



IALANA News

**INTERNATIONAL ASSOCIATION OF LAWYERS
AGAINST NUCLEAR ARMS**
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Welcome by the President

C.G. Weeramantry

*President of IALANA and former Vice-President of the
International Court of Justice*

As the President of IALANA, I welcome this issue of the IALANA journal and extend my warm regards to its readership.

The nuclear danger continues to be a major cause of international tension. It is the object of IALANA to seek the total abolition of nuclear weapons - for their presence in any shape or form is a violation of basic rules of international law and basic state obligations. Their existence anywhere is an invitation to powers everywhere to seek to acquire this illegitimate weapon as an additional source of strength.

Moreover the easier availability of nuclear know-how and the possibility of leakage of weapons-grade nuclear materials are a source of encouragement to those who seek this illegitimate means of extending their power.

When those who object to nuclear research and weapons production by some countries are themselves involved in violations of the basic rules of the international law which prohibit such weapons, their protests lack the authority they would otherwise command.

Nuclear abolition requires a world which is nuclear free around the globe and not one where pockets of exemption cloud the clarity of the general rule. A nuclear free world is the world IALANA aims at and that is the world which we invite our entire membership to contribute actively to achieve. Numerous flash points across the world underline the urgency of this message. It is IALANA's philosophy that every individual has something to contribute to this objective and that no one should be a victim of the mistaken belief that these are matters only for governments, statesmen and diplomats.

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IALANA News

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United Nations, Iraq and the International lawyers' appeal on preventive use of force

On February 13, 2003 Judge Weeramantry, President of IALANA, presented to the United Nations an "International Appeal by Lawyers and Jurists Against the 'Preventive' Use of Force" circulated by IALANA and signed by more than 300 lawyers from 40 countries.

The appeal was distributed to all members of the UN Security Council and General Assembly and released to media at a press conference in the United Nations building in New York. It stated that a preventive attack on Iraq would be illegal and unnecessary and should not be authorized by the Security Council or undertaken by any State.

The Financial Times, in its report on the appeal presentation, highlighted IALANA's statement that "there is no precedent in international law for use of force as a preventive measure, when there has been no actual or imminent attack by the offending State". (*IRAQ CRISIS: DIPLOMACY: 'Conflict would be deemed illegal'* By Mark Turner at the United Nations, Financial Times, February 14, 2003).

The appeal buttressed the positions of Security Council members which had been resisting the intense pressure by the United States and the United Kingdom to adopt a Security Council resolution authorizing the use of force.

While the appeal, and other efforts by the international community, failed to prevent the military attack on Iraq, they ensured that the Security Council refused to endorse the use of force, thus affirming an international norm against the preventive use of force and indicated strong international support for multilateral approaches to deal with the suspected or actual proliferation of weapons of mass destruction.

The appeal and list of signatures can be found on www.lcnp.org

UK Legal Actions on Iraq

In September 2002 an ad-hoc group of legal experts and peace activists came together in the UK to form The *Legal Inquiry Steering Group* (LISG) to deal with issues of international human rights and humanitarian law and the legality of the use of force. The first step was a *Citizens' Inquiry into the Legality of use of force against Iraq* which was chaired by Professor Colin Warbrick, professor of Law at Durham University. He concluded that the UK's bombing raids into Iraq at that time were in breach of international law, and that further armed force, in the absence of a clear UN Security Council mandate, would also be unlawful.

This "virtual" action was soon followed by a real one. On 28 November 2002 the High Court was asked to carry out a judicial review on the possible use of force. Lord Justice Simon Brown in his judgment on 17 December ruled that in order to decide whether war would be unlawful, the courts would have to interpret UN Resolution 1441; clearly this is not part of domestic law. However, the initiative attracted considerable media publicity, so much so that BBC Radio conducted a Shadow Judicial Review on 19 December.

Following the failure of these actions to prevent war, a War Crimes Project was initiated to monitor UK conduct in the war and continuing occupation. Infringements of International Humanitarian Law (IHL) by the 'Coalition of the Willing' were reported to the Permanent People's Tribunal in Italy. If the panel finds that there have been breaches of IHL it will present a report to the Prosecutor of the International Criminal Court (ICC) on the basis that individual members of the UK Government are responsible, at the highest level, for decisions on how force is used against Iraq and its civilian population.

