Nations to take immediate steps towards obtaining a resolution in accordance with the United Nations Charter, requesting the International Court of Justice to render an advisory opinion on the illegality of the use of nuclear weapons; thus foreshadowing our World Court Project together with IPB and IPPNW.

August 1990

The publication of brochure "Nuclear Arms and the Law".

Over the year we also arranged or sponsored several international seminars, among them the Right to Refuse Military Orders, organized by the Peace Union of Finland and the Finnish Lawyers for Peace, held in Helsinki, Finland.

November 2-4 1990

IALANA co-sponsored together with our German section the International Colloquium, "Nuclear Weapons in a Changing World - Policy and Legal issues", held in Berlin, attended by 140 lawyers.

May 1991

Regional meeting with W. European affiliates in Amsterdam on the specific topic of developments regarding the Partial Test Ban Treaty (PTBT) and the Non Proliferation Treaty (NPT).

January 1992

IALANA's Second General Assembly was held in Amsterdam. Adoption of 2 major projects:

(1) the campaign to obtain an advisory opinion from the International Court of Justice on the legal status of the use and threat of use of nuclear weapons;

(2) a Draft Treaty on the Monitoring, Reduction and Ultimate Abolition of the International Arms Trade, prepared by IALANA's US affiliate, the Lawyers Committee on Nuclear Policy (LCNP).

May 12 1992

A conference in Helsinki entitled "Nuclear Weapons in Europe", organized by IALANA, Finnish Lawyers for Peace and Survival and Swedish, Lawyers Against Nuclear War. This was part of the NGO programme at the CSCE Follow-Up Meeting.

In September this year, we will have a colloquium in Stockholm, "Saving the NPT and Abolishing Nuclear Weapons" as a preparation for the IALANA stand on the crucial NPT Extension Conference in 1995.

IALANA has also over the years adopted several important resolutions.

Nuclear weapons are not only incompatible with the fundamental rules of international law and principles of elementary morality; they are also deeply subversive of the traditions and structure of democratic society. When our national security rests upon a logic that has the potential for destroying our population, democracy no longer exists.

Without question the prevention of nuclear war is the imperative of our time. Yet, simply to declare the use of nuclear weapons illegal under international law is not sufficient. Such a legal declaration alone will not protect the world from nuclear devastation.

Our duty is to react against the present role of law. The legal profession should organize to point out clearly:

1. That the failure of the present legal system is not due to the non-existence of norms and principles, but

to an anachronistic policy which is consistent with the spirit of the nuclear era. Today, mankind is faced with just one rational option. The solution of the problem facing humanity is inconceivable without legality, without respect for the fundamental principles of international law.

2. That the technological revolution requires a new vision - there must be radical improvement of the present international legal system. Many of the existing rules are not adequate in present-day conditions. But I believe that "law is originally and ultimately not so much a body of legal rules as a body of legal principles", as rightly maintained by Lauterpacht 50 years ago.

There is one special aspect of the problem that should be mentioned. The growing indignation about the ever-more disastrous consequences of the arms race wipes out the distinction between the law as it stands (de lege lata) and the law as it should be (de lege ferenda). This trend has already reached such a degree of development that it ought to be considered as a first stage in forming new customary law that might be called the natural trend has not been examined with sufficient rigour and creativity.

Already President Truman said in his last State of the Union message, following the first hydrogen bomb test, "From now on, man moves into a new era of destructive power....The war of the future would be one in which man could extinguish millions of lives at one blow, demolish the great cities of the world, wipe out the cultural achievements of the past and destroy the very structure of a civilization that was slowly and painfully built through hundreds of generations. Such a war is not a possible policy for rational men".

Presidents Reagan and Gorbachev in Reykjavik stated that "a nuclear war cannot be won and must never be fought". Those are almost exactly the words of Olof Palme in the report of his Commission on Disarmament and Security Issues. Now all nuclear powers must show the world that they take seriously the implications of these words. They must continue on the road to nuclear disarmament.

At the very beginning of the nuclear weapon era, two giants of physics - Albert Einstein and Neils Bohr - made some simple but still profound remarks on the nuclear problem. Einstein said: "The unleashed power of the atom has changed everything except our way of thinking - and thus we are drifting towards a catastrophe beyond conception". He clearly urges us to radically re-think all previous ideas on international politics and military strategies in the shadow of the bomb. Applied to the present-day situation with huge nuclear arsenals, I would translate Einstein's warning into the two words: Common Security. It is no longer possible for any country to increase its individual security at the expense of others. The overall stability of the global system becomes the main concern. If one or the other tries to gain strategic superiority,

The work of IPPNW

Dr Robin Briant, IPPNW, Aotearoa/New Zealand branch

It is my pleasure and honour to speak for IPPNW at this important seminar launching the World Court Project. First I take time to congratulate the International Peace Bureau on its 100 years of existence and achievement; you can now claim senior citizen status. Compared to that, our fellow sponsors IALANA are but infants in napkins. To continue the metaphor IPPNW is an adolescent. This organization was conceived across cultural and political barriers, born into turmoil, had rapid growth and development in its early childhood and is now into adolescence which may well be stormy. Its 10th Anniversary Congress was held last year in Stockholm.

I recognize the many World Court Project workers from all peace fellowships around the world, and pay tribute to grassroots workers in peace and development.

We are here to look for new ways to address a 47-year-old problem. Nuclear danger has not diminished in that time but it has changed, with the end of the Cold War, instability in the previous Soviet States, and an axis shift in world tension to North-South. There are major difficulties with this and similar campaigns, and

the result will be a destabilization of the system, and you end up by reducing your own safety. What matters is to reduce the overall risk of nuclear war - any step we take must be considered in this light.

With the end of the Cold War, it is hard to construct even a semi-plausible military threat to the United States or to Europe west of the old Soviet border in the immediate future. As General Colin Powell, Chairman of the Joint Chiefs of Staffs of the US Army remarked: "I'm running out of demons, I'm running out of villains. I'm down to Castro and Kim Il Sung". If this is so, it is reasonable to ask: what role will the military in general, and nuclear weapons in particular, play in the emerging world order?

they include the invisibility of nuclear weapons. It is hard to confront what you cannot see or feel. As well it is hard to deal with the propaganda that insists the problem is solved.

There are common threads in the wide diversity of people who are here today, people with multiple skills and interests, but a shared connection through the World Court Project.

Let us look for a moment at those three words separately: World, Court and Project. I will begin with Court; but as a simple physician I don't really have to address that at all. All I want to say is that whilst getting to Court is our aim, it is not necessarily our most important outcome. We must not lose heart when we are deflected from our intent, as undoubtedly we will be from time to time.

World: This reminds us of the global involvement in this project, in the value of working together, sharing our talents and raising the consciousness of other people. When we get to Court, the Court will know that millions of people are waiting for the result and that the sheer numbers of

us and our involvement, add weight to their legal judgement. So the process is as important as the outcome and may indeed suffice ultimately (if we never get to the Court) by convincing the nuclear powers of the people's will.

Project: A project is an undertaking, a proposal with action. It is a campaign, not an organization. The World Court Project will be the coordination of the activity of many groups and individuals welded together to give strength but in a way that allows flexibility. We cannot cement ourselves into a solid lump for then we could not withstand the moving and changing landscape in which we will be working. Our project must be able to respond to what I am sure will be many changes in world happenings. To seek unanimity would be self-defeating. Unanimity implies there is only one right route through this uncharted terrain. The diversity we bring confirms otherwise. We must concentrate on what holds us together, not what might drag us apart.

IPPNW (New Zealand) and the World Court Project have been linked together for some years. For us in New Zealand it was the one-man campaign of Harold Evans which caught our attention. Our affiliate took action through the General Assembly. When that failed we took the matter to our International Congress in Montreal in 1988 and again in Stockholm in 1991. I can say that IPPNW affiliates are 100% supportive of World Court referral, as evidenced by their voting patterns on these occasions.

But every cause needs a champion and Erich Geiringer has become our champion, ably assisted by Katrina Bassett and by Michael Christ in the Boston office. Erich has clarified our thinking and articulated the issues in a way that we can all understand. He has led us logically on to our first assault on the World Health Organization. In this the work was spearheaded by Dr. Ann-Marie Jansen, a Swedish IPPNW doctor, and our official liaison with WHO, and Dr. George Salmond, a New Zealand IPPNW doctor, previously our Director-General of Health. Both have a lot of experience working in the WHO, and know the way the Assembly functions and know many delegations. Their inside knowledge was invaluable in this whole scheme.

I would like now to discuss briefly why we suggested the question we suggested, and what happened when we did. The word 'suggest' is used wisely, for that is all we can do. The question must ultimately be asked by a UN Agency, and so it is their question.

As to the question, our view has been argued expertly by Erich in one of his discussion papers. I paraphrase it: "if you ask a simple question you get a simple answer". The question has to be relevant to the organ of the UN that is asking it. IPPNW was established because of the recognition that the medical effects of nuclear weapons explosions are simply not able to be managed, and nuclear war is the greatest threat to human health. WHO has a mission to promote and maintain human health, especially public health. In 1984 and 1987 WHO has published reports on the health effects of nuclear war, acknowledging this as a great threat to human health. But one doesn't need a medical degree to know that. A simple glance back at Hiroshima and Nagasaki confirms the devastating health consequences of nuclear weapons explosions. We therefore suggested that WHO be asked about the illegality of use of nuclear weapons in view of their serious health and environmental effects.

The question asked needs to offer the Court the best opportunity to give us the answer we want. The answer must benefit the cause of disarmament and not set it back. Thus even if the answer is adverse it must be able to be exploited.

What we want is a simple yes or no. 'Maybe' is not good enough.

So what happened to our question at the 45th World Health Assembly still concluding in this building today? I will not dwell on the WHO process. Like all such organizations its rules are complicated and can be used to stop good ideas. A full report on what happened will be prepared and distributed to you all.

A resolution (Appendix 1) on the question of the use of nuclear weapons related to health and environment was filed by the Colombian Health Minister and co-sponsored by 14 countries, mostly from Africa, South and Central America, plus Tonga and Belarus.

A major counter-offensive was launched immediately by the USA, ably assisted by the Western bloc. Using the rules of WHO the resolution was buried without trace, never to be debated at this 45th Assembly. The grounds were that this is a political, not a health question and the WHO is not competent to address it.

In our reconstruction of this private assassination of the resolution, we found that only 6 delegates voted against the hearing of this resolution, three voted for its hearing, but most of the Committee stayed silent and abstained (16). The US has many past favours to call up and future hopes to dash. For now she gets her own way. But doctors are nothing if not optimists and we can always snatch victory from the jaws of death.

We have learned much from this exercise: about the workings of the WHO, about our opposition and who our friends are. The consciousness of the WHA on this issue was raised manyfold by the work done. And the resolution was not lost, simply sidelined. We can return to argue it another day.

There is an urgency however in this matter. Most UN bodies meet only annually and are ponderous. We must gather our strength again for another try. The urgency lies predominantly in the matter of the horizontal proliferation of nuclear weapons. At the stroke of a pen on Christmas Day 1991 five nuclear weapons states became eight with the redistribution of the Soviet weapons of mass destruction and a new big five appears. (Figure 1).

Rumour has it that three Kazakh bombs may be missing from their inventory and could have been sold to Iran or Syria. The newly independent states of the previous Soviet Union are poor in all urgently needed resources, and

their nuclear hardware or technology may well become their most important currency as we head to the year 2000 - bombs for bread and butter, to slightly rewrite an old 2nd World War slogan.

Probably eight more nuclear weapon states are at or near nuclear capability, giving us now a total of 16. I have drawn the increasing number of states with nuclear weapons

NUCLEAR WEAPONS IN THE STOCKPILES OF THE TOP 5 NUCLEAR POWERS

as of JANUARY 1991		as of JANUARY 1992	
U.S.S.R.	29,000	U.S.	20,000
U.S.	20,000	Russia	19,775
France	600	Ukraine	3,950
China	500	Kazakhstan	1,800
U.K.	300	Belarus	1,220

Source: National Resources Defense Council

Fig. 1

on this time line, and whilst it is not exactly accurate, I think it demonstrates the fact that the we appear to be on the exponential part of the growth curve and you can see where it is heading (Figure 2).

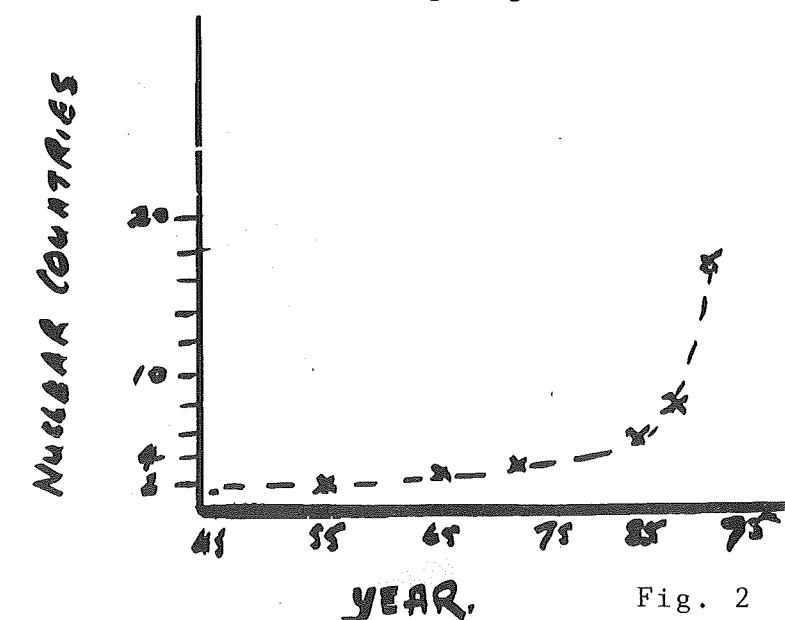


Fig. 2

But there is also the urgency related to the Nuclear Non-Proliferation Treaty which is due for its Extension Conference in 1995. The good faith required of the nuclear weapon states has not been forthcoming for 25 years. This dangerous double standard is, at least for the time being, the world order: peace through deterrence for some but not others. We need a non-discriminatory regime to replace the NPT, as a basis for true and lasting disarmament.

What about enforcement? The World Court does not have the ability to impose sanctions, though the use of nuclear weapons has some inherent sanction, you might say. In Stockholm in 1991 IPPNW (NZ) proposed that, as a necessary consequence of an illegality ruling, we should work towards the development of a control agency to implement the ban. This foreshadowed an international agency set up by the UN to oversee destruction of nuclear weapons and prevent further manufacture.

You will see that this agency is supported by IPPNW in its mission for total abolition of nuclear weapons. All our routes to this are supported by an International Control Agency for nuclear weapons. (Figure 3). Reading the Herald Tribune on my travels I saw a report of near agreement between Russia and the US on the means of controlling chemical and biological weapons, with a massive inspection and control agency as its base. If it's good enough for chemical weapons it's certainly good enough for nukes.

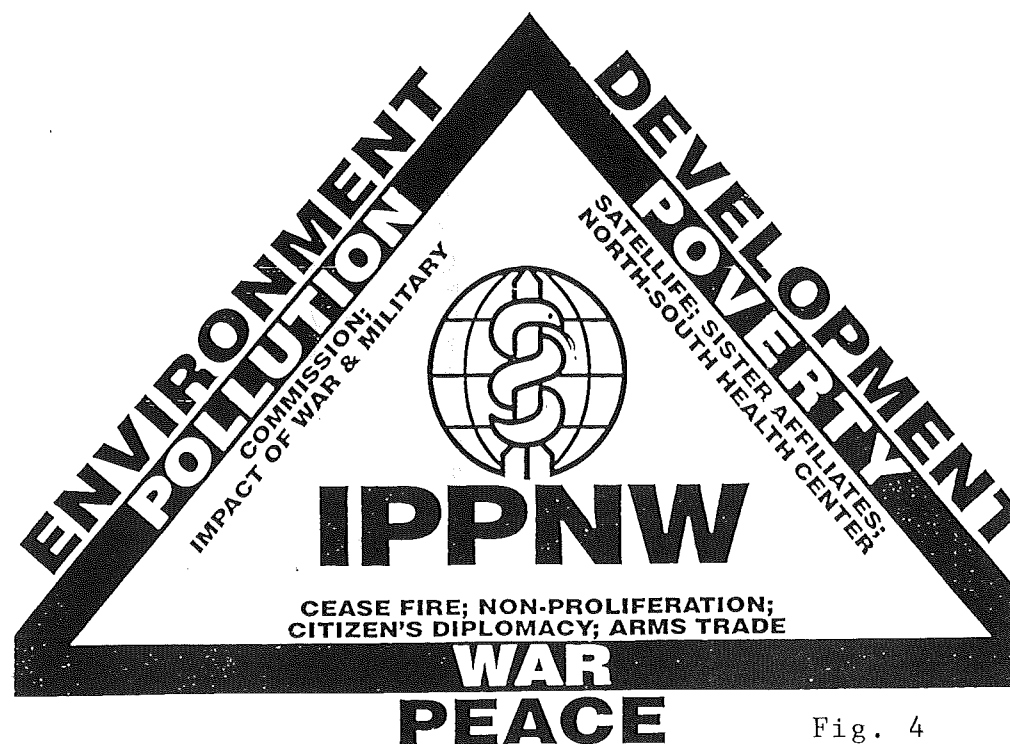


Fig. 4

The Mission of IPPNW

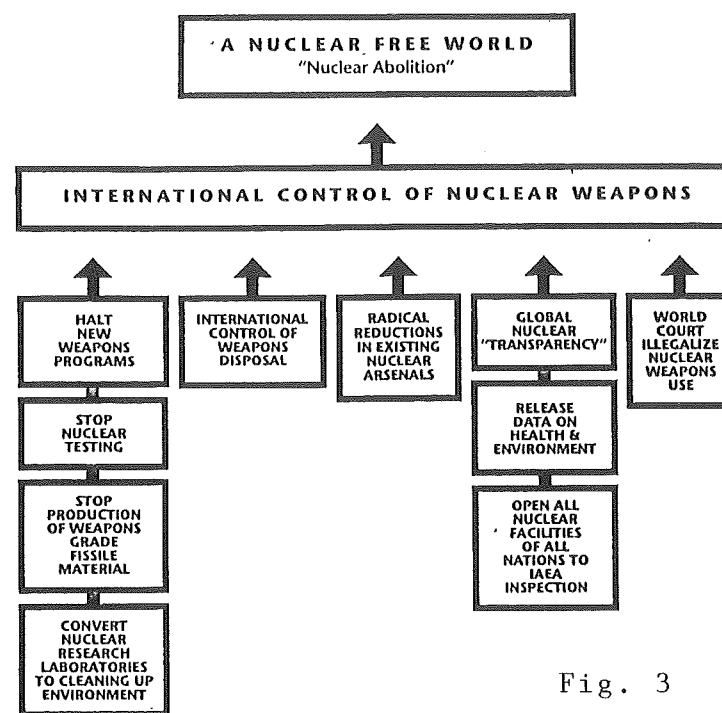


Fig. 3

How does the World Court Project fit with the work of IPPNW? Well it certainly interlocks with our fundamental aim of abolition of nuclear weapons, and is in concert with all our other programmes. Figure 4 shows the inter-relationship of IPPNW's activities: against poverty, pollution and war. I will mention just a couple of the programmes to bring them to life. SateLife brings information to the information-deprived health workers of the 3rd World through modern but affordable technology. The Commission which studies and publishes on the health effects of nuclear weapons production

has already done its first book on the effects of nuclear testing. It is currently working on an Atomic Atlas and on the issues of waste disposal. The Citizen Diplomacy programme was extended in 1992 to incorporate visits to the political leaders of the four new nuclear weapon States of the former Soviet Union. IPPNW doctors from five countries visited them, providing a briefing book in Russian and English which described the medical dangers of nuclear weapons and brought messages from the people of Hiroshima and Nagasaki. The politicians were educated on their responsibilities now they have control over nuclear weapons, and the disaster potential of their arsenal.

The group brought back disturbing news that I will share you with you briefly:

* The four republics are not in agreement about the position and control of the nuclear arsenal of the former Soviet Union.

* Kazakhstan will keep her nuclear weapons meantime and disarm only as other nuclear weapons states do.

* Ukraine and Belarus will allow their weapons to be removed from the territory only if there are guarantees that they will be dismantled and not re-deployed, and the money available for dismantling is small.

* The Russian military-industrial complex remains extremely powerful.

* After the expiry of the October moratorium on testing it is expected that Russia will recommence nuclear weapons tests at Novaya Zemlya.

* It is understood that the US President Bush and Russian President Yeltsin have reached a mutual understanding on two to four Russian tests per year.

Finally I would like to ask the question: what does the world want in the way of disarmament? Obviously I can't answer for the whole world but I can show you some information about the world's views as reflected in the United Nations General Assembly disarmament voting of 1991. For this bar graph I am indebted to PeaceLink Magazine of Aotearoa (Figure 5). This graph was constructed to show the voting patterns of all States, voting on the 17 disarmament resolutions in 1991.

The 66 countries on the left, who voted 100% for the 17 disarmament resolutions, are all 3rd World countries. The next 52 countries, who voted for 90% of the disarmament resolutions, are all 3rd World countries except the Ukraine. There is a bundle in the middle, which includes New Zealand, Australia, Canada and China, who have patchy record but still voted for more than half of the disarmament resolutions. The extreme right shows the 25 countries who voted for less than half, or even voted against several resolutions; all are European powers, plus the US and Israel.

So I conclude that the world wants disarmament, its about time we got it.

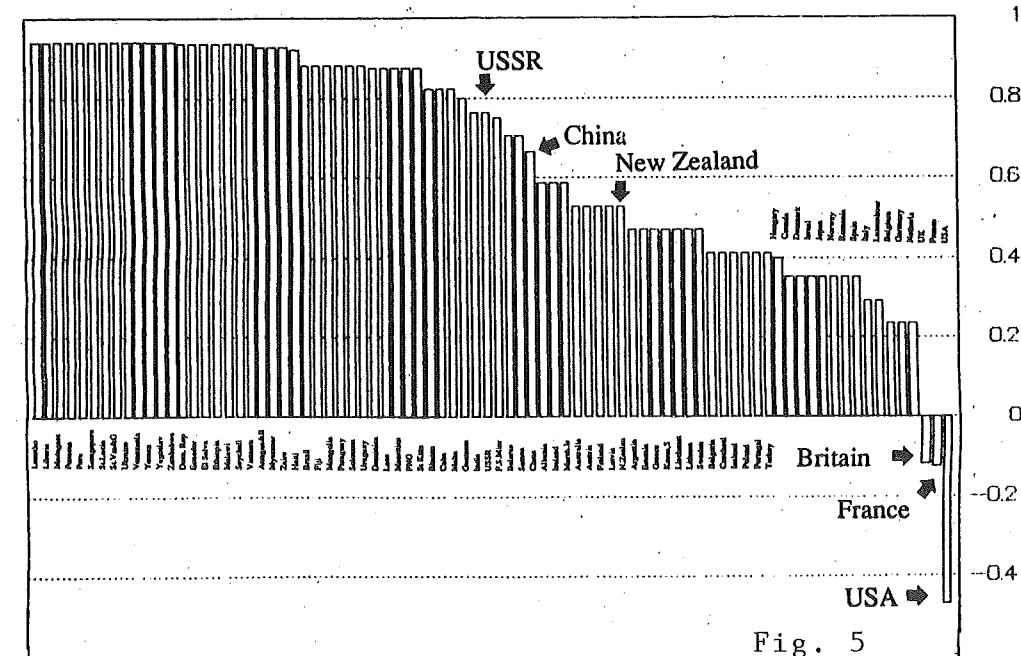


Fig. 5



FORTY-FIFTH WORLD HEALTH ASSEMBLY

Agenda item 20.1¹

HEALTH AND ENVIRONMENTAL EFFECTS OF NUCLEAR WEAPONS

Draft resolution proposed by the delegations of Belarus,
Colombia, Costa Rica, El Salvador, Honduras, Kenya, Namibia, Nicaragua,
Nigeria, Panama, Senegal, Swaziland, Tonga and Zimbabwe

The Forty-fifth World Health Assembly,

Bearing in mind the principles for health laid down in the WHO Constitution;

Taking account of the framework for new public health action presented by the Director-General to the Executive Board at its eighty-ninth session;²

Recalling resolutions WHA34.38, WHA36.28 and resolution WHA40.24, on the effects of nuclear war on health and health services, and recognizing that it has been established that no health service in the world can alleviate in any significant way a situation resulting from the use of even a single nuclear weapon;³

Recalling resolution WHA42.26 on the close link between health and environmental degradation and recognizing the short- and long-term environmental consequences of the use of nuclear weapons, which will be injurious to human health for generations;

Appreciating recent efforts to reduce the number of nuclear warheads, while noting that these weapons still exist in vast numbers, posing a serious threat to life and health;

Noting the concern of the world health community about the acute danger of nuclear proliferation, the control of existing nuclear stockpiles and the increased access of nations to nuclear weapons technology and expertise, thus increasing the risks to health and undermining the efforts of WHO and its Member States to achieve health for all;

Recalling that WHO has concluded that primary prevention is the only appropriate means of management of the health and environmental effects of the use of nuclear weapons;

Recognizing that the regulatory processes needed for primary prevention of the health hazards of nuclear weapons cannot be formulated without a clear determination of the legal status of the use of these weapons;

REQUESTS the Director-General:

(1) to refer the matter to the Executive Board to study and formulate a request for an advisory opinion from the International Court of Justice on the status in international law of the use of nuclear weapons in view of their serious effects on health and environment;

(2) to report back to the Forty-sixth World Health Assembly.

¹ Provisional pending the decision of the General Committee concerning the most appropriate agenda item under which to consider this resolution.

² Document EB89/1992/REC/1 Annex 9.

³ See *Effects of nuclear war on health and health services* (Second edition). Geneva, World Health Organization, 1987.

The Status of Nuclear Warfare under International Law: The Argument in Humanitarian, Environmental & Human Rights Law

Justice P.N. Bhagwati, India

Nuclear weapons are a serious threat to the survival of humanity. Never before in history has mankind faced a situation where its extinction is threatened by the very instruments of destruction designed and fashioned by it. Some nuclear states believe that nuclear war can be prevented by mutual deterrence or the mutual threat of use of nuclear weapons, but the foundations of peace cannot be made to rest on a precarious balance of terror. Humanity cannot live constantly on the edge of a precipice where at any moment it might be plunged into the abyss of death and destruction. The world must be made a safe place where mankind can live in peace without distrust and suspicion, and the race for new and sophisticated nuclear weaponry must be brought to a halt. The elimination of the danger of use of nuclear weapons has become a pressing necessity and a moral compulsion.

The launching of the World Court Project has therefore not come a day too soon, for it is only by a legal declaration of illegality of nuclear weapons that we shall be able to rid the world of nuclear weapons and establish a non-discriminatory legal norm. Applicable alike to nuclear and non-nuclear states, it would strike at what Prof. Richard Falk aptly described as 'nuclear apartheid' and would exert pressure on nuclear weapons countries to abandon their attitude of arrogance.

Now it is no doubt true that there is no express specific prohibition in any international treaty or convention banning the use of nuclear weapons. But there are existing customary and treaty rules which clearly indicate that having regard to the concrete effects which inevitably would result from the use of nuclear weapons, their use must be regarded as illegal. It is necessary in this connection to refer to the de Martens Clause. The Hague Convention IV, Respecting the Laws and Customs of War on Land, signed on 18th October

1907, included a general purpose 'catch-all' clause suggested by a leading member of the Russian delegation after whom it has been informally named. This clause in the Preamble to the Hague Convention of 1907 provided:

"Until a more complete code of the laws of war has been issued, the high contracting parties deem it expedient to declare that, in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection and the rule of the principles of the law of nations, as they result from the usages established amongst civilized peoples from the laws of humanity and the dictates of the public conscience."

This clause was relied on in post World War II war crimes tribunals, including the Krupp Trial where it was described as much more than a "pious declaration", but rather "the legal yardstick to be applied if and when the provisions of the Convention.... do not cover specific cases occurring in warfare". A similar clause was adopted in the Additional Protocol I to the Geneva Conventions of 12th August 1949 signed on 12 December 1977, where it was stated in clause 2 of article 1:

"In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established customs, from the principles of humanity and from the dictates of the public conscience".

It is evident from the countless declarations and resolutions passed by various international organizations which reflect expressions of public conscience, that the use of nuclear weapons is contrary to the principles of humanity and the dictates of public conscience. I refer to UN Resolution

1653 of 1961 which inter alia declared, with only 20 votes against:

(a) The use of nuclear weapons is contrary to the spirit, letter and aims of the UN and as such, a direct violation of the Charter of the UN;

(b) (Their use) would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind and civilization and as such, is contrary to the rules of international laws of humanity".

This is the voice of the conscience of the international community. Then, the Resolution proceeds to declare:

(c) (Their use) is in a war directed not against an enemy or enemies alone but also against mankind in general;

(d) Any state using them is to be considered to violate the Charter of the UN, to act contrary to the laws of humanity and to commit a crime against mankind and its civilization".

This unequivocal condemnation of nuclear weapons was reiterated and reaffirmed in UN Resolution 2936 of 1972. This was again reaffirmed in UN Resolution 75/38 of 1983 which resolutely, unconditionally and for all time, condemned nuclear as being "contrary to human conscience and reason, as the most monstrous crime against people and as a violation of the foremost human right - the right to life". An earlier UN Resolution 808(IX) adopted unanimously as one of the three points of a co-ordinated programme of disarmament "the total prohibition of the use and manufacture of nuclear weapons and the weapons of mass destruction of every type".

A series of Resolutions, originally tabled by India and resubmitted throughout the 1980s with increasing majorities and culminating in the UN Resolution 42/390 of 1987, reaffirmed "that the use of nuclear weapons would be a violation of the Charter of the United Nations and a crime against humanity" and called for negotiations

with a view to prohibiting the use or threat of use of nuclear weapons under any circumstances. It is significant to note that even those States which possess nuclear devices have accepted to have their hands tied through a host of legally-binding instruments such as, for example, the Treaty for the Prohibition of the Emplacement of Nuclear Weapons and other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof, and the Outer Space Treaty of 1967.

These instruments recognize the massive, widespread and indiscriminate character of the destructive effect of nuclear weapons and, therefore, prohibit their use in certain areas. These declarations, resolutions and treaties provide the clearest evidence that, according to the world community - at any rate, according to the vast majority of people inhabiting the globe - nuclear weapons are a threat to the survival of humanity and their use would be contrary to the laws of humanity and the dictates of public conscience.

This proposition may be reinforced by the following passage from Dr. Nagendra Singh's "Nuclear Weapons and International Law" where the learned author says:

"A careful study of the consequences of the use of nuclear weapons reveals that in the indiscriminate nature of the devastation involving innocent neutrals and civilians of both belligerents, as well as the generally uncontrolled character of their destructive effects, these would appear to disregard the laws of humanity..... and the inhuman destruction they cause would make them fall outside the "dictates of public conscience".

The use of nuclear weapons can also be looked at from another point of view. The first and foremost basic principle of civilized warfare and the fountain

source of all rules and customs of war, is embodied in Article 22 of the Regulations annexed to the Hague Convention IV of 1907:

"The right of belligerents to adopt means of injuring the enemy is not unlimited".

So also Article 35 of the Additional Protocol I to the Geneva Convention of 12th August 1949 provides in clause 1:

"In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited".

This rule owes its origin to the principle that the recognized purpose of war is to weaken the military forces of the enemy and to overpower the enemy and not to destroy him altogether. The Preamble to the Declaration of St. Petersburg, 1868, states:

"That the only legitimate object which states should endeavour to accomplish during the war is to weaken the military forces of the enemy".

The methods or means of warfare adopted by a belligerent State must, therefore, be limited by the legitimate object of over-powering the enemy and must not exceed that object. The use of nuclear weapons, because of the vast area of indiscriminate destruction and the lingering lethal effects of radiation, would clearly constitute unlimited force used irrespective of, and unrestricted by, considerations of overpowering the enemy and it would convert the recognized purpose of war into complete destruction of the enemy. It is evident that in the light of the massive destructive effect of the use of nuclear weapons and particularly the area of devastation from radioactive fall-out with its unpredictable genetic effects, it cannot be said that a belligerent State in resorting to nuclear weapons would be adopting means of injuring the enemy which were

limited in any sense of the word. A broad line of distinction must be drawn between the nature and scope of destruction which could be regarded as permissible as being consistent with the legitimate object of overpowering the enemy, and that which could be characterized as excessive and unnecessarily destructive. The use of nuclear weapons clearly comes into the latter category.