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International Association of Lawyers Against Nuclear Arms

An international coalition of lawyers' organisations and lawyers working for nuclear disarmament, the strengthening of international peace and security law and the development and use of peaceful mechanisms for international conflict resolution

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Playing violin on the Titanic's deck? NPT Prep Com struggles forward.



'UN weapons inspectors' fail to notice illegal nuclear weapons at the NPT meeting possessed by China, France, Russia, US and UK Photo: Greenpeace

New Zealand Minister of Disarmament Marian Hobbs, in the opening presentation of the 2003 Prep Com meeting of States parties to the Non-Proliferation Treaty, held in Geneva from April 28 to May 9, underscored global concerns with the fate of the NPT arising from North Korea's withdrawal from the Treaty, instability in the Middle East including Israel's possession of nuclear weapons, the development of nuclear weapons by India and Pakistan, the development of new generations of nuclear weapons and the lack of implementation by the nuclear weapon states of disarmament obligations agreed to at previous NPT conferences.

Non-governmental groups (NGOs) represented at the NPT meeting were even more prophetic of potential doom. Rhianna Tyson, addressing the conference on April 29 noted that the nuclear weapons states, led by the U.S., were charging away from their 2000 undertaking to eliminate nuclear weapons. The U.S. in particular is designing and developing new nuclear weapons, derailing the Comprehensive Test Ban Treaty, developing missile defences after withdrawing from the ABM Treaty, and increasing the military role for potential nuclear weapons use. Tyson warned that "If the world community allows the Nuclear Weapons States to continue demonstrating their contempt of the Treaty, the NPT will crumble and we will find ourselves in the deadly grip of a new and uncontrollable global arms race."



Alyn Ware (IALANA) with Ambassador Molnar, Chair of the 2003 NPT Prep Com. Photo: Nya Gregor Fleron

Despite these warnings, it was business as usual in the deliberations by NPT parties and no concrete measures were developed to bring erring states into compliance with their disarmament obligations, leading some NGOs to feel that the scene was somewhat reminiscent of the orchestra which kept playing on the decks of the Titanic as it sunk into the ocean.

There were a few modest proposals from the New Agenda Coalition (NAC), Canada and Germany and small measures by the UK in response to its disarmament obligations (see 'Glimmer of Hope? Small Steps at the NPT Prep Com,' p4). However, even if these are

agreed to by the nuclear weapons states (NWS), they would be too weak and ineffectual to reverse current nuclear weapons doctrine and developments. The global community must therefore increase its pressure on the NWS to meet their legal obligations to achieve nuclear disarmament.

IALANA, which was instrumental in achieving the 1996 Advisory Opinion from the International Court of Justice on the illegality of nuclear weapons, is thus considering the possibility of further actions in the International Court of Justice to move the NWS to implement their disarmament obligations. This will be reported on in the next issue of IALANA News.

Glimmer of Hope? Small steps at the NPT Prep Com

Little was achieved at the 2003 meeting of States Parties to the Non-Proliferation Treaty (NPT Prep Com). However, there were a few small steps that might pave the way for progress in the future...

Transparency

Canada initiated a process at the 2002 NPT Prep-Com to encourage transparency and accountability through reporting by all States at NPT Prep Coms and review Conferences. States responded favourably at the 2003 Prep Com with many making reports on activities they were undertaking in order to fulfill their NPT obligations. States also started an interactivity process, whereby they questioned others on their reports.

Disarmament Education

Egypt, Hungary, Japan, Mexico, New Zealand, Peru, Poland and Sweden introduced a working paper encouraging States to implement appropriate recommendations from the United Nations Study on Disarmament and Non-Proliferation Education.

Security Assurances

The New Agenda took the standard call for the adoption of legally binding negative security assurances (NSAs) one step further at the Conference by introducing a working paper on the topic which included, as an annex, a draft protocol.

NPT Emergency Mechanism

Germany suggested that there should be a mechanism to deal with any State intending to withdraw from the NPT. Aaron Tovish (Middle Powers Initiative) went further and proposed the establishment of a mechanism that could deal with any NPT compliance crisis - whether that be a threat of horizontal proliferation or a threat of vertical proliferation (such as the resumption of nuclear testing or development of new nuclear weapons).