This recognition of the limitation on the use of force has given rise to several other general principles which have found their place in some of the Conventions sponsored by 'civilized nations'. One of these principles relevant to our purpose is the now-accepted conventional rule which prohibits resort to arms or use of ammunitions which cause superfluous injury or unnecessary suffering. Its first enunciation was made in the Preamble to the Declaration of St. Petersburg 1868 where it was stated inter alia:

"This object (i.e. the object sought to be accomplished by war) would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men or render their death inevitable;

"The employment of such arms would therefore, be contrary to the laws of humanity".

This is again the refrain from de Martens' Clause. This principle is also embodied in Clause (e) of Article 23 of the Regulations annexed to the Hague IV Convention 1907 and, so important is this principle in the field of international law, that is reaffirmed once again in Clause 2 of Article 35 of the 1977 Additional Protocol I to the Geneva Conventions of 12th August 1949, in the following words:

"It is prohibited to employ weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering."

It may be noted that the words "weapons, projectiles and material" are wide enough to include all methods by which nuclear weapons could be delivered from land, sea or air and cover any weapon of war calculated to cause unnecessary suffering. There can be no doubt that, apart from the blast and heat effects, the radioactive fall-out and the immediate radiation would cause various kinds of diseases with possibly genetic defects, and physical disorders including cancer resulting in prolonged suffering and slow lingering death. This would bring the use of nuclear weapons into the category of employment of "arms and materials" calculated to cause unnecessary suffering, prohibited by clause (e) of Article 23 of the Regulations annexed to the Hague Convention IV of 1907 and clause 2 of Article 365 of the 1977 Additional Protocol I to the Geneva Conventions of 1949.

The fundamental principle behind these provisions of humanitarian law aims at measuring the illegality of weapons not by the extent of their destructiveness but by the amount of unnecessary suffering caused by their use. It is necessary to bear in mind that any survivors from nuclear assault will not simply be put out of action, but will each day suffer new symptoms of gamma irradiation. These tortures will continue to affect them even when peace has been declared and thus they would be utterly pointless from a military point of view. A comparison of the language of clauses (e) and (g) of Article 23 would show that unnecessary suffering inflicted on combatants and civilians alike cannot be justified even by "the necessities of war". This rule, which was accepted as valid in the pre-nuclear age, does not lose its validity in the nuclear era and must continue to apply to use of nuclear weapons.

I may also refer to the Convention on the Prevention and Punishment of the

Crime of Genocide 1948, which embodies the conventional law on the limitation on the use of force in both peace and war, and which came into force on 12th January 1951. This Convention declares genocide - defined as killing or causing serious bodily or mental harm to members of a group or adopting various measures calculated to destroy a national, ethnical (sic), racial or religious group - to be a crime under international law. It may be argued that the use of nuclear weapons is not prohibited under this Convention because it deals with the destruction of a group as such. But a regular nuclear war with nuclear weapons would be bound to result in slaughter of humanity in certain large territories which would include all kinds of groups and it may be possible to contend that such slaughter by use of nuclear weapons would contravene the provisions of this Convention. The intent can be inferred from the knowledge of the expected consequences of the act.

The most time-honoured prohibition of the subject of weapons and instruments of war relates to the use of poison. It is an ancient and universal customary prohibition. In conventional law, the most positive and clear enactment of this prohibition is to be found in Hague Convention (IV) of 1907 Article 23, clause (a) of the Regulations of which states in unequivocal terms that it is forbidden to employ poison or poisoned weapons. Though Article 2 of the Hague Convention (IV) of 1907 restricts the binding force of the Regulations to a war in which all the belligerents are parties to the Convention, the universally accepted practice of civilized nations has regarded poison as banned and thus, apart from purely conventional law, customary international law would also bar the use in warfare of poisonous substances as not only barbarous, inhuman and uncivilized but also treacherous and hence, it must be regarded as binding on all States. This prohibition also finds a place in the 1925 Geneva

Protocol where it has been stated in the Preamble:

"Whereas the use in war of asphyxiating, poisonous or other gases, and of all the analogous liquids, materials or devices has been justly condemned by the general opinion of the civilized world..."

The 1925 Geneva Protocol has been ratified by all the nuclear States, though with a reservation that they would not be bound by its obligations if the enemy does not respect it. The prohibition against (first) use of poisonous gases or analogous liquids, materials or devices has therefore universal acceptance.

Now it can be hardly be disputed that nuclear weapons are poisonous weapons and that they emit poisonous substances. The term poison covers any substance that when introduced into or absorbed by a living organism destroys life or injures health. Exposure to nuclear radiation, which consists of neutrons and gamma rays, brings about chemical changes in human beings and is destructive of life, and can be legitimately be described as poisonous in that it has the effect of destroying or hampering vital functions of the body and causing cancers, resulting in death by reason of being absorbed into the human body. In fact, radioactive fall-out is described in the U.S. Government's publication 'Atomic Energy' as a "vicious form of poison gas" and it would, in any event, be an analogous material or device having poisonous effect. It may also be noted that the official definition of 'atomic weapon' annexed to the Paris Protocol of 1954, modifying and completing the 1948 Brussels Treaty of Collaboration and Collective Self-Defence setting up the Western European Union, states:

"An atomic weapon is defined as any weapon which contains...radioactive isotopes and which....is capable of mass destruction, mass injury or mass poisoning".

The great majority of jurists have also classed nuclear weapons as being in breach of the poison prohibition. The use of nuclear weapons would thus clearly be illegal as poison-scattering devices.

There is also another ground on which the use of nuclear weapons may be regarded as illegal under customary as well as conventional international law. It has always been regarded as customary international law that the civilian population should not be subject to attacks and that attacks on civilians would be barbaric, inhuman and illegal. The civilian population should not be held hostage and their traditional immunity should be respected. This principle of non-combatant immunity which is well-entrenched in customary law has been reaffirmed on many occasions and in particular in U.N. Resolution 2675 (XXV) of 1970 where it is stated in clear and emphatic terms:

"The General Assembly affirms the following basic principles for the protection of civilian populations in armed conflicts:...In the conduct of military operations, every effort should be made to spare civilian populations from the ravages of war and all necessary precautions should be taken to avoid injury, loss or damage to civilian populations".

But by far the most detailed elaboration of this concept is to be found in the 1977 Additional Protocol I to the Geneva Conventions of 1949:

Article 51 clause 4: Attacks which employ a method or means of combat which cannot be directed at a specific military objective or the effects of which cannot be limited as required by the Protocol, are prohibited as indiscriminate.

Article 51 clause 5: Attacks which may be expected to cause incidental loss of civilian life, injury to civilians which would be

excessive in relation to the concrete and direct military advantage anticipated, are outlawed as indiscriminate.

So also article 57 of the Additional Protocol provides in clauses 1 and 2 that:

"In the conduct of military operations, constant care shall be taken to spare the civilian population" and "those who plan or decide upon an attack shall take all feasible precautions in the choice of means and methods of attacks with a view to avoiding and in any event, minimizing, incidental loss of civilian life".

This being the position in customary as well as conventional international law, it is impossible to envisage any use of nuclear weapons which would not cause unlimited and excessive injury to the civilian population. Once the factor of radioactive fall-out is taken into account, it is obvious that the use of nuclear devices would cause devastatingly excessive harm to civilians, through long-term diffusion of long-lasting isotopes in the atmosphere and food-chains of the world. It would produce genetic malformations and affect the lives of future generations. Can such inter-generational damage be permitted to be caused by the use of nuclear weapons, however militarily focussed and vital such use may appear to be? Western legal concepts are tailored only to the needs and desires of the current generations but in the countries of the East, as pointed out by Prof. Weeramantry,

"The community participating in the legal system is thought of as being not only the living but those who have gone before and also those who are yet to come".

The health and well-being of unborn future generations would be affected by reason of the genetic defects engendered by the radioactive fall-

out from the use of nuclear weapons. That can be justified only on the basis of 'this-generational chauvinism' and would manifestly inflict recklessly excessive harm on the civilian population. When nuclear weapons are used, damage to civilians in this generation and succeeding generations is bound to occur inevitably and inexorably, however precise the improved aiming techniques. Such damage, being an inevitable consequence of the use of nuclear weapons, cannot possibly be justified as incidental to it.

I would also make reference to Geneva Convention (IV) of 1949 which seeks to ensure protection of the civilian population in terms of war. Article 13 which occurs in Part II provides that the provisions of that Part cover the whole of the populations of the countries in conflict without any distinctions whatsoever, and are intended to alleviate the sufferings caused by war. Article 16 enjoins that the wounded and the sick as well as the infirm and expectant mothers, shall be the object of the particular protection and respect; and Article 20 extends this protection to persons regularly and solely engaged in the operation and administration of civilian hospitals. Article 147 in Part IV defines grave breaches as including inter alia acts such as wilful killing, torture or inhumane treatment or wilfully causing great suffering or serious injury to body or health of persons protected under the Convention. Can it be suggested for a moment that the use of nuclear weapons would not kill or cause torture or serious injury to body and health of the infirm and pregnant mothers? Pregnant women and their foetuses as also the infirm would be particularly vulnerable to the effects of gamma radiation and to the radioactive fall-out carried in winds, food-chains and reproductive cells for long years. The use of nuclear weapons, even on isolated battlefields, would cause death, torture or in any event, serious injury to the body and health

of this category of protected person. It would, therefore, be highly arguable that Geneva Convention IV of 1949 can also be regarded as prohibiting the use of nuclear weapons.

I will now attempt to demonstrate the illegality of use of nuclear weapons from the environmental point of view. I first refer to the 1963 Nuclear Test Ban Treaty. The Preamble to this Treaty expresses the desire "to put an end to the contamination of man's natural environment by radioactive substances". The Parties undertake under Article 1:

"to prohibit, prevent and not to carry-out (or cause or encourage) any nuclear weapon test explosion or any other nuclear explosion at any place under its jurisdiction or control:

(a) in the atmosphere or under water

(b) in any other environment, if such explosion causes radioactive debris to be present outside the territorial limits of the state under whose jurisdiction or control such explosion is conducted."

One other important indication of the growing ecological concern of the world community is to be found in the Declaration of the 1972 Stockholm Conference on Environment whose legal significance was confirmed in G.A.Res 2996:

"All states have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction".

This principle was subsequently incorporated in Article 30 of the 1974 Charter of Economic Rights and Duties of States. I may also refer to the Additional Protocol to the Geneva Convention of 12th August 1949 Relating to the Protection of Victims

of International Armed Conflicts, signed on 12th December 1977. Part II of the Additional Protocol which deals with Methods and Means of Warfare contains Article 35, clause 3 of which provides as follows:

"It is prohibited to employ methods or means of warfare which are intended, or maybe expected, to cause widespread, long-term and severe damage to the natural environment".

So, also, Article 55 in Part IV enjoins by using similar language:

"1) Care shall be taken in warfare to protect the natural environment against widespread, long-term and severe damage. This protection includes a prohibition of the use of methods or means of warfare which are intended, or maybe expected, to cause such damage to the natural environment and thereby to prejudice the health or survival of the population".

2) Attacks against the natural environment by way of reprisals are prohibited".

Unfortunately, neither the US nor the UK, two major nuclear powers, have signed the Additional Protocol. But the provisions of the Additional Protocol would be binding not only on the High Contracting Parties who have subscribed to the Additional Protocol but also on the other States as customary international law or in any event as an international norm which has been recognized by civilized nations. Article 38 (1) of the Statute of the International Court of Justice enumerates amongst the sources of international law: international customs, general principles of law recognized by civilized nations and the teachings of the most highly qualified publicists. Prof. C.G. Weeramantry, a judge of the International Court of Justice, in a presentation made by him under the title: "The Law, Nuclear Weapons and the Real World" states that the

greatest strength of the argument against nuclear weapons comes from the principles of international customary law and lists amongst those principles, the principle against permanent environmental damage. So, also the principle against widespread, long-term or severe damage to the environment, or in other words, ecocide, may be regarded as a general principle of law recognized by civilized nations, since it finds a place in the Declaration of the 1972 Stockholm Conference on Environment and GA Resolution 2996 as also in Article 35 clause 3 and Article 55 of the Additional Protocol and it is recognized on all sides that any permanent damage to the environment will spell disaster for human survival and environmental damage or destruction must be avoided at all costs. It can, therefore, be legitimately argued that it has over the years emerged as a customary norm of international law in the line with the dictates of public conscience that no methods or means must be employed in warfare which would cause widespread, longterm and severe damage to the natural environment, whether in other States and areas or otherwise.

At this stage I venture to point out to you as a matter of interest what the Greek traveller Megasthenes said of India in 310 B.C. He observed:

"....whereas among other nations it is usual in the contests of war, to ravage the soil and thus to reduce it to an uncultivated waste, among the Indians.... the tillers of the soil.... are undisturbed by any sense of danger.....Besides, they never ravage an enemy's land with fire nor cut down its trees. "

So environmentally conscious were the Indians at that time, that no methods or means of warfare were employed by them which would cause damage to the environment.

This rule derives great support from the Second Helsinki Accords which oblige signatories to use technologies which protect the environment in the

interests of future generations. It may well be considered to have emerged into the category of most fundamental and peremptory rules known as jus cogens, which are binding on all members of the international community, irrespective of whether they have signified their consent to be bound and regardless of any reservations they may have made.

There can be little doubt that the use of nuclear weapons would violate this principle of international law which may now be taken to be well established. The radioactive fall-out which would be of gigantic proportions in case of thermo-nuclear weapons, would have a highly destructive effect on the natural environment. Two examples will suffice. The Japanese fishing boat Fukuryu Maru was eighty miles outside the estimated danger zone, yet it was contaminated by radio-active fall-out produced by US nuclear tests carried out in the Pacific in 1954. All 23 members of the crew showed symptoms of radiation disease, showing fissionable material in their organs. The vessel was rendered radioactive, dust from it producing radiation sickness in animals and genetic effects in plants. Fish caught in various parts of the Pacific, as long as eight months after the explosion were contaminated and unfit for human consumption, while crops in different parts of Japan were affected by radioactive rain. The other example is Chernobyl where since the nuclear accident, the soil in Ukraine has been contaminated with radioactive substances for at least ten years. Radioactivity was detected in milk of animals grazing on soil affected by radioactive fall-out. For several months, large numbers of people declined to eat fresh vegetables and fish with a view to reducing the radiological impact. Chernobyl fall-out destroyed the arctic pastures of Norway and Sweden by contaminating the vegetation that the reindeer eat. The Government had to buy the reindeer meat and destroy it to stop it reaching the market. We

can just imagine how devastatingly radioactive fall-out from a nuclear bomb would contaminate the soil and the air and how it would cause widespread permanent damage to the environment. The use of nuclear weapons would, therefore, clearly violate the principle or norm of international law banning ecocide and would be illegal.

Before I leave the discussion of the environmental aspect, I wish to make reference to the Convention on the Prohibition of Military or any other Hostile use of Environmental Modification Techniques signed on 18th May, 1977, which entered into force on 5th October, 1978. Article 1 of this Convention provides that each state party undertakes not to engage in military or any other hostile use of environmental modification techniques having widespread, long-lasting and severe effects, as the means of destruction, damage or injury to any other State Party. The term "environmental modification techniques" is used to refer to any technique for changing, through the deliberate manipulation of natural processes, the dynamics, composition or structure of the earth including its atmosphere or of outer space. The Consultative Committee of Experts constituted under the Convention has described certain illustrative phenomena that could be caused by the use of environmental modification techniques, namely, among other things, upset in the ecological balance of a region, changes in weather or climate patterns. The use of nuclear weapons would have the undoubted effect of upsetting the ecological balance of the region where the thermo-nuclear bomb is exploded and would inevitably bring about changes in climatic patterns. The heat, blast and immediate nuclear radiation and fall-out radioactive effects of nuclear weapons would interfere drastically with the processes of nature and it could be said that they constitute environmental modification techniques

causing widespread, long-lasting and severe effects resulting in destruction and damage. It can, therefore, be argued with some degree of plausibility that the use of nuclear weapons would be contrary to this Convention and hence unlawful.