Verification

The UK reported on its ongoing study on the verification of nuclear disarmament, a study prompted by their assumptions, welcomed by most, that a) the UK will at some stage be engaged in negotiations for complete nuclear disarmament, b) in order to succeed, verification processes, mechanisms and capabilities will be required, and c) starting work on these verification elements now will aid the negotiations. Some non-nuclear States indicated an interest in collaborating with the UK on multilateral verification measures.

Compliance within a nuclear abolition regime

IALANA, INESAP and the Mayors for Peace organized a seminar on compliance within a nuclear weapons abolition regime. The seminar highlighted the usefulness of the Model Nuclear Weapons Convention in indicating and helping develop appropriate compliance measures. The seminar also launched a campaign to engage mayors globally in subsequent NPT meetings.



*Panel at 2003 NPT Prep Com on Compliance within a Nuclear Weapons Abolition Regime:
Jozef Goldblat (UNIDIR), Hiroshima Mayor Akiba, Regina Hagen (INESAP), Alyn Ware (IALANA)*

Korea learns from Iraq's 'mistakes'?

The irrational war of nerves currently taking place between the United States and North Korea is raising the level of danger on the Korean peninsula. North Korea has withdrawn from the Non-Proliferation Treaty and acknowledged a nuclear weapons program, while the United States is refusing to conduct direct negotiations with North Korea on the crisis and has not retracted from its description of North Korea as a 'rogue' State, against which the use of force is possible. The Korean Committee for Solidarity with World Peoples, a government supported 'people's committee' tasked with informing international civil society about North Korean perspectives on security issues, has indicated that a major reason for North Korea's recent steps to solidify its nuclear weapons program was because they learned from the US led invasion of Iraq that submitting to disarmament leaves one vulnerable to attack.

Korea learns from Iraq's mistakes (from page 4)

The Iraqi war taught the lesson that "nuclear suspicion," "suspected development of weapons of mass destruction" and suspected "sponsorship of terrorism" touted by the U.S. were all aimed to find a pretext for war and one would fall victim to a war when one meekly responds to the IAEA's inspection for disarmament. Neither strong international public opinion or big country's opposition to war nor the UN charter could prevent the U.S. from launching the Iraqi war. It is a serious lesson the world has drawn from the Iraqi war that a war can be averted and the sovereignty of the country and the security of the nation can be protected only when a country has a physical deterrent force, a strong military deterrent force capable of decisively repelling any attack to be made by any types of sophisticated weapons. (May 15, 2003)

The US doctrine of pre-emptive attack, and the new proposal to intercept North Korean ships on the high seas - reminiscent of the 1962 blockade of Cuba which nearly ended in nuclear catastrophe - only heighten tensions further and risks erupting into war.

However, international attention to Korea, particularly with the 50th anniversary of the armistice on July 27, has opened up a number of possibilities for negotiations which could lead, not only to denuclearization of the Korean peninsula, but also pave the way for negotiations for a Peace Treaty to replace the uneasy armistice, and eventually to possible reunification.

Ideas of what could help, and what could alternatively hinder this process are included in a number of appeals and statements, some of which are listed above, and in the two accompanying articles.

Articles, appeals and actions relating to denuclearisation and peace in Korea

* *Recommendations for Peace on the Korean Peninsula*
Ten recommendations from the National Council for Peace on the Korean Peninsula, a coalition of South Korean citizens, academics and parliamentarians from key peace organizations and from the different political parties. Contact National Council for Peace on the Korean Peninsula. humanrights@korea.com

* Letter to Bush and others from over 215 parliamentarians and organizations calling for a peaceful resolution to the Korea crisis. See www.abolition2000.org (Actions)

* 10 point plan for peace on the Korean peninsula proposed by US Representative Curt Weldon (Republican) who led a delegation to North Korea in June 2003.

* *A Korean Krakatoa? Scenarios for the Peaceful Resolution of the North Korean Nuclear Crisis*, Nautilus Institute.
www.nautilus.org/DPRKBriefingBook/scenarios/DPRKscenarios2003.pdf

Nonproliferation Treaty applies to both North Korea and the US

John Burroughs*

The Nuclear Nonproliferation Treaty (NPT) is much in the news due to North Korea's January 10, 2003 announcement of withdrawal. What has received no attention is that the United States is also undermining the NPT by ignoring recent political commitments to implement the treaty's disarmament obligation.

The NPT and North Korea

North Korea's violations of the NPT, in the early 1990s, and again now, consist at least in operating programs for production of plutonium and perhaps uranium that are not monitored by the International Atomic Energy Agency (IAEA) to prevent diversion of the materials to weapons. Accordingly, in February, the IAEA reported to the Security Council that North Korea is in breach of the NPT. It is not known whether North Korea has produced any nuclear explosive devices with unaccounted for plutonium from its earlier program, which of course would violate the NPT's basic non-acquisition obligation.

According to North Korea, its announcement of withdrawal from the NPT was effective immediately. However, under the treaty's terms withdrawal is effective only upon three months. Moreover, and fundamentally, while North Korea may be able to withdraw from the treaty, it cannot withdraw from the underlying obligation not to acquire nuclear weapons.

First, NPT general obligations are now sufficiently settled, accepted, and longstanding to be customary international law, binding on all states whether or not they are parties to the treaty. The NPT has been in force since 1970, and its membership is nearly universal, with only three states outside the regime, all, however, nuclear-armed, India, Pakistan, and Israel.

Second, the NPT is also widely recognized, along with the UN Charter, as a cornerstone of global order. In its resolution regarding the May 1998 Indian and Pakistani nuclear tests, the Security Council declared that proliferation of weapons of mass destruction is a threat to peace and security. Under Chapter VII of the UN Charter, that means, in principle, that the Security Council is required to respond to any state's efforts to acquire nuclear weapons, at least by making recommendations as to how to reverse such efforts.

Third, based in part on the incompatibility of threat or use of nuclear weapons with humanitarian law forbidding the infliction of indiscriminate harm and unnecessary suffering, the International Court of Justice, interpreting NPT Article VI, concluded unanimously in its 1996 opinion that states are obligated to bring to a conclusion negotiations on nuclear disarmament. The clear implication is that the obligation of non-possession of nuclear arms is universal in scope; that states therefore are not to acquire nuclear weapons; and that those states which do possess them are obligated to eliminate them with all due speed.

None of this is to say that the Security Council should respond to a North Korea nuclear weapons program by authorizing use of force. Security Council practice indicates that use of force is a permissible response only to actual or imminent attacks, large-scale violence, or humanitarian emergency. (See International Appeal, p. 2) There is no legal basis for the United States to take military action. A political approach combining censure with dialogue, inducements, and, perhaps, limited sanctions is the right course of action.

The NPT and the United States

To balance obligations, Article VI of the Nonproliferation Treaty requires the nuclear powers to "pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament." In 1978 and again in 1995, the United States and other nuclear powers also formally declared policies of non-use of nuclear arms against non-nuclear NPT states.

In the post-Cold War era, non-nuclear countries have demanded progress on the promised disarmament. In 1995, the year that the NPT was due to expire, the United States and other nuclear states pressed for the treaty to be extended indefinitely. Other states agreed in return for pledges to complete negotiations on a treaty banning all nuclear test explosions by 1996, to begin negotiations on an agreement banning production of plutonium and highly enriched uranium for use in weapons, and to pursue "systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating those weapons."

Additional commitments made in 2000 include "an unequivocal undertaking to accomplish the total elimination of their nuclear arsenals," preserving the Anti-Ballistic Missile Treaty, applying the principle of irreversibility to nuclear weapons reductions, further developing verification capabilities, reducing the operational readiness of nuclear weapons, and a diminishing role for nuclear weapons in security policies.

Measured against the standards set in 1995 and 2000, the nuclear powers, especially the United States, are not complying with the disarmament obligation. The Senate declined to approve ratification of the Comprehensive Nuclear Test Ban Treaty in 1999. Negotiations on a fissile materials treaty are stalled. The United States withdrew from the ABM Treaty in June 2002. Perhaps most disturbingly, the Defense Department's Nuclear Posture Review submitted to Congress at the end of 2001 signals the end, or at least the suspension, of verified and irreversible arms control.

In accordance with the approach announced by the Nuclear Posture Review (NPR), the short and starkly simple Moscow Treaty signed in May 2002 with Russia does not require the verified destruction of any delivery systems or warheads. In addition to treaty-permitted deployed strategic warheads, the Defense Department plans to retain many

thousands of warheads in reserve. That includes large numbers of warheads - probably more than two thousand a decade from now - in a "responsive force" capable of redeployment within weeks or months. A more blatant rejection of the NPT principle of irreversible arms control could hardly be imagined.