Let us now examine the question of illegality of nuclear weapons from the human rights point of view. There are references to human rights in the UN Charter but the first and foremost document formulating human rights in broad and general terms is the Universal Declaration of Human Rights adopted by the General Assembly on 10th December 1948. The Universal Declaration was adopted without any dissent and though it is not binding as a Treaty, its provisions constitute general principles of law recognized by civilized nations - principles which have received recognition and acceptance by the world community and they may well be regarded as part of international customary law. Article 3 of the Universal Declaration binds member states 'to secure the universal and effective recognition and observance' of the right to life and the same obligation rests on member states in regard to equal protection of law (vide Article 7) and conditions of living adequate for health and wellbeing, especially mothers and children (vide Article 25). Article 28 provides that "everyone is entitled to a social and international order in which rights and freedoms.... can be fully realized". Is the use of nuclear weapons not destructive of or at any rate incompatible with the international order contemplated under Article 28?

The human rights embodied in the Universal Declaration are elaborated in the two International Covenants, namely, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Political Rights which lay down the human rights standards. Article 6 of the International Covenant on Civil and Political Rights

nuclear weapons as a first step towards the ultimate goal of general and complete disarmament. "

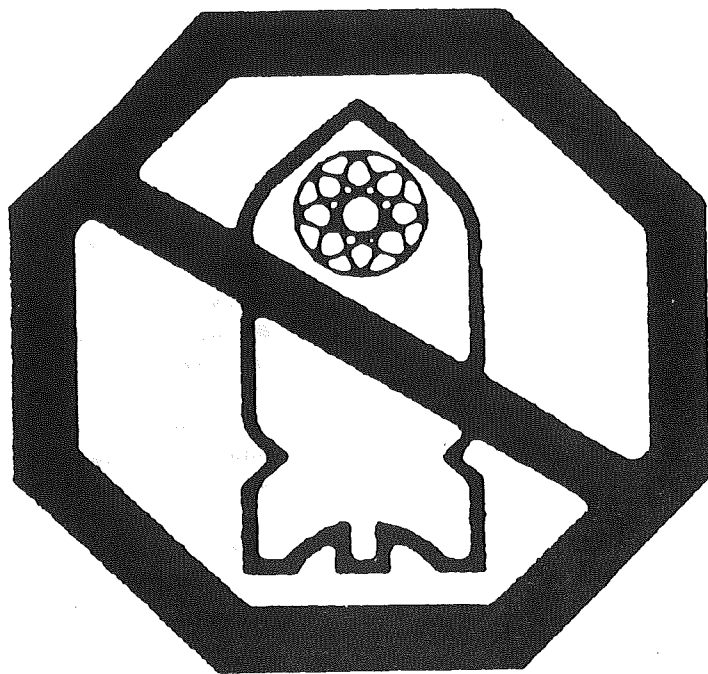
This Appeal was distributed, with the help of Margie Graf and others, all over the world from 1987 onwards, and received many thousands of signatures, including an impressive array of legal practitioners and academics at the highest levels. To list just a few examples: we have 2 former judges from the ICJ itself; Ministers of Justice, Attorney-Generals, Ombudsmen, Chief Justices, scores of senior judges, professors of law, legislators, senior counsel, together with Presidents of national Bar Associations, the Chairmen of the Union of Arab Lawyers, the Union of South American Lawyers, and the Secretary-General of the Inter-African Union of Lawyers.

The actual number of signatures has been quoted with widely differing figures, and perhaps this requires an explanation. It is due mainly to a curious event characteristic of the Cold War. Having collected over 10,000 signatures we received in the IPB office one day a letter from the Rumanian Law Association, offering in a single sentence the support of the entire legal profession of Rumania! While not wishing to question in any way the strength of anti-nuclear

feeling in Rumania we thought it best in the end to lay this letter to one side and restrict the final total to the 11,038 who have actually signed the Appeal in person.

I had hoped to be able to present this weighty package tomorrow directly to the Secretary-General of the Conference on Disarmament, Sr Vicente Berasategui. Unfortunately he has been called away to Vienna on important chemical weapons business along with many CD delegates. I would therefore like to take the opportunity to present it instead to M. Antoine Blanca, Director of the UN Office in Geneva, who has kindly agreed to convey the documentation to Sr Berasategui's office so it can be lodged as an official communication to the Conference.

Let us hope and pray that this resolute expression of expert opinion will help to persuade the world's governments - be they Nuclear Weapons States, Threshold Nuclear States, or Non-Nuclear Weapons States - that in the interests of everyone's security (including those not yet born or even thought of) the time has finally come to put end to the age of nuclear terror. Thank you.



Role of the International Court of Justice within the UN System and the Significance of Advisory Opinions

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The role of the International Court of Justice within the United Nations system in general and the maintenance of international peace and security in particular still give rise to lots of misunderstandings regarding the character of the United Nations system and its impact on the position of the International Court of Justice.

The United Nations has no supranational character. The International Court of Justice, therefore, is not the highest judicial organ of the international community. There is no such thing as a hierarchy among the peaceful means for the settlement of disputes, the continuance of which is likely to endanger the maintenance of international peace and security.

The success of the World Court Project depends on a clear insight into the limits of the UN system for the maintenance of international peace and security and the regulation of armaments. One should not have too high expectations of declaratory advisory opinions of the International Court of Justice in the abstract, for both issues are classic examples of political disputes.

For that reason the World Court Project should consider the possibility of linking its initiative to specific articles of the UN Charter. In doing so the Project could enable UN organs to submit well-defined legal issues to the International Court of Justice in order to obtain its advisory opinions.

These basic assumptions will be explained on the basis of the following scheme: (1) the UN model of administration; (2) the division of labour between UN organs in the field of maintaining international peace and security and the regulation of armaments; (3) related judgments of the International Court of Justice, i.e. its 1974 Nuclear Test judgments, 1980 Iran judgment, 1986 Nicaragua judgment and 1992 Libyan judgments.

International organizations generally have the following form of administration: a general assembly representing all the members that meets in regular annual sessions and ad hoc as well as an executive committee and a secretariat which function continuously. The latter two organs usually have to give account to the general assembly as the representative body of all members.

The United Nations are an exception in that there is no executive committee which functions continuously covering the whole field of the organisation. The Security Council is so organized that it functions continuously, it is true, but it is only competent in respect of one of the purposes of the UN, i.e. to maintain international peace and security.

Moreover, the Security Council has the primary responsibility for the maintenance of international peace and security. Admittedly, its responsibility is not exclusive but the other organs including the General Assembly have a secondary responsibility only (Advisory Opinion of the ICJ in the Certain Expenses Case, ICJ Reports 1962, pp. 162 - 163).

In addition to the Security Council and the Secretariat the UN disposes of a third permanent organ: the International Court of Justice. However this organ may only render good service on the basis of a request to give an advisory opinion, made by the General Assembly, the Security Council or any UN organ and specialised agency authorised to do so by the General Assembly.

Moreover, the Court is not a constitutional court that may settle disputes about competence between UN organs amongst themselves or with member states. Nevertheless from time to time the United States compares the position of the International Court of Justice with that of the American

Supreme Court. The USA did so, for instance, when they refused to recognize the jurisdiction of the International Court in disputes about American use of force in the context of collective self-defence (Nicaragua v. USA).

Operation Desert Storm showed that the end of the Cold War paved the way for a consensus among the permanent members of the Security Council, but that this achievement tends to put the other UN organs out of action. This development might seriously limit the intended democratic character of the UN system since it increases the risk of hot wars as a continuation of the national politics of the permanent members of the Security Council by other means.

There appears to be a real danger indeed that the end of the Cold War will not enhance the role of the UN in the maintenance of international peace and security, due to the widely diverging opinions as to the legal foundation of Operation Desert Storm.

The Western permanent members, in particular the USA, consider the right to collective self-defence inherent, in such a way that victims of aggression should determine themselves whether or not the Security Council has taken measures to maintain international peace and security effectively. This interpretation implies that permanent members may always pass over the Security Council when this suits them, even when the Council has taken measures to maintain international peace and security in accordance with Article 41 or 42 of the UN Charter.

Other opinions invoke the transitional security arrangement laid down in Article 106 of the UN Charter. According to this Article the permanent members shall consult with one another and as occasion requires with other UN members with a view to joint action on behalf of the Organization. They argue that this

transitional security arrangement still applies due to the absence of special agreements between the Security Council and members on making available military forces (UN Charter, Article 43).

However, Article 106 undoubtedly intended to fill a security gap which might prevent action against the former Axis Powers (Article 107). Since Germany, Italy and Japan have become UN members, Article 106 has lost its significance.

The position of the permanent members is far-reaching because of the fact that only the Security Council is competent to determine the existence of any threat to the peace, breach of the peace, or act of aggression. Any permanent member may veto such a determination, even if its own conduct is at stake.

The judgment of the International Court of Justice of 14 April 1992 on the Libyan request for the indication of provisional measures against the United Kingdom and the United States is revealing in respect of the powers of the Security Council. The Court considered that in accordance with Article 103 of the Charter, the obligations of the parties to the dispute - Libya v. USA and UK - under Security Council Resolution 748 (1992) of 31 March 1992 prevail over their obligations under any international agreement, including the 1971 Montreal Convention.

The Court was of the opinion that an indication of the measures requested by Libya would be likely to impair the rights (sic!) which appear *prima facie* to be enjoyed by the United Kingdom and United States by virtue of the Security Council Resolution 748 (1992). In other words, permanent members of the Security Council may back out of their treaty obligations simply by manipulating the Security Council in such a way that they get a binding decision under Chapter VII assigning them rights. Western powers

are in a position to do so due to the dependence of the poor(er) non-permanent members of the Security Council upon the rich(er) countries).

No other organ of the United Nations, not even the International Court of Justice can prevent such a manipulation of the Third World by the First World because each organ may interpret its competence under the UN Charter. For the UN Charter does not provide for a constitutional review of binding decisions of the Security Council. In this connection it should be recalled that the Security Council is the only UN organ that may adopt binding decisions against the will of States.

The basic criterion of the International Court of Justice in deciding upon its jurisdiction is that its competence depends on voluntary acceptance by States. This holds true even in the well known disputes between the United States and Iran as well as Nicaragua and the United States.

In doing so the Court should be particularly careful not to decide politically charged disputes when one of the parties does not appear. An illustrative example is the 1974 judgment in the Nuclear Test cases between Australia and New Zealand on the one side and France on the other. France was of the opinion that the Court was manifestly not competent in the case and that it could not accept the Court's jurisdiction.

Australia requested the Court to adjudge and declare that (...) the carrying out of further atmospheric nuclear weapon tests in the South Pacific Ocean is not consistent with applicable rules of international law and to order that the French Republic shall not carry out further such tests.

New Zealand's request implied that the Court should adjudge and declare that the conduct of the French Government of nuclear tests in the South Pacific

Region that give rise to radio-active fall out constitute a violation of New Zealand's rights under international law, and that these rights will be violated by any further such tests.

The Court probably heaved a sigh of relief, as it were, when the French government in the course of 1974, albeit outside the Court, announced that the 1974 series of atmospheric nuclear tests would be the last. The Court found by nine votes to six that the claims of Australia and New Zealand had no longer any object and that it was therefore not called upon to give a decision thereon (ICJ Reports 1974, pp. 271-272).

Quod non, to my mind at least. For the Court overlooked for the sake of its convenience that the request not only aimed at stopping the tests but also at getting a judgment on the consistency of such tests with applicable rules of international law. Moreover, the unilateral declaration of the French government did not concern the alleged illegality at all. It only stated that France had reached a point in the execution of its programme of defence by nuclear arms, at which it was in a position to move to the stage of underground tests, as soon as the test planned for the summer of 1974 was completed. (ICJ Reports 1974, p. 266).

In his comments on the Nuclear Test case in his recent book on Judicial Settlement of International Disputes, McWhinney considers the reasoning and internal logic of the opinion of the Court impeccable and in accord with what McWhinney calls an American approach to constitutional jurisdiction (Martinus Nijhoff Publishers 1991, p. 29).

According to McWhinney:

'the imaginativeness and flexibility with which the Court majority used, and extended, the concept of unilateral acts - here Unilateral Declarations of Intent - and the ability of those

unilateral acts to create binding legal obligations, without any necessary degree of formality in those State acts in order to confer juridical force upon them, accompanies the judicial self-restraint expressed in the Court's final decision not to enter upon the substantive-legal questions involved in the case.'

I fully share the joint dissenting opinion of judges Onyeama, Dillard, Jiménez Aréchaga and Sir Humphrey Waldock who vigorously denied that the claim of the applicants no longer had any object. For the submission requested from the Court a judicial declaration of the illegality of atmospheric nuclear tests conducted by France in the South Pacific Ocean (ICJ Reports 1974, p. 313).

Be this as it may, the judgments in the Nuclear Test case shows the reluctance of the Court to cut political knots in cases of contentious jurisdiction. In presenting judgment the Court overlooked that its function is to decide in accordance with international law such disputes as are submitted to it, and that it shall apply international conventions, international custom, general principles of law, judicial decisions and the teachings of the most highly qualified publicists of the various nations. In other words the Court should not have refused to deliver a judgment on the alleged illegality of atmospheric nuclear tests because of obscurity of the law.

Moreover, according to the 1980 judgment in the USA v. Iran case, the Court should not have declined cognizance of one aspect of a dispute merely because that dispute had other aspects, however important. The Court should have lived up to its constant jurisprudence that:

'legal disputes between sovereign States by their very nature are likely to occur in political contexts, and often form only one

element in a wider and longstanding dispute between the States concerned' (ICJ Reports 1980, p. 19).

The Nuclear Test cases indicate that the Court will not be easily inclined to give an advisory opinion on the legal status of nuclear warfare under international law in the abstract. In this connection one should be aware of the fact that the Court is not obliged to give an advisory opinion, although the advisory procedure is closely modelled on the contentious procedure (H.W.A. Thirlway, *Advisory Opinions of International Courts*, in R. Bernhardt (ed.), *Encyclopedia of International Law*, Instalment 1 (1981), pp. 5 and 7).

The World Court Project should not limit itself to the legal status of nuclear warfare under international law in the abstract. The Project could include obtaining advisory opinions on the legal significance of Articles 23 section 1, 51 and 106 of the UN Charter.

According to Article 23 section 1 the General Assembly shall elect ten other members of the UN to be non-permanent members of the Security Council, due regard being specially paid, in the first instance to the contribution of members of the UN to the maintenance of international peace and security and to the other purposes of the organization, and also to equitable geographical distribution.

Under the impact of the Cold War the equitable geographical distribution has prevailed at the expense of the condition regarding the contribution to the maintenance of international peace and security and to the other purposes of the United Nations.

The end of the Cold War should enable the General Assembly to take that condition seriously. The General Assembly should now consider refusing membership to non-nuclear-weapon states who manufacture or otherwise

acquire nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices.

The General Assembly might request the advisory opinion of the International Court of Justice on whether a member of the United Nations which is called upon to pronounce by vote on the election of a non-permanent member, is juridically entitled to make its consent dependent on conditions such as that state's recognition of nuclear warfare being illegal under international law.

Security Council Resolution 678 (1990) of 29 November 1990 which authorized member states co-operating with the Government of Kuwait to use all necessary means to uphold and implement Resolution 660 (1990) and all subsequent resolutions, gives the General Assembly every reason to request the International Court of Justice to express itself on the legal issue of whether such means may imply the use of nuclear weapons or other nuclear explosive devices.

The diverging views on the scope and content of Article 51 justify a request of the General Assembly for an advisory opinion on whether or not the inherent right to individual or collective self-defence implies the use, or threat of use, of nuclear weapons when the Security Council has taken measures non involving the use of armed force under Article 41 of the UN Charter but refuses to act under Article 42 providing for military action.

The debate upon the transitional security arrangement of Article 106 might give cause to the General Assembly to request the advisory opinion of the Court on whether or not the joint action of the permanent members of the Security Council on behalf of the Organization may imply the use, or threat of use, of nuclear weapons.

To put it briefly, thanks to the end of the Cold War and Operation Desert Storm, it would be very meaningful for the World Court Project to devote itself to getting the General Assembly to request advisory opinions on the legal status of nuclear warfare in the context of the above mentioned Articles of the UN Charter. Such an approach might be more promising than asking the International Court to spell out in the abstract that any use, or threat of use, of nuclear weapons would necessarily violate fundamental principles of international law.