Nor is there any indication in the NPR or elsewhere that the Bush administration will seek to reduce the readiness level of deployed strategic forces, for example by separating warheads from delivery systems. Today, both the US and Russia each have about 2,000 warheads on high alert, ready to launch within minutes of an order to do so.

The Nuclear Posture Review also ignores the commitment to reduce the military role of nuclear weapons and the longstanding assurances of their non-use against non-nuclear countries. Instead it reveals new trends towards making nuclear arms more usable, notably in response to non-nuclear attacks or threats involving biological or chemical weapons or "surprising military developments." Among the "immediate contingencies" it identifies for possible U.S. nuclear use is "a North Korean attack on South Korea" - not necessarily a nuclear attack.

Indeed, the reference to use of nuclear weapons against North Korea was one of a series of provocative Bush administration statements spurring North Korean nuclearization. They include naming North Korea as a member of the "axis of evil"; strategy documents embracing "preemptive" military actions against states' acquiring of nuclear, chemical, biological, and radiological weapons; and depiction of a potential future North Korean missile deployment as a major basis for withdrawal from the ABM Treaty.

Resolving the Crisis

The right and lawful thing for North Korea to do is to abandon any aspirations for a nuclear arsenal and to remain a member of the NPT. For its part, the United States should provide a formal assurance that it will not use nuclear weapons against North Korea. That step follows from the U.S. commitment already made to all non-nuclear weapon NPT states, and also was promised as part of the 1994 U.S.-DPRK agreement. The United States should also end the state of near war that has existed between the two countries for decades and normalize relations, including economic relations. This is fundamentally what North Korea seeks.

More broadly, if North Korea's hopefully temporary defiance of the NPT is to remain an aberration not imitated by other countries, the United States will have to learn that a viable nonproliferation regime depends crucially on compliance with the obligation to disarm nuclear weapons as well as the obligation not to acquire them.

John Burroughs, LCNP executive director, is the principal author of the chapter on the NPT in Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties (see page 20).

Freedom or Force on the High Seas?

Arms Interdiction and International Law*

By Devon Chaffee, Research and Advocacy Coordinator of the Nuclear Age Peace Foundation

North Korea's withdrawal from the nuclear non-proliferation regime and announcement of a nuclear weapons program was an unfortunate development, which the international community must work to counter. Some US officials are, however, advocating for a policy of interdicting¹ North Korean ships - a policy that would do more harm than good to international stability by undermining the International Law of the Sea.

The International Law of the Sea is one of the most comprehensive and well-established conglomerations of international regulatory norms in existence. The Law of the Sea regime (LOS) is buttressed by longstanding international norms, and formal legal agreements, critical to creating a more secure international environment.²

The Law of the Sea grants several freedoms, including the right to navigation on the high seas and rights to transit³ through international straits, exclusive economic zones (EEZ), and the territorial and archipelagic waters of another state. The regime prohibits a select number of illegal activities, including piracy, slave trade, illicit traffic in narcotic drugs or psychotropic substances, and unauthorized broadcasting, and grants states the right to intervene in such activities.⁴

There is nothing in the LOS regime that explicitly prohibits transit of weapons of mass destruction or gives States rights to interdict such transit. On the contrary, a number of States, including the United States, have actively opposed the development of such prohibitive norms or interpretations of international law that would inhibit the transit of weapons of mass destruction by the seas or air, and cite the rights and privileges established in the Law of the Sea to affirm their unhindered military use of the oceans. Nuclear weapon states such as the US, UK and France have continuously worked to ensure that their ability to transit nuclear weapons is not hindered by regional nuclear weapons free zones or UN efforts to create a Nuclear Weapon Free Southern Hemisphere. The US, UK and France, along with Japan, have also asserted their rights to transit nuclear materials - in particular reprocessed plutonium - through the high seas and through the EEZ's of coastal States. In addition, a number of States, including the US, France, Israel, China, Russia and Italy, export missile technology⁵ transiting through the oceans to do so.

In contrast to this general assertion of rights to transit nuclear weapons, missile technology, fissile materials and other materials related to weapons of mass destruction, the US is currently advocating for the selected interdiction of such materials to or from certain states of concern to the Bush Administration as a means to stem proliferation to these States.

Ten countries have now joined what is known as the Proliferation Security Initiative (PSI), which met in Madrid, Spain in early June and in Brisbane, Australia in the beginning of July 2003.⁶ Members of PSI include: Australia, France, Germany, Italy, Japan, the Netherlands, Poland, Portugal, Spain, and the United Kingdom.