One may wonder whether the General Assembly will be the most appropriate organ to ask advisory opinions on the above mentioned issues because of the fact that there is no question of a constitutional review. In other words even if the General Assembly endorses the advisory opinions, the Security Council can ignore them.

However, according to Article 10 of the UN Charter the General Assembly may discuss any questions or any matters within the scope of the Charter or relating to the powers and functions of any organs provided for in the Charter, and may make recommendations to the UN members or to the Security Council on any such questions or matters.

The General Assembly should not hamper the Security Council. Article 12 of the UN Charter states to that end that the General Assembly should make no recommendation with regard to a dispute or situation while the Security Council is exercising in respect of that dispute or situation the functions assigned to it in the Charter.

The World Court Project should take Article 12 into account by attuning its initiative in the General Assembly to the agenda of the Security Council. This may imply that the issues involved in the interpretation of Articles 51 and 106 as well as

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Resolution 678 (1990) should not be raised before the Security Council has removed the Iraqi question from its agenda.

An advisory opinion on Article 23 section 1 will not interfere with the functions assigned to the Security Council. Therefore, the request for such an opinion by the General Assembly may be a good start. An advisory opinion by the Court on the conditions for electing non-permanent members will already give enough food for thought for the time being. This holds true the more if such conditions also relate to the conduct of candidates in respect of international humanitarian law in general, for instance the condition that candidates should be parties to the 1949 Geneva Conventions and 1977 Protocols.

It should not be overlooked that an advisory opinion on conditions for membership of the Security Council will not affect the position of the present permanent members directly. However, the non-permanent members can prevent the Security Council from adopting decisions which violate fundamental principles of international law.

The détente between East and West may have enabled the permanent members to reach consensus among themselves. They should now be aware of the fact that seven non-permanent members together also have a veto power. This situation was fully understood by the USA when it put pressure on the non-permanent members in order to get Resolution 678 (1990) adopted. Such a manipulation can be better opposed in the future when the General Assembly may put conditions on the election of non-permanent members. Of course, the advisory opinion will be also of great interest if and when the number of permanent seats is enlarged.

A well-known expert in international law, the late professor George Schwarzenberger, formulated a request for an advisory opinion on the

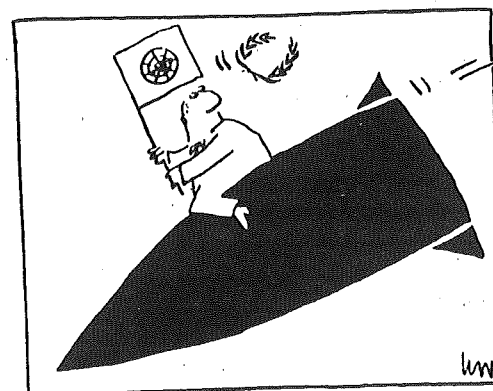
legality of biological, chemical, nuclear and other means of mass-extinction in the final chapter of his famous treatise on International Judicial Law (International Law as Applied by International Courts and Tribunals, Volume IV 1986, pp. 731-733). He did so under three headings:

(1) Can a nation which prepares, if only contingently, for use of means of mechanised barbarism and co-extinction be considered as being civilised?

(2) A fortiori, can this description be applied to any nation which, in any circumstances, actually resorts to the use of such weapons?

(3) Would the Court subscribe to the view, expressed by Alberico Gentili four centuries ago, on the unlawfulness of any weapons which are unacceptable "because war, a contest between men, through these acts is made a struggle of demons"?

With all due respect to Schwarzenberger I would strongly advise the World Court Project not to make such a request. I think it would be more in line with teachings on international law, including those of Schwarzenberger himself, for the World Court Project to make the General Assembly face the fact that the end of the Cold War enables it to pay special regard, in the first instance, to the contribution of candidates for non-permanent seats in the Security Council to the maintenance of international peace and security and to the other purposes of the United Nations.



Though it is the 47th year since the atomic bombing of Hiroshima and Nagasaki, we cannot say that the reality of the atomic attack and its dreadful consequences, which still continue even today, have been fully revealed. Until August 15, 1945, it was the war policy of the Japanese government, and after that it was U.S. occupation policy, that these facts were to be kept in strict secrecy. The damage inflicted on human beings was especially to be kept from the public.

Even after 1952 when Japanese sovereignty was restored under U.S. nuclear policy and Japanese government subordination, the policy was to hide or underestimate the A-bomb damage by those in power. In March 1945, a U.S. hydrogen bomb test at Bikini Atoll showered the Fifth Lucky Dragon and other Japanese fishing boats with deadly fallout. This triggered the growth of the great movement and the surge of public opinion in Japan calling for a ban on atomic and hydrogen bombs, and it was not until then that the tragedies of Hiroshima and Nagasaki began to be really talked about. This was one of the major reasons why it has been difficult for the human community today to draw precious lessons from those tragic experiences.

The survivors of those two atomic bombs now number 350,000 in Japan, some thousands to tens of thousands on the Korean Peninsula and also several thousands in the U.S. and some South American countries.

I am one such survivor, and so is Dr. Hida, who is participating in this forum. Based on the survey conducted by us, I want to report to you what sufferings the atomic bombings of August 1945 brought on human beings, sufferings beyond description; how inhuman and unforgivable was the crime against humanity of the use of those two A-bombs. I want also to tell you what the demands of the Hibakusha are in their struggle for survival, upholding the slogan, "No More Hibakusha".

In the survey on the A-bomb victims

1985 to the spring of 1986, data were collected on 13,169 survivors and 12,726 deaths. Let me introduce to you some of their characteristic features.

Life and Death of Hibakusha - Anti-Human Atomic Bomb

The number of those killed by the end of 1945 by the atomic bombs on Hiroshima on August 6 and Nagasaki on August 9 of that year are about 210,000 (140,000+/-10,000 in Hiroshima, 70,000 +/-10,000 in Nagasaki.) (NGO symposium in 1977). But the actual number of victims is not known.

1. Painful Death

(a) Death on that day

* Among those who were killed on August 6 in Hiroshima and August 9 in Nagasaki, 1945, 18% were children under 9 years; 39% women at ages ranging from 10 to 59; and 8% were over 60 years old. There was no time for them to escape. They were crushed and burned to death under collapsed houses.

The atomic bomb completely destroyed the functions of those two cities; organizational anti-disaster and rescue operations were impossible. It was a surprise attack, unprecedented in its indiscriminate and massacre nature.

* The destruction and massacre by the atomic bombs can literally be called the very height of inhumanity and cruelty, creating an extreme situation in which many people had no option but to leave their families in the fire and try to escape. Many survivors remember the feeling, "I was not human at that time". 23% of all answerers to this survey are still suffering from the emotional wounds they suffered.

Among the death toll of August 6 and 9, only 4% were able to be with their families as they died. 42% are still missing. Their bereaved families cannot confirm their deaths and therefore, cannot accept the fact of their deaths. The bereaved can only

guess about the suffering endured by their relatives in their last hours.

* Death at that time could not be called the death of human beings. It was beyond imagination and description.

"There were some bodies with only half their heads or without hands and legs." "I never realized that a black lump on a bicycle was a human body." It was no longer the deaths of humans. It was the "death of mere things". This is the image imprinted on the hearts of survivors.

(b) Later Death

In the days following the atomic bombing, Hibakusha died one after another. 60% of those who died by the end of August died of acute atomic disease: massive haemorrhage from the gums, mucous membranes, the surface of the skin; diarrhoea; high fever, etc. In those days, seeing others dying, they were full of anxiety and feared they themselves would soon die, and so many did.

* The bereaved families of 90% of those who died after 1946 believe that the deaths were caused by the atomic bomb, just "later deaths". It has been proved epidemiologically that leukemia and other cancers which increased strikingly after 1955, are related to the atomic bomb. Nor it can be said that other diseases are not related to the atomic bomb. Much more are they convinced that their illnesses are atomic bomb diseases in that symptoms similar to those experienced just after the bombing.

The pain while they lived was torment for most of the dead. 29% spoke about the "days of struggle against diseases". 23% said that they "became weak in health after the bombing". 9% said that they "were full of anxieties and fears of atomic diseases".

2. Painful Life

* Among 350,000 surviving victims, there are some who escaped death, as by a miracle, after hovering between life and death for several months. Including Senji Yamaguchi, one of the chairpersons of Hidankyo, these people who returned to life are now leading our organization in its activities in Japan and overseas, appealing for the abolition of nuclear weapons. Many with serious illnesses have died

during these 47 years, but those who are now in relatively stable health, including myself, have experienced in the past long-term health problems, anxiety and mental trauma.

Respondents from 50.9% of the survivors in the survey (as of 1985) said that they experienced such acute symptoms as diarrhoea, loss of hair, haemorrhage from the mucous membranes, bloody stools and/or high fever. 60.5% said that they had what they called "A-bomb burabura disease": a syndrome of loss of energy, getting tired easily or prone to catching colds, etc.

In addition to such physical handicaps, Hibakusha suffered from social misunderstanding and discrimination. Out of fear of genetic effects, people rejected them as possible partners, or they did not want to hire them because of their poor health - all of which cause the Hibakusha constant psychological pain.

* The pain of the dead until their last moment also means the pain of the surviving Hibakusha. The main features of these Hibakusha's psychological pains are expressed as follows: "Whenever I have a health problem, I feel it is related to the atomic bombing" (62%). "I am in constant fear of the onset of possible disease" (52%). Other fears include problems of sustaining their life and health and the future of their children or grand-children. 74% of Hibakusha are suffering from these kinds of anxieties.

* 87% of those who experienced acute symptoms are suffering from various anxieties as Hibakusha. Among those who have not, still 58% of them have the same kind of fears.

* Hibakusha easily become subject to the fear of "later death" because they have seen other such cases of "later death". With cancer having become the symbol of atomic disease, this fear is accompanied by the "real fear of death". Even more than 40 years after the end of the war, Hibakusha are

such a life are deprived of or have lost their "will to live". One of every four Hibakusha says that they were once desperate in life and

thought of committing suicide. In fact, some 12,700 cases of the deaths of relatives reported by 13,000 Hibakusha include 47 cases of suicide.

3. The Struggle of Hibakusha

* As stated, nuclear weapons are the most brutal weapons intended for extermination and eradication. The victims were thrust into "hell"- an extreme condition which made them lose all sense of humanity and deprived the survivors of their will to live. It imposed sacrifices on the victims beyond their capacity to bear and did not allow them to live as human beings or even to die as human beings. In that sense, we cannot but confirm that the atomic bomb is an utterly anti-human weapon.

* The only way for Hibakusha to live is to struggle and protest against those forces that try to defeat the Hibakusha's will to live. One of the aims on which they base their lives (as cited in the survey) is "to live stable life with a family (43%)". The other is "to make efforts for enactment of a Hibakusha relief law and for the elimination of nuclear weapons (35%)". The only way to make their horrible death and life significant is activity to let no one again suffer from the atomic bomb "hell" that the Hibakusha experienced.

4. What Do the Hibakusha Demand?

Atomic bombs are absolutely evil weapons which on no account can be permitted. Humankind cannot co-exist with them even for a moment. Those who wish to be a human must fight against them.

The elimination of nuclear weapons and the establishment of a state compensation scheme for the victims of nuclear war are both the conclusions that atomic-bomb survivors draw from the experiences of their sufferings and also the way to restore humanity

to the Hibakusha. The path we have followed was never smooth. Hardships will continue into the future.

Our demands on the Japanese and the U.S. governments, as well as on all nuclear weapons possessing countries, are as follows:

Demands on the Japanese government

1) The immediate enactment of an Hibakusha aid law embodying the principle of state compensation to ensure that there will be no more Hibakusha.

2) To thoroughly make clear the real picture of the A-bombing of Hiroshima and Nagasaki and make it known widely inside and outside of this country which is the victim nation of nuclear war.

3) To legislate the Three Non-Nuclear Principles into law, declare Japan a nuclear weapons-free nation, and demand that the countries concerned immediately withdraw all deployed nuclear weapons, as well as nuclear bases and establishments in and around the Japan. To work to establish nuclear free zones in Asia and the Pacific region. To refuse to share the "nuclear umbrella" of any country.

4) To appeal to all nuclear weapons possessing countries to immediately conclude a treaty for a total ban and the elimination of nuclear weapons.

Demands on the U.S. Administration

1) To acknowledge that the dropping of atomic bombs on Hiroshima and Nagasaki violated humanity and international law, and to apologize to the Hibakusha. In proof of this, to play a leading role in the elimination of nuclear weapons by abolishing its own nuclear weapons first.

2) To deploy no Tomahawks or other nuclear weapons in Japan. To immediately remove nuclear bases and establishments relating to nuclear war.

3) To abandon the Star Wars plan (SDI) that would expand the nuclear arms race to outer space.

Demands on the U.S., Russia and all other nuclear weapons possessing countries:

1) Never to take your eyes off Hiroshima and Nagasaki; listen to what the Hibakusha are saying; let your people know the realities of the damage caused by the atomic bombs.

2) To conclude a treaty for a total ban and the elimination of nuclear weapons.

3) To abolish all nuclear weapons and the whole array of facilities related to nuclear war in your countries and elsewhere.

4) Dissolve all military alliances which form the basis of the nuclear arms race.

(For further details, please refer to 'NO MORE HIBAKUSHA' --Atomic Bomb Victims Demand.)

Based on these demands, since its foundation in 1956, on every possible occasion, Nihon Hidankyo has sent its delegations all over Japan and the world, appealing for the "Prevention of nuclear war; the elimination of nuclear arms" and "enactment of state compensation for nuclear war victims". It sent delegations to the past three U.N. Special Sessions on Disarmament, petitioning for the conclusion of an international treaty on the elimination of nuclear weapons. Chairperson Senji Yamaguchi spoke at the Second U.N. Special Session, and another Chairperson, Takeshi Ito, spoke at the Third Special Session, as representatives of the NGOs.

Though the Hibakusha have won some welfare measures from the Japanese government through 35 years of efforts, the state still refuses to enact a compensation law (A-Bomb Victims Aid Law), such as the Hibakusha demand. The Japanese government has shut its ears to the desire of the Hibakusha. From that, it has not only cooperated in the nuclear arms build-up of the U.S. but in 1980 also took the position that "the sacrifice of the A-bombing was caused by the unusual situation of war, which the victims must endure".

The U.S. administration has never apologized for dropping the atomic bombs. The Hibakusha's testimony as atomic-bomb survivors has contributed greatly to informing public opinion on the need for the elimination of nuclear weapons, but nuclear weapons have been increased and some other countries are becoming nuclear weapons States. Although the collapse of the Soviet Union has paved the way for a drastic reduction of nuclear weapons, the condition of "overkill" is not yet overcome, nor do we have any clear prospect for the end of nuclear arsenals. On the contrary, present

nuclear weapons possessing countries still cling to the theory of "nuclear deterrence". These facts only increase the suffering of the Hibakusha.

Put succinctly, our demand is to establish a system that will ensure that there will be "No more Hibakusha". We believe that it must be a universally legislated principle not only to relieve atomic victims but also to defend the peoples of the world from nuclear war. So long as the danger of nuclear war exists, even if there were only one nuclear weapon in the world, the Hibakusha will continue to shout "Do not let nuclear war break out! Eliminate nuclear weapons!" and "Enact the Hibakusha aid law at once!"

Based on this position, we demand that the United Nations and its member states take the following measures:

1) Confirm that the prevention of nuclear war and a complete ban and elimination of nuclear weapons are urgent vital tasks, and work for the achievement of this at the earliest possible date. To immediately conclude an international agreement on a total ban and elimination of nuclear weapons.

2) To compile correct informations on the atomic sufferings of Hiroshima and Nagasaki in the light of the present situation and based on the testimony of the Hibakusha and records, and make it known to the people all over the world.

In recent years, many nuclear victims have been created by accidents at nuclear power plants, including Chernobyl. This is a very serious situation, coupled with destruction of the environment caused by radiation. Isn't this also due to the failure of humans to learn the lessons from Hiroshima and Nagasaki? Hibakusha are the people who were forced to go through the first, most serious and inhuman experiences among all nuclear victims in the world. If our appeal for "No more nuclear war" can be of help in enhancing the world-wide public opinion, the Hibakusha are willing to travel anywhere in the world to join you.