However, there are limitations to the transit that countries can legally inhibit in their territorial waters and EEZs and even stricter limitations on what can be intercepted on the High Seas. The legal implications of arms interdictions on the oceans depend greatly on the nature of interdictions and the way the interdictions are undertaken.

In territorial waters it might be possible for the coastal State to determine the transit of missiles or WMD to be a threat to its security and thus prohibit such transit deeming it to be non-innocent passage.

Some States have agreed to export controls amongst themselves, such as those laid out in the Missile Technology Control Regime (MTCR), and could thus possibly act within territorial waters and EEZs to intercept missile exports by other MTCR members in violation of these controls, but the legality of interdicting even in these circumstances is disputed. In any case, the States of concern to the US, such as North Korea, China, Pakistan and Iran, are not members and so are not bound by these controls.

Alternatively, it might be legal to interdict shipments on the High Seas which have been deemed by the Security Council or the Law of the Sea Tribunal to violate the Law of the Sea and to constitute a threat to the peace. This option is being pursued in a recent strategy issued by the Council of the European Union calling on the EU to support a Security Council Resolution that would permit arms interdictions when appropriate.⁷

Any interdictions outside those explicitly allowed for in the existing international law of the sea regime would clearly violate the freedom of navigation on the high seas and the right of innocent passage through territorial waters.

Australian Foreign Minister Alexander Downer has recognized that there is a "very real difficulty in terms of vessels that might be going through the high seas because international law requires that those ships should not be intercepted,"⁸ and that there might therefore "need to be some change to international law to facilitate these types of interdictions, to stop illicit trade."⁹ However, changing the Law of the Sea would be a long process requiring extensive negotiations and would unlikely yield the discriminatory approach desired by the PSI of allowing transit by certain States but not others.

(continued page 8)

Freedom or Force on the High Seas (con. from p7)

The likelihood that the US and PSI will thus develop an interdiction strategy outside international law is reinforced by the current trend in US policy towards dismantling norms that prevent the US from exercising its military dominance. The US has moved away from multi-lateral non-proliferation solutions, withdrawn from the Anti-Ballistic Missile treaty, abandoned START II, effectively replaced START III with the much weaker Moscow Treaty, failed to ratify the Comprehensive Test Ban Treaty, and stalled efforts to improve the Biological Weapons Convention regime. The controversy over the UK and US use of intelligence in Iraq will also bring into question the legitimacy of intelligence information used to justify interdictions regarding the existence of arms and material shipments and their intended destination and/or use.

Restricting the transit of weapons of mass destruction would be a positive development in furthering arms control and stemming proliferation, if such norms were carefully developed by the international community and applied uniformly. International law cannot maintain its integrity, however, if applied whimsically or discriminately, or if defined by a small "coalition of the willing." While PSI membership may appear to be an easy way for leaders of certain countries to get back into the good graces of the Bush administration after disagreements over Iraq, they should realize that if they contribute to the degradation of LOS it will come back to haunt them. If leaders of the states participating in the PSI attempt to exchange LOS norms for selective nonproliferation measures, it could eventually restrict their own access to international waters. If members of the international community begin to allow the erosion of the law of the sea to suite the policy goals of the sole existing superpower, they should not expect that such concessions would be easily reversed.

The author thanks Alyn Ware for assistance in the writing of this article. This is a summary of a longer piece pending publication in Scientists for Democratic Action, the newsletter of the Institute for Energy and Environmental Research.

Footnotes:

¹ Interdicting: intercepting ships and ensuring that no proscribed activities are being conducted.

² Such formal agreements include the four 1958 Conventions that resulted from the Geneva Conference on the law of the sea, to which the US is a party, and the 1982 UN Convention on the Law of the Sea (UNCLOS), which President Ronald Reagan decided not to sign onto for fear that it could interfere with certain US sovereign prerogatives. The US has however signed the 1994 Agreement relating to the Implementation of Part XI of the U.N. Convention on the Law of the Sea.

³ Transit through territorial waters is limited to innocent passage. According to the 1958 Convention on the Territorial Sea "Passage is innocent so long as it is not prejudicial to the peace, good order or security of the coastal state."