Dear friends throughout the world, please make use of us, so that we can get rid of all nuclear arms and protect human life from any more damages caused by nuclear development.

On The Danger of Low-Level Radiation Absorbed by the Body

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HIDANKYO).

Introduction

In the damage caused by radioactivity released by the Hiroshima and Nagasaki bombs, attention has been paid to "acute symptoms caused by direct radiation from high-level radioactivity, as well as leukemia and cancer as its after-effects". But the effect of long term exposure to residual radioactivity, to low-level radiation, has been belittled, or simply ignored.

* Residual radioactivity means radioactivity contained in the "deadly ashes", the radioactive fall-out, plus induced radioactivity produced by neutrons released on the earth.

I was exposed to the atomic bombing of Hiroshima. For some 47 years since then, I have worked as clinician, giving treatment to A-bomb survivors. While engaged in their medical treatment, a question has arisen in my mind, that, while the focus has been on symptoms and the damages caused by direct, high-level radioactivity to the people near the epicenter, the effect of long-term exposure to low-level radiation absorbed by the body has long been under-estimated, or simply neglected. My experience shows that there are many cases in which sufferers from low-level radiation had to suffer agonies, which for them were worse than immediate death.

The effects of low-level radiation on the "Nyushi-Hibakusha", the people who entered the city shortly after the bombing and were affected by residual radioactivity, as well as those who suffered from the bombing outside the radius of two kilometers*, must be neither neglected nor under-estimated. My belief is that, for the people facing the danger of man-made radiation, this is quite an important problem, and I want to discuss the danger of low-level radiation, a question that is now being reviewed in certain fields.

(* A Japanese law distinguishes between those who suffered within a 2 km radius and those outside that area.)

I. Why has Residual Radioactivity (Low-Level Radiation) Been Underestimated or Even Ignored?

a) Both current diagnostics and cure presuppose that a cell is the minimum unit of a human body, based on cellular pathology, in which abnormality in a cell forms the foundation. There is no way to look into changes in micro-molecules, the size of which is said to be some one 6 billionth of a cell. Therefore, the destruction of molecules caused by collision with radioactive particles at molecular level, and the process of this destruction leading to changes in cells, are unknown fields, except for certain areas.

a) Under its occupation of Japan after the end of the war, the United States ruled that the damages caused by the atomic bombing and by radioactivity in particular, be kept as military secrets. Given that Japanese medical doctors and researchers were banned from making investigations and studies, research was not pursued in that most important period when typical "A-bomb diseases" were rampant.

II. Victims of Low-Level Radiation in Japan and the United States

a) The characteristics of the diseases and syndromes seen among the low-level radiation sufferers are that they are indefinable, that the traditional diagnostics and clinical examination cannot identify them with any particular disease or syndrome. The "Burabura-byo" disease, which was so common among Hiroshima and Nagasaki sufferers, is a typical example: Patients persistently repeated the same complaint that they feel "easily tired", "sluggish", "unable to maintain tension" and "often catching colds". But because neither diagnostic observation nor clinical examinations could establish their claims, in many cases they were judged as "not being ill", "not being related to their suffering from the bomb", "nervous breakdown", or even "feigned illness". Further, they had difficulty finding the will to work, and even if starting to work, they could not keep doing it,

thus easily losing jobs; in cases of being unable to manage sex life, they were often divorced. In important junctures in their life, such as getting a new job, entering a school, marriage, giving birth and in child-care, they had to face unfortunate consequences, thus ending their life in poverty, disease, anxiety and despair.

b) Similar to Japan, the existence of many sufferers from low-level radiation in the United States is also known.

i) As well as presenting Japanese "Burabura-byo" disease, Dr. D.W. Boardman claims in his book "Radiation Shock", that of some 250,000 U.S. soldiers who were engaged in atmospheric nuclear tests and suffered from the radiation (the figure announced by the U.S. administration), many are suffering from an "indefinable" syndrome caused by residual radioactivity.

ii) Prof. E.J. Sternglass, in his "Low Level Radiation", pointed out that in areas affected by fall-out from nuclear tests, both the death rate of babies and the rate of occurrence of thyroid cancer rose while nuclear tests were being conducted, warning that the effects of low-level radiation must not be underestimated.

iii) Massive radioactive materials, leaked in the accident at the Three-Mile Island nuclear power plant in 1979, caused considerable damage to residents in the area nearby, including the occurrence of leukemia and cancer. This made still clearer the danger of residual radioactivity contained in fall-out.

III. Current Warnings: Low-Level Radiation is more harmful than High-Level Radiation

"Deadly Deceit-- Low Level Radiation", co-authored by Jay M. Gould Benjamin and A. Goldman, quotes Dr. A. Petkau, a Canadian bio-physicist, as saying in the study on the effects of radiation to cell membrane, which he has carried on from 1971, that "low-level radiation is more dangerous than high-level".

a) While 3,500 rem is needed to destroy a cell membrane by the direct radiation of x-rays, in the case of indirect radiation of the radioactive isotope, Sodium-22, one rem is enough if it is radiated in water.

b) Among the reasons why a smaller amount of radiation is more effective are:

i) oxygen in water is ionized by radiation and turns into a negatively charged, harmful free radical. Sticking to electrolyzed cell membranes and destroying their fat molecules, this makes it easier for radioactive particles to penetrate cells.

ii) This explains the mechanism that if radioactivity is released against human bodies, all of which contain a lot of water, the affected oxygen in water creates Free Radicals, which in turn destroy cell membranes.

iii) High-level radiation at once produces a tremendous amount of harmful oxygen free radicals. But because they collide with each other, turning most of them into harmless oxygen particles, the effect on cell membranes is relatively limited.

iv) In the case of radioactivity radiated over some lengthy period, a limited amount of free radicals are produced continually. They reach and penetrate cell membranes easily and more effectively. A small amount of absorbed radioactivity can thus damage the whole immune system.

v) Likening free radicals to humans; If a room is full of people and a fire breaks out, pushing against each other they cannot easily escape through a small exit. If the number of people is small, they can escape without difficulty. Though low-level radiation produces a smaller number of harmful free radicals, this makes it easier for radioactive particles to penetrate cells at the damaged "small door" of cell membranes, therefore being more dangerous.

vi) The damage to cell membranes caused by the radiation of Beta rays from within the body over a lengthy period is some 1,000 times greater than that caused by instant massive radiation of X-rays from outside.

vii) Though under the normal circumstances also, harmful free radicals are produced in cells by metabolism, they are made harmless by the function of protective elements called super-oxide dismutase. But radiation absorbed into the body produces far more free radicals than can be rendered harmless, thus causing an irreparable degree of damage.

viii) If slowly radiated by low-level radioactivity over a lengthy period, the free radicals produced cause heavy damage to the hormone and immunity systems.

ix) Taken in through food, milk, water and air, strontium 90, iodine 131 and other forms of residual radioactivity damage the rehabilitation functions, which would otherwise destroy infected and malignant cells.

c) That the damage caused by residual radioactivity in Hiroshima and Nagasaki have been neglected or belittled, is not because the effects of low-level radiation on the human body were unknown in those days; it is more likely that the nuclear strategy and policies of the country that used the bombs required this.

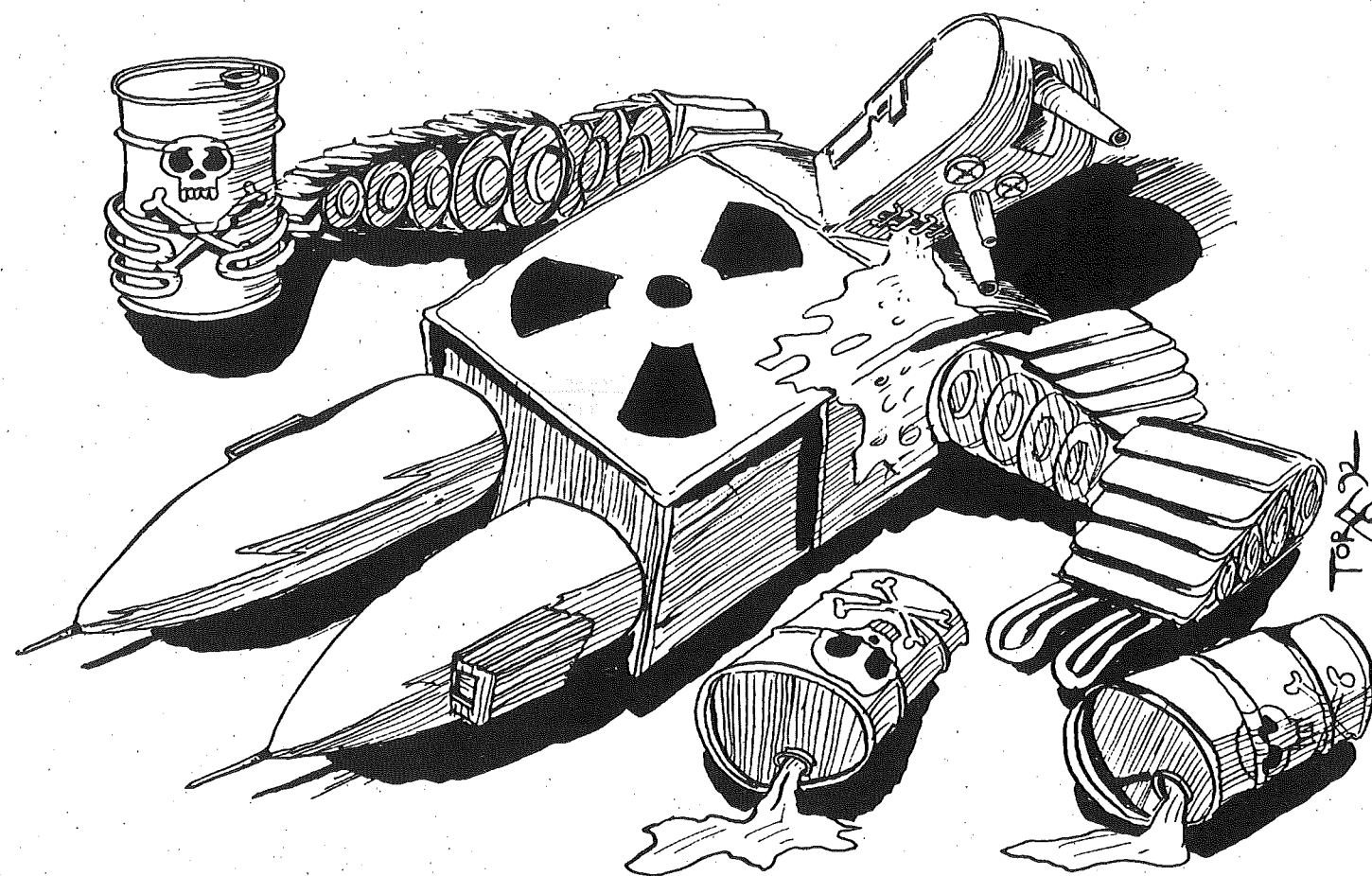
Endorsing this, the book referred to above presents an interesting story at its beginning:

In 1943, Enrico Fermi suggested to Robert Oppenheimer, "if we can contaminate German foods with radioactive nuclear materials, we can

force them to give up their atomic bomb production". Oppenheimer and Edward Teller responded to this proposal by identifying strontium 90 as the most "hopeful" and appropriate isotope, saying "we should not do this, until we are able to contaminate food enough to kill at least half a million".

This story suggests that from the very outset, low-level radiation was their expectation in developing nuclear weapons much more than direct radioactivity.

I conclude this report by calling our attention to the need to focus on the danger and terror caused by low-level radiation, added to the "direct radiation of high-level radioactivity leading to cancer", on the damage caused by nuclear bombs; and by appealing that every effort be made for the total abolition of genocidal nuclear weapons.



For the past ten years, working on nuclear weapons decision-making, I confess I have not been very interested in questions of the legality of nuclear weapons in international law. These questions have seemed to me academic, in terms of the realities of political power. When two opposing world alliances based their entire military doctrine and structure on nuclear weapons, then were hardly likely to suddenly say "oh sorry, we didn't realize they were all illegal". The five nations possessing them were also the permanent members of the Security Council, which was the international body which could conceivably put pressure on a nation to give them up.

I think that the world situation now does make this question interesting, for two reasons: the break up of the Warsaw Treaty Organization and Iraq. One of the legs of the colossus on which the 'legitimacy' of nuclear weapons was built, has collapsed and fragmented into seventeen parts. Secondly, the experience of the IAEA in Iraq has shown the world both how easy it is for small nation with a lot of dollars and determination to get a nuclear capability, and how to toothless the usual IAEA procedures are.

There is a third reason why I am taking this question seriously now, and that is when you come up against an alliance of lawyers and doctors and one-hundred-year-old peace persons, it's pretty difficult to refuse! I am quite serious about this, as you will see in a moment.

Others have outlined, far more competently than I can, all the good arguments why the International Court of Justice should give an Advisory Opinion that the use of nuclear weapons is illegal under International Law. My job is to convey to you from our experience how a successful strategy for obtaining a majority may be designed. Just before I try to do that I can't resist - having spent the past eight months working with some of the best international brains on how to control the worldwide trade in conventional weapons - adding one more arrow of

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Oxford Research Group, UK
argument to your quiver. The five permanent members of the Security Council, whom I shall call the P5, are now caught in a problem of double standards. They put large amounts of effort and money into promoting the sale of conventional weapons to other states, while prohibiting or trying to prohibit the sale of nuclear weaponry to the same states. The UK for example has 8 government offices around the globe entirely devoted to selling British weapons, at the taxpayer's expense, at a cost of £8.4 million, minimum. (That's the published figure). The United States has just reversed, in a historic decision, a 25 year old moratorium on placing the armed forces, personnel and equipment of the Pentagon at the disposal of US arms manufacturers, to help them sell their weapons at international arms fairs. And the Pentagon has already, since the decision was taken last June, spent tens of millions of dollars making resources and manpower available to demonstrate the equipment in order to boost flagging US arms sales. This double standard is no longer lost on the rest of the world. In fact, like the 'flasher's raincoat, it's gaping wider and wider, revealing nothing very exciting underneath in the way of justification to prop it up.

If we want a strategy, we need to consider four parts to it: purpose, people, presentation and timetable (or, for easy memorising: what, who, how and when.)

1. Purpose.

What are you trying to achieve? This part of this answer is simple - you are trying to get the ICJ to give an Advisory Opinion. But through which UN organ will you do this: through ECOSOC (the UN Economic and Social Council)? The General Assembly? or working again next year, through the World Health Assembly. I do not need to go into the comparative merits of these three avenues because they are very clearly laid out in the excellent Guide to the World Court Project prepared for this conference. ('Hiroshima to the Hague' pp 114-120). I would also suggest one organization which hasn't been

mentioned much, in putting all this documentation in front of the International Law Commission. Although they may not be a body to act on this issue, they certainly should be notified. As far as the General Assembly is concerned, I agree with Richard Falk that the decision would be a logical sequel of the General Assembly resolutions so far.

But which organ you decide to work through, and you may decide to work through all three, will to an extent determine which countries you work most closely with. In any case, I would advise selecting a) two nuclear countries, b) two threshold nuclear countries, c) five NATO countries and d) at least twenty smaller countries. In each case you should pick the 'medium-difficult one's - not the obvious supporters, like Sweden and Mexico (they can be relied upon to help if they are kept closely informed of your efforts), nor the predictable bastions of opposition like the US. They must be overcome by majority opinion). In the first three categories I would suggest the following countries:

a) Nuclear:

First of all France, as it has just signed the NPT, and has a temporary moratorium on testing. France is also concerned over proliferation, but of more political concern, the socialists desperately need the Green vote and they are ready to make some concessions. That was why they announced this moratorium on testing.