⁴ In addition to their codification into the law of the sea through the 1958 and the 1982 Conventions, the prohibition of these activities has been codified by a series of multilateral treaties including: 1965 Agreement for the Prevention of Broadcasts Transmitted from Stations outside National Territories; General Act for the Repression of the Slave Trade, 1890;

⁵ See UN Register of Conventional Arms, http://disarmament.un.org/UN_REGISTER.nsf and Nuclear and Missile Trade and Developments, *The Nonproliferation Review*, Center for Nonproliferation Studies, <http://cns.miis.edu/pubs/npr/vol05/53/db53.pdf>

⁶ Chairman's Statement, Proliferation Security Initiative, Brisbane Meeting, July 9-10, 2003. <http://www.dfat.gov.au/globalissues/psi/>

⁷ Strategy against Proliferation of Weapons of Mass Destruction and its corresponding Action Plan adopted by the Council of the European Union on April 14, 2003.

⁸ "N Korea Ships Face more Scrutiny," BBC, June 11, 2003.

⁹ Sonni Efron and Barbara Demick, "11 nations to Discuss Blocking Shipments of Weapons Materials," *Los Angeles Times*. June 12, 2003.

ICC and Immunity

The establishment of the International Criminal Court (ICC) represents a profound step forward for international justice. The Court's infrastructure is currently being developed in the Hague, with the Court's first 18 judges elected in February, and the Court's prosecutor elected in April.

Against this progress, the United States' long-standing opposition to the ICC has intensified since mid-2002. The Bush administration has engaged in a widespread campaign to undermine and marginalize the ICC to prevent it from becoming an effective instrument of justice. After "unsigned" the Rome Statute, the Bush administration threatened the future of United Nations peacekeeping operations and negotiated a Security Council resolution that provides a one year exemption for citizens of non-state parties to the Rome Statute including the U.S. participating in UN peacekeeping missions or UN authorized operations. Following this, the Bush administration launched a worldwide campaign to negotiate bilateral immunity agreements (BIAs) that would exempt U.S. nationals from ICC jurisdiction.

The bilateral agreements sought by Washington require states to send any American national requested by the ICC back to the U.S. instead of surrendering him/her to the ICC. Importantly, Washington's agreement would remove the ICC's oversight function, which is the fundamental principle underpinning the Rome Statute and is critical to close the door on impunity.

By signing the BIA's states are possibly putting themselves at risk of breaching Articles 27, 86, 87, 89 and 90 of the Statute, which require states to co-operate with and assist the ICC. As of June 2003 39 states had signed BIA's. Several other, including members of the European Union have conducted legal analyses of the BIA's and concluded they are contrary to international law. The Council of the European Union, for example, on 30 September 2002 concluded that:

Entering into US agreements - as presently drafted - would be inconsistent with ICC States Parties' obligations with regard to the ICC Statute and may be inconsistent with other international agreements to which ICC States Parties are Parties; (Document 12386/02 COJUR 9 USA 35 PESC 369)

The US is placing considerable pressure on states to sign BIAs. On August 2, 2002, President Bush signed the American Service-members' Protection Act, which authorizes the withdrawal of U.S. military assistance from certain non-NATO allies supporting the Court. And it is reported that States seeking entry into NATO may be refused such entry on the basis of a failure to sign a bilateral immunity agreement.

For more information see www.iccnw.org

Europe: A Power for Peace or another Military Juggernaut?

Project European Constitution¹

Peter Becker, Philipp Boos and Alyn Ware

Since the demise of the Soviet Union, the US has emerged as a sole super-power - able to pursue its interests globally without restraint even when its actions - such as its use of force and occupation of Iraq - have been illegal. Confident of its unparalleled power, the US has backed away from many multilateral security regimes - such as the International Criminal Court, Comprehensive Test Ban Treaty, Kyoto Protocol and Anti-Ballistic Missile Treaty and is instead pursuing its own security through unilateral measures to the detriment of the rest of the world.

However, Europe is developing as a new power - not directly in opposition to the US, but one which could either provide a positive restraint to the US and a strengthening of multi-lateralism - or which might instead create another self-interested and militaristic power bloc not much better than the US.

A key indication of which way Europe will go can be seen in the current development of a European Constitution. Various political forces have been at work during the constitution's development including the influence of existing military alliances with the US, corporate interests, economic disparities between Europe and neighbouring countries, internal and inter-national conflicts and environmental concerns.

IALANA believes that civil society can play an important role in shaping the European Constitution in a positive way and has thus taken an active role infusing into the process key concerns and about peace, disarmament and conflict resolution.