The second one is the UK, the toughest country short of the US, but must be attempted; if for no other reason that British officials chair the P5 and G7 groups of officials working on conventional arms sales restraint and the UN Register. They also have an official concern over proliferation, and it is now possible to identify individuals in the Foreign Office and the Defence Ministry who are at least open to argument and would be receptive to the kind of documents that I have seen at this conference. The third country that I wouldn't have added a month ago is China. They made proposals in UN Disarmament Commission on April 28 for the total elimination of nuclear

weapons and for a Nuclear Weapons Free Zone in Asia-Pacific region and Europe.

b) Threshold nuclear countries:

Here I think you should concentrate on Pakistan and India. They are playing each other off now as Israel and Egypt did before Camp David. Progress with one could be used as leverage with progress with the other. Just as it could with France and Britain. I should add that the main reason that Britain has nuclear weapons has nothing to do with the Soviet Union and never did, but with France. Officials in the Ministry of Defence have said to me (and I quote): 'It is inconceivable that we could leave France in possession of Europe if we were to disarm'.

c) NATO countries:

I note that in the list that Keith Mothersson has prepared of countries that might be attempted for convincing in this campaign, he hasn't mentioned the tougher European countries, the NATO countries, which are so significant in that marvellous chart we were shown, yesterday, by Robin Briant (from PeaceLink magazine, New Zealand). That chart shows you clearly the voting pattern of European nations and how exactly it copies if you are a NATO nation, the way you will vote in UN. So I would encourage efforts to be directed not only to Greece, Denmark, Norway or Iceland, the easier countries of NATO, but also to Italy (very possible now, a lot of openings), Germany (huge possibilities since reunification), and the Netherlands. The Netherlands are very wobbly, on the one hand they are one of the bastions of Atlanticism and on the other hand there are members of the Netherlands administration and government who are very open to this kind of idea.

d) Smaller countries:

This should include the other, ie non-permanent members of the Security Council, in the next few years. I think this is crucial.

2. People.

Who is it worth talking to in these countries? What your Guidebook says about 'Working with Politicians and Diplomats' (Chapter 15, page 153) is

essentially correct, but doesn't go far enough. Our research has shown that there is a lot more to these decisions than politicians and diplomats - the key people are often those permanent civil servants who advise the politicians. In Britain, for example, the average tenure of a defence minister is two years, whereas the officials who advise (and not just advise, push) these ministers - who have very little technological background - they are there the whole time and they keep giving the same advice. So I would suggest to concentrate on these people. So I would suggest a carefully-prepared list of say 20 people whose word on this issue is likely to be pivotal. In the case of France, for example, it would include the director of the Délégation Général aux Armements, the Direction des Applications Militaires of the Commissariat à l'Energie Atomique, as well as the key members of the cabinet of Mitterand, that's the people surrounding him, Pierre Bérégovoy (Prime Minister) and Pierre Joxe, the Defence Minister. Such lists could be provided by the Oxford Research Group if you want us to, for Britain, France, Pakistan, India and to a lesser extent for the five NATO countries I've mentioned. We published 4 years ago a 'Who's Who' of decision-makers in the nuclear weapons world, world-wide. This covered decision-makers essentially in the nuclear countries of the 2 alliances, the then Warsaw Pact and NATO. The posts outlined in the book could be helpful, though in some cases the incumbents have changed.

3. Presentation.

How can your proposal most effectively be presented? Again, your Guide gives a good set of sensible guidelines and they're all based on the assumption of personal discussions taking place between you, your members and these individuals. They present the elementary things like the way to dress, and the importance of the type of language used. This is of course the best way to get your points discussed, but don't forget the people you want to see need to know precisely what it is you want. They're incredibly busy, they have piles of paper on their desks - just

like you do - and clear and concise documents should be presented in a meeting, or better beforehand. This enables the official to respond clearly and it enables you and him (or, in the rare cases, her) to identify straight away the points where there's a problem. This means you all save time and energy by getting to the point immediately, instead of leaving questions unresolved or undigested.

Now I will mention briefly the Oxford Research Group's experience of putting groups of concerned citizens in touch with decision-makers. There are two keys things I want to stress: dialogue and persistence. Dialogue is a word that features consistently in this book and I am glad to see it there. There is obvious no point of going into an office, putting your beating your fists on the table haranguing them and leaving. Obviously you won't have communicated anything. But we have had some amazing experiences with groups of people relating to officials. One that comes to my mind is a group of housewives from a village in Oxfordshire. They decided to get in touch with a person in the Foreign Office, they came to us, we gave them the name of the person and they applied for an interview. They were granted one with a PR person as a first hurdle. The interview took place, everything went well, everybody liked each other and there was a genuine exchange. They were given the green light to see the man himself, who was in charge of the formulation of British policy on arms control for the entire Foreign Office and thus the British government. They saw him, the atmosphere was completely different, he was didactic, he said: 'Next question!'. They were treated like schoolchildren, and eventually one of them exploded, she was so angry about the way they were treated and she said: 'How many times do you think you can you kill a baby'? The interview collapsed, as you might expect. It isn't always a bad thing, sometimes emotions are good thing in this issues, especially that kind of female emotion. But these women became so determined, they learned everything there was to know about Comprehensive Test Ban Treaty, they developed a dialogue which took

place on this issue, over three years, with key persons in the Foreign Office and they became recognised as knowing more about it than the officials themselves.

The second point is an question of persistence. Another group, of musicians and actors, came to us and said: 'We want to talk with someone in the Ministry of Defence'. We were very impressed by their communication skills so we gave them the Chief of the Defence Staff. They wrote to him, they got a one-line answer, they wrote again, another one-line letter came back, they wrote again for three years, every six weeks, getting this kind of acknowledgement or nothing at all. They went on for three years and he was then promoted to the House of Lords and his maiden speech there consisted entirely of quotes from their letters. So persistence works.

Always ask for a written response subsequent to your meeting, otherwise the issue can conveniently be left pending. In some cases it will be worthwhile to put an official in one country in touch with an official in another, to whom you have already spoken, and who you know has a positive position. Because officials do meet each other all the time. An official from a country like Mexico can be a very positive influence on officials from more doubtful countries.

Here I would like to stress the importance of good coordination between all of your organisations, because there's no point in duplicating, by all going to visit some countries and nobody concentrating on others.

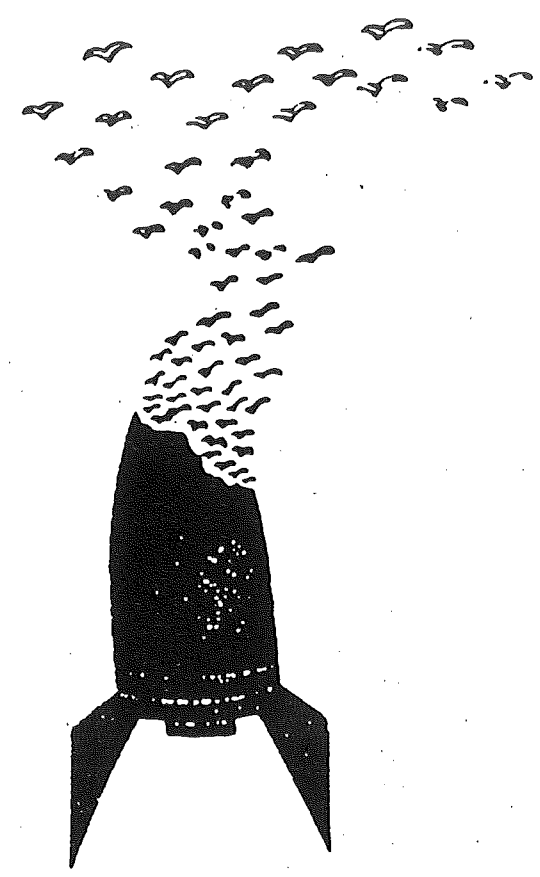
4. Timetable.

When is all this to be done? The immediate link that officials and politicians will make is the 1995 NPT Review Conference. I would work on that because it is a major cause of concern to the nuclear countries. In the course of your work you will develop a valuable thermometer of the attitudes of key States to the 1995 Review, and you can use this to your advantage. You could for example develop two alternative count-downs to 1995: one scenario based on the present attitudes of

nuclear states, which most authorities now feel will result in the collapse of the whole non-proliferation regime, and one based on support for your initiative in the International Court of Justice. They would make very good contrasting reading.

I said earlier that this alliance of doctors, lawyers and the IPB, supported by a huge range of other peace organisations, is worth taking seriously and will, I think, be taken seriously by decision makers, and for three reasons:

- Your case is strong and it's stated clearly.
- You are well organised and your material is very classy indeed.
- Your members have the skills necessary for putting the case across. Try arguing with a doctor; try getting a word in edgeways with a lawyer; and (I mentioned persistence earlier) try outlasting a one-hundred-year-old peace organization!



Sven Hellman
Vice-President, Engineers Against Nuclear Arms, Sweden

I think this subject 'Implications of the World Court Project' is rather difficult to speak about. There will be a lot of speculation, and much less of fact. I have chosen to try to consider the point of view of governments: how are governments influenced by what we are doing now? And then I can't treat the World Court Project alone. I must also try to describe the situation of proliferation as a whole - to give the complete background.

For a country considering the development of nuclear weapons, there are many arguments for and against which they have to weigh in order to arrive at their position. Among the arguments in favour of a programme: you may have heard that the 'balance of terror' is supposed to have prevented war in Europe for many years. Why not prevent war in the same way, for example in the Indian sub-continent? Nuclear weapons obviously contribute to national prestige; for example, all permanent members of the UN Security Council are nuclear weapons States, so why not other large States also? Threats to continue or activate a nuclear weapons programme could be used for blackmail, for example, Israel has used that many times to get economic and military assistance which might not otherwise be available. And finally among the 'positive' arguments: this is the ultimate weapon to be used when national survival is at stake. And that's a problem for many countries in regions where there are continuous conflicts.

Among the arguments against nuclear weapons seen from the government point of view: first, they are very expensive. You need a lot of investment in education, in facilities of different kinds, and in material and in knowledge not only for the warheads, but also the delivery systems. That is what prevented Sweden once - it was too expensive. Furthermore, nuclear weapons may provoke adversaries to follow suit, so the advantage of having them may be short-lived. If you start a nuclear weapons programme, you may provoke another country to start, and you won't be better off after that. A nuclear weapon programme may provoke economic sanctions from major nuclear

powers, with adverse consequences for the whole society. Pakistan could have been subject to those sanctions. There is a risk of being exposed to a pre-meditated attack intended to stop the programme, and you have the example of Israel bombing the Iraqi reactor. There is the risk of unauthorised use before controls have been developed. You may remember the French nuclear weapons in Algeria when there was a coup in Paris. There is a risk of escalation of a regional conflict, thus making much more destruction than is needed for the purpose. And the consequences of a nuclear war will be out of proportion to the possible gains. I could refer to the declaration by Reagan and Gorbachev: 'A nuclear war cannot be won and must never be fought'. And lastly, there have been many regional wars since 1945 and in many of them there have been nuclear weapons on one side, but they have never been used. Maybe they aren't as useful as governments believe.

The obvious role of non-proliferation efforts and the World Court Project is now to influence the balance of arguments for and against so that there won't be any new nuclear weapon powers and those who already have them will abolish them.

If we look at nuclear non-proliferation regimes, we can see that these are either on the demand side, trying to reduce the demand, or on the supply side, to make supply more difficult. For example, now on the demand side are such incentives as guaranteed peaceful nuclear cooperation with states that renounce nuclear weapons. That is not as popular now as people suppose it to be. I personally hope there won't be any more nuclear-power countries.

The NPT also commits States already in possession of nuclear weapons to "pursue negotiations in good faith on effective measures for the cessation of nuclear arms race at an early date and to make progress in the direction of complete disarmament". This was said already when the Non-Proliferation Treaty came into force in 1970 and since then there has been an enormous increase in the destructive capability of the weapons, even though the numbers of weapons are being reduced. The supply side

policies consist of embargoes and export control measures applied by supplier States in order to place obstacles in the path of certain States. And we have seen from the newspapers how inefficient such measures are. In some European countries, it has been quite impossible to stop private people and firms from exporting knowledge and exporting components and so on to threshold countries.

What has been achieved by these non-proliferation regimes? In the first place we can say that at present more than 140 countries are members of the NPT. But the number of States in the world is much larger than that. In 1992, the remaining nuclear weapon states outside the NPT, China and France have decided to accept the NPT. Argentina, Brazil, South Africa, and maybe also North Korea have taken some steps which could be interpreted as steps away from the nuclear weapons option, but we can't be sure. The US and Russia have agreed on reductions in nuclear stockpiles. For example, in the medium range systems, in the strategic systems which should be reduced by 30%, and in tactical nuclear weapons which will withdrawn for example from ship basing. These measures have somewhat weakened the criticism against the nuclear weapons states for not having fulfilled their obligations. But I must say that the majority of these arsenals are still there, posing a serious threat to humanity and to the environment, and no restrictions are so far put on research and development of new generations of even more dangerous weapons.

What are the threats to these regimes? The biggest problem has been lack of political will. For example, the United States has abstained from enforcing nuclear export controls whenever competing interests have been deemed to take precedent, which is almost always. There have not been any export restraints, for example, against Pakistan, against Israel and some others. Some Western countries who are members of the NPT have not been effective in preventing sales of sensitive material and know-how to threshold countries. So covert nuclear weapons programs have been supported without the governments necessarily wanting to. The dissolution of the

Soviet Union may create new threats to non-proliferation regimes. The Russian Federation has declared itself to be the legal successor to the defunct Soviet Union, and consequently is expected to comply with all the treaties that were signed by the Soviet Union, including the Non-Proliferation Treaty. The Russian Federation is thus under obligation not to transfer control of any nuclear weapons whatsoever to other republics, for example, to the republics of Belarus, Kazakhstan or Ukraine. Those countries are supposed to sign the Non-Proliferation Treaty as non-nuclear weapon States. If they don't, it would mean a severe blow to the non-proliferation regime.

The dismantling of large amounts of excess nuclear weapons has created new problems of how to prevent these materials from leaking out onto the world market. The nuclear weapon complex in the former Soviet Union will be reduced, which gives rise to concern that some of the approx. 1000 nuclear weapon specialists may seek better paid employment abroad and may help other countries to develop their weapons.

So to sum up, what is going to happen with the Non-Proliferation Treaty? There are now a lot of threats to the Treaty and much has to be done to make sure it will be extended at the 1995 conference. What should be done? On the demand side, the United States and the Russian Federation should commit themselves to rolling back their nuclear arsenals and infrastructures, created at the height of the Cold War. The goal should be to reduce to an absolute minimum the role of nuclear weapons, and to abolish them altogether at some time in the future - which may be a distant future. Consequently they should declare an immediate moratorium on nuclear weapon testing followed by negotiations for a comprehensive test ban.

The United States and the Russian Federation now have a critically important opportunity to underline their confidence in the International Atomic Energy Agency safeguards, by dismantling excess nuclear warheads and placing the fissile material in secure storage under the control of the IAEA. The other possible way of strengthening the Non-Proliferation

Treaty and making possession of nuclear weapons less attractive would be to force a global taboo against their use. On the supply side, there is a lot to be done. For example, further and more effective restrictions on trade should be agreed, the IAEA should be supported and strengthened, for example with the experience from the Iraqi effort as a background. The Russian Federation and a number of Western countries should join forces to find new jobs for the nuclear weapons experts so they won't move to other countries.

What other implications has the World Court Project? As I understand it the International Court of Justice in the Hague should be asked for its Advisory Opinion on the status in international law of the use of nuclear weapons. Is the use illegal or is it not? I could imagine many problems in this procedure and they have been mentioned by earlier speakers. As the basis for my discussion of possible implications, I shall start from the assumption that the Court considers the use of nuclear weapons illegal. What are the consequences of that? My first observation is that the hitherto stubborn refusal by the nuclear weapons states to accept a legal ban on the use of nuclear weapons is a clear indication that international law has a role, a political role, otherwise they wouldn't care. So if the United States and others are persuaded to say that the nuclear weapons are illegal, I think it would have a very strong influence.

On the other hand, I must admit that despite the ban on the use of chemical weapons since 1925, the international political reaction to Iraq's use of chemical weapons was surprisingly weak. The illegitimizing of the use of nuclear weapons in combination with clear reductions in the arsenals would provide legitimacy for great powers or United Nations Security Council actions to defuse or contain the threat of regional nuclear wars and to use international sanctions against proliferators. So this would strengthen the United Nations in its role. The illegitimizing of the use of nuclear weapons could be seen as a first small step toward a future

Proliferation Treaty. It would give the peace movement a strong argument against nuclear weapons.

But maybe there could also be some risks with a question to the International Court of Justice. If the ICJ considers the use of nuclear weapons as legal, the present practice of States with strong restraints against the use of nuclear weapons may be weakened. The threshold countries may feel it's now OK to now go on with their programmes. So we should be a bit careful before asking the questions, so we don't get the wrong answer.

I have the feeling that the nuclear weapons countries have a choice. The first alternative is:

- to keep all options open for further nuclear weapons development, testing, production and deployment;
 - to scrap only those weapons which are completely useless; and to try, probably in vain;
 - to halt proliferation with emphasis only on trade restrictions and other supply-side policies;
 - to build up a defence against limited missile attacks, GPALS, which are considered by most independent experts to be ineffective against many ways of delivering the weapons.
- This is the first alternative for the nuclear weapons States, just to press their will on other countries. They can do whatever they like and they protect themselves against the effects. I think that's the most dangerous route they could choose and there many signs that they are choosing it

There are other ways of behaving. One is to contribute to the decrease in interest in nuclear weapons:

- by illustrating their limited value and their disastrous effects if used;
 - by reducing arsenals and by storing the excess fissile material under international control;
 - and by taking, as a small first step towards nuclear weapons abolition, a decision to de-legitimize their use.
- This second path is much more promising for the future of the world.

Mobilising Civil Society

Katie Boanas-Dewes,
Aotearoa/New Zealand
Foundation for Peace Studies

It is a great privilege to be with you all, and to be able to bring greetings from the other end of the globe - from the land the Maori people named Aotearoa, which means: "Land of the Long White Cloud". Leaders of the largest Maori tribe in the South Island, Te Runaka ki Otautahi o Kai Tahu, and from the peace women tribe Rongomaiwahine in the North Island have asked me to convey their greetings to you on their behalf.

I also bring greetings from the members of the Nuclear Free and Independent Pacific movement, and especially the women. They, like the Japanese hibakusha, are hibakusha of the Pacific. They have struggled long and hard to gain the South Pacific Nuclear-Free Zone which we now have. I'm sure that, with our colleagues from France, we have together helped stop the French testing for a while.

I also bring greetings from the peace people of Aotearoa/New Zealand - the people who said a resounding NO to all forms of nuclear power and weaponry and who, through the creation of the nuclear-free legislation, effectively attempted to prevent the possibility of our land becoming the Land of the Long White Mushroom Cloud.

Last but not least, I bring you greetings from retired Judge Harold Evans, from my home town in Christchurch, who probably more than anyone else on this planet is responsible for the work which led to the launch of this Project here today. He has worked consistently over the past 6 years, tirelessly

promoting the idea with a vision, dedication and persistence which has driven the diplomats, the Prime Ministers and the politicians round the bend - but it has had an effect! He is truly inspiring. He is certainly here in spirit with us today, and he sends his best wishes to you all.

During our campaign to declare our country nuclear-free, we often used the image of the millions of seemingly weightless snowflakes which collectively have the weight to break the branch of a tree. We persisted against great odds, including the strength of America, encouraging many small seemingly insignificant steps to be taken which culminated in what is now seen as a major effort towards nuclear disarmament within our region.

With regards to the World Court Project, I have watched over 6 years as the snowflakes have gathered together and a snowball has creaked into action. It has begun to roll and gather momentum within the past 15 months and this launch will hopefully give it the impetus needed to carry the Project to the Hague and beyond. I remember the beginnings of this Project in my kitchen when Prof. Richard Falk first met Harold Evans in 1986 and suggested that New Zealand should 'take the nuclear policy to the World Court' - and although Harold was unsuccessful in that particular bid, it sowed the seed for further actions. Harold shared his vision with the Prime Ministers of Australia and New Zealand, and with key lawyers, doctors, politicians and activists around the world. Those of us who supported him in these efforts were seen to have joined Harold's nuclear-free snow-flakey band.

When the Paramount Chief of our local Maori tribe heard I was coming here to share with you, he asked me to bring you a message from his people. In the South Island the ancient name of the highest mountain is Mt. Aoraki (or Mt. Cook) and is referred to by the Maori as the 'Snowclad Paramount Chief'. As the snow melts, he says "it is like teardrops falling onto the plains causing tributaries of life-giving waters, spreading out like settlements of the sub-tribal clan groups clinging to their ancestral canoe". His people have given me their blessing for his journey here in the hope that together, we, in our sub-tribal clans around the globe, will help mobilise a snowball big enough to extinguish the nuclear fireball forever. Their hope, like mine, is that we will succeed in having the testing, production, possession, use and threat of use of these evil nuclear weapons declared illegal by the ICJ within the next few years.

I have been asked to talk about mobilizing civil society. I want to draw on the experience of those of us in Aotearoa/New Zealand. There were only 3 or 4 of us and we've had a little effect. But imagine if we all could have a similar effect, doing our own little actions. In particular I want to draw on the actions of the UK group, especially Keith Mothersson, and we have already referred to some of the groups supporting us. Already we have mobilized a substantial snowball. These are only a sample of the groups who are supporting our action so far:

IPB, IALANA, IPPNW, WILPF, World Peace Council, the International Nuclear-Free Zone Movement, Greenpeace International; the UK groups (many already activated), the

US and Canada the same; in the Pacific area there is the International Commission of Jurists, the Nuclear Free and Independent Pacific movement, many within our own country and now the Maori Women's Welfare League; I know there are many more on the way and going on. It is a start and a very hopeful start, because 12 months ago there would have been only 2 or 3.

So far though, these groups are predominantly peace-oriented, white and Western. If we want to have any chance of success in the General Assembly in the next year or two, we need to urgently cast our net far wider. We have to look at ways of getting the information out to the general public. In many ways the language of these books is not accessible to ordinary people - to mothers like me. As a mother and an activist, it is a great challenge to be able to take the words of my legal and medical colleagues to the kitchen table and explain to other mothers why we have to take this Project on.

My challenge tomorrow morning, on Radio New Zealand live, is that I have been asked to go into most kitchens in New Zealand, on radio, and talk about what has happened here. It is not easy to take the legal language and to put it in plain, simple English and to try to mobilize ordinary people in their homes and to put a human face on the Hague. For most people in Aotearoa the Hague doesn't mean much. Neither does the U.N. We've still got a lot of work to do, but we can do it and this Project gives us ways of doing it. In our successful anti-nuclear campaign, we started by getting people to put stickers on the gates, in their offices and on their kitchen windows. In the end it happened and what I see is

that this Project is a way of taking what we did in our homes for the national nuclear policy, now globally, to the Court. It's like saying "we don't want our homes and our children defended by nuclear weapons and I, as a mother, don't want anyone else's children defended by nuclear weapons on my behalf". That is the simplest way I can put this Project into language which has meaning for other mothers. Women are over half of the population. (There are many fathers too who want to act, but I am aware that I speak especially for mothers).

Already we have millions of people living in nuclear-free zones. I'm thrilled to see this declaration from Kobe Port. It feels good that the Japanese people have declared a port nuclear-free, and that you have many nuclear-free zones in your country. It is good to be able to build on and you should be able to get many, many De Martens Declarations from Japan, from all your nuclear-free zones, to take to the Hague. This is an idea that Keith Mothersson and others have promoted, of getting thousands of De Martens Declarations. We collect them together in our own national repositories, and we take them to the Hague. We suggest people, within our community, leaders, who could go to the Hague on our behalf and take them there. The English group have already drafted a Declaration of Public Conscience, and are already collecting them to be delivered to the Hague. I am sure it will be translated into Japanese in an appropriate form for your people to sign and to be taken to the Hague by your leaders.

The other thing we should do besides the De Martens Declarations is to create a

sense of urgency in this window of opportunity, also also a sense of hope. The last thing I want to leave with anybody today is a legacy of despair, because that is disempowering. We have to leave a legacy of hope, that we can achieve this - no matter what the Americans do - in the General Assembly, collectively all the little nations can get together and stand up together and say: we demand it! I want to give people hope that their voices do have an importance, that is why I want to hold on to what my French friends were saying yesterday. That their voices are being heard on nuclear testing, ours are being heard. I want to claim some power.

Alyn Ware and I went to knock on our ambassador's door, the French ambassador's door and the Chinese ambassador's door and we asked: "will you sign the NPT?" (this is eight months before they agreed), and we asked: "will you sign in favour of the PTBT Amendment Conference?", and we also said: "it's about time you signed the protocol for the South Pacific Nuclear-Free Zone". I would ask our French colleagues now to support us and ask their government to do it, now that they've stopped testing. It's another step towards cumulatively building up towards our World Court Project.

I talked about Harold being persistent and I have an image of this continual drip of a drop on the brick wall. I have seen that happen, not only with my own government, but at the U.N. too, and Harold is that persisting drip of a drop and it does have an effect. I want to refer to monitoring how a government votes in the United Nations, on the convention on prohibition of use of nuclear weapons. I

think this is a very important idea, on which will depend our strategy in the future. Owen Wilkes has come up with this brilliant data base, called "VUNDerBAR", standing for: Voting in the UN, DataBase for Activist Researchers. This database is available for people to order. I will help to facilitate you getting it so you can monitor how your government votes on these very important resolutions, especially on the Indian resolution on the convention on the prohibition of the use of nuclear weapons.

I want to affirm this point of the grassroots pressure to make our governments hear. They won't vote in the UN the way we want them to, unless we are dripping and dropping, knocking and being bloody nuisances. I want to relate to you what David Lange said, the former Prime Minister of New-Zealand. He only accepted the Nuclear-Free legislation with his arm up his back. He now takes a lot of the credit for it, but I know he wouldn't have done it without our continuous pressure and especially from the women. He says: "There is nothing more powerful than a group of women NGOs descending on you, at a critical moment, when you cross the street to Parliament or to the UN. You have actually changed the climate, so that politicians have to look at the details of what they are doing. You can't any more, in New Zealand, say that you are against nuclear weapons and vote for them all the time in the UN". That is quite an admission, and I would like to see every country, every politician, have that accountability and especially to the women. Because I know that the diplomats find it very hard to answer these questions. I've done the same, I've been to see these diplomats, with my babies on my hip (because that's my job

and I can't leave them at home). I've asked them: 'How many bombs do you need to kill my babies?' They can't answer it, the French diplomats can't answer me when I say, during the Special Session on Disarmament and they're testing nuclear bombs, 'Why do you need to have it, your three daughters are as much at risk as my three daughters in the Pacific. Take this home and read it and see if you can lie straight your bed after you read it. He was in tears with me. How can we reach the diplomats? They are human beings, they are lovely people, they are fathers and mothers too.

I think that we have to claim our passion as well as our books and our 'head-space', and marry those together in our cause. I certainly have learned to own that part of my space and who I am, and to use it. I ask us all to do that because we are going to need all our strength and our passion to turn this around. We've come a long way, but we have still a long way to go.

I talked about the idea of taking signatures to the Hague and I suggested some people that we might like to ask to do that on our behalf. Some come to mind immediately, like the Dalai Lama, Mother Theresa, Nelson Mandela, David Lange, Helen Caldicott, and there are many, many others. I think it would be wonderful if we had leaders in our movement to go to the Hague on our behalf and stand there and say: "we do this for the people in our countries".

I want to leave also with you the importance of going for the dreams and the visions and the impossible. I don't know what effect my letter will have today in New Zealand. I was to have met the Dalai Lama and welcomed him to our country, so I had

to choose whether I did that or came here. I decided I was coming here, but instead I wrote him a letter and I gave him our booklets on Illegality and I asked him if he would mention it in his opening speech at Rio next week at the UN Conference on Environment and Development. It is a dream, I don't know what will come of it, but we've got to keep on dreaming, if this is going to happen.

We've got to keep lobbying our Members of Parliament. I know some might disagree with the energy that I and others have put into trying to get a parallel launch of this Project in New Zealand. I have just got a fax from New Zealand, saying that already many prominent people have signed a support statement and have launched it in New Zealand. It may include people like David Lange, who would not have agreed to our government taking this resolution to the UN 3 years ago. It includes a former Governor-General, it includes 22 members of the Parliamentary Labour Party, it includes 9 mayors of cities declared nuclear-free, including Wellington our capital, many Dames and Sirs, 3 Queens Council lawyers, and Maori leaders. It is a good start but there are many more to come.

We must publish articles, use our media effectively. I was standing at my kitchen sink when I heard Alyn Ware on the radio two weeks ago, talking about going off to the World Court Project launch. His voice was coming into the kitchen as I was making breakfast with my daughters. A few minutes after he finished, local mothers rang me from and said: "Did you hear? Alyn was on, he is off to the UN, to Geneva!". I thought, that's great, people are feeling connected with that already. We have got to

take our message to the media, to get our message both in the Bulletin of the Atomic Scientists and right down to local community newspapers.

I would love to ask that people like Richard Falk and other leading colleagues in the professions - who are able to put this message into reasonably simple language and that have the prominence to be covered by the media - if they are travelling around the world, going to conferences, that maybe they take an extra day or two and allow us their presence to be able to have you for you a few hours to speak to our public. I know that when you are available, people will listen and we will get the message heard. I would like to ask you, again, to give your expertise and your time as the so-called 'experts' (I think we are all experts), but the experts that will be listened to by politicians and decision-makers.

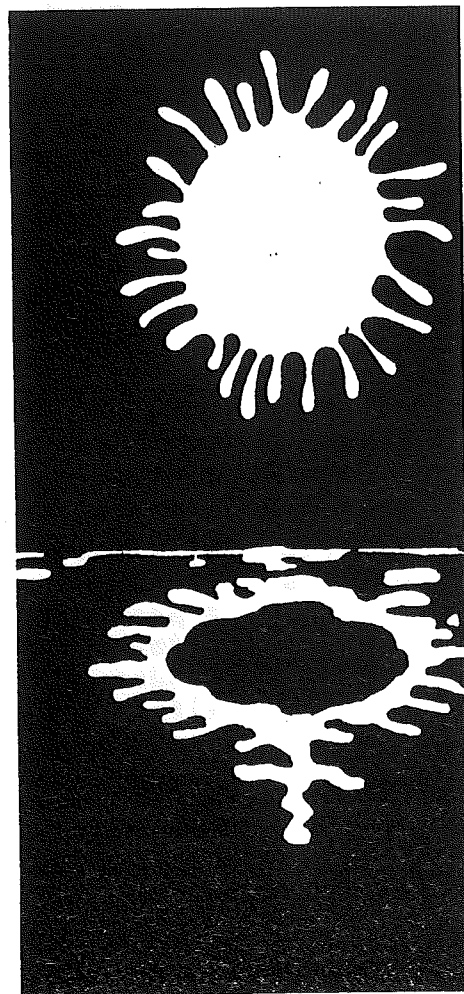
I don't want to look only to what we do in our own country, I want to look at our region. I have to mention that I am well aware that Pakistan has made some very good statements about the need for regional security and nuclear-free zones, I know that China has made recent statements, that the Philippines has just got rid of most of the US nuclear weapons based there, there's the South Pacific Nuclear-Free Zone, the Treaty of Tlatelolco... There are many initiatives that have been taken by countries, where people in those places often don't know what the bureaucracy is saying, what the ambassadors at the UN are saying. We've got to help convey the information about what those people are saying at the UN, to the ordinary peace movement people, so that they remind their governments that that's what

they've said and then hold them to it, because it won't happen unless they do that.

I want to end with a message of what each one of us can do. I think we can all set achievable objectives and priorities, but I still want us to go for the impossible, because I think that this World Court has that feeling about it, that it could be impossible. But I don't want us to lose the dream and the vision of what we can do. When I was getting dressed this morning, I looked at my dress and I thought: "I should wear those rainbow colours I wore yesterday". Then I looked at what I was wearing and I said "No, this is extremely appropriate". I am wearing little snowflakes. The more I thought about snowflakes and storms the more I realised that when the snow is beginning to fall and you're trying to get some clumps of snow together, it's often very soggy and slippery and it's a bit misty, it's a bit wet and a bit cold and

sometimes you can't see the right way to go. But when the snow is really full and good for making snowballs, then the sky is clear, and before the sky is clear, something comes out of the storm and it is called the rainbow. I want to leave with you with the image of the rainbow and the hope that we are going to see this thing happen, and it is going to go from every kitchen table to the Hague and we can only do it if we do it collectively. I am going to finish with a proverb that this Maori chief gave me for you (I've changed some words, you can easily guess which ones):

"Cease, oh nuclear winds from the West. cease oh nuclear winds from the South (Mururoa), let gentle breezes flow over the ocean and let the red-tipped dawn come with a sharpened ear, a touch of snow and the promise of a glorious day".



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