Development of the project

In March 2003, the European Constitutional Convention started to draft a constitution for the member states of the European Union. The Convention consisted of members of the parliament and governments of the member states as well as members of the European Parliament.² Combined with the institution of the Convention was the invitation to the representatives of the civil society, to make proposals for the European Constitution to be created and to participate directly in the discussion of new proposals by using an internet forum.³

IALANA, the International Physicians for the Prevention of Nuclear War and the Humanistische Union (HU) proposed the introduction of the following provisions into the European Constitution:

1. The member states condemn recourse to war for the solution of international controversies, and renounce it, as an instrument of national policy in their relations with one another.

2. The European Union is not allowed to produce, store, transport, test or use nuclear weapons or other weapons of mass destruction.

3. The European Union and the member states establish civil forces for the prevention and management of national and international conflicts.

IALANA is concerned that militaristic forces within Europe are planning a buildup of military strength and militaristic policy to the level of the US. While it is important to challenge and restrain US militarism, one cannot fight fire with fire. One must use water to quench fire. In any case, the motives of the militarists are not primarily to constrain the US but instead to project European corporate interests globally. Europe should instead focus on building institutions and processes for peace and maintenance of international law.

The rejection of war as a political instrument would not be complete, if it is not combined with an effective alternative for conflict management. The obvious and by now successfully tested measure is the use of civil conflict managers. The problems with establishing OSCE missions have shown, however, that a constitutional guarantee for civil conflict management is required. If sufficient structures for civil conflict management do not exist, a fall back to military measures is more likely, again. Therefore, the constitutional rejection of war should be combined with a constitutional obligation for the establishment of civil conflict management forces.

Existing political concepts and civil structures in UN, EU, and OSCE and the national foreign offices as well as in NGOs should be used instead of referring to military approaches.

Civil Conflict Management

The obligation of the European Union and the member states to activate sufficient forces for civil conflict management is essential. The competence should be given to the EC as well as to the member states. Furthermore, the drafting of obligations for the training of these forces and for the harmonization of this training by European Law should be considered.

1. This article is a summary of Project European Constitution by Peter Becker and Philipp Boos. The full article can be found on www.ialana.org. Dr. Peter Becker is attorney at law, Secretary of IALANA and president of IALANA Germany. Dr. Philipp Boos is attorney at law, Director of IALANA Northern Office and Executive Director of IALANA Germany. Alyn Ware is a Consultant for IALANA.

2. For additional information see: <http://european-convention.eu.int/organisation.asp?lang=EN>

3. See http://europa.eu.int/futurum/index_en.htm.

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Project European Constitution

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It would be sufficient to establish the larger part of these forces as a reserve unit. This unit would consist of qualified specialists for administration, judiciary and police as well as specialists for economic reconstruction, development, monitoring of ceasefires, democratization and elections as well as other persons qualified for the management of conflicts.

These forces can be used/deployed after the invitation or request of a concerned state or on request of UN/OSCE. The invitation of civil conflict managers will be a much easier step for concerned states than the acceptance of a military "occupation."

Evaluation of the Result / Success of Project European Constitution

From the perspective of the peace movement, the subsequently presented articles of the final draft of the European Convention⁴ are of the highest importance.

The objectives of the Union are defined in Article I-3.

In paragraph 1, it says:

"The Union's aim is it to promote peace, its values and the well-being of its people."

In paragraph 4, the task to foster peace as well as an acknowledgement of the binding effect of international law are included:

"In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, the sustainable development of the earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and protection of human rights and in particular children's right, as well as to strict observance and development of international law, including respect for the principles of the UN Charter."

The most important provision with regard to the objectives of the peace movement is Article I-40 " Specific provisions for implementing the common security and defence policy

Paragraph 1:

"The common security and defence policy shall be an integral part of the common foreign and security policy. It shall provide the Union with an operational capacity drawing on assets civil and military. The Union may use them on missions outside the Union for peace-keeping, conflict prevention and strengthening international security in accordance with the principles of the United Nations Charter. The performance of these tasks shall be undertaken using capabilities provided by the Member States."

Paragraph 3, 1st sentence:

"Member States shall make civilian and military capabilities available to the Union for the implementation of the common security and defence policy, to contribute to the objectives defined by the Council of Ministers. Those

Member States which together establish multinational forces may also make them available to the common security and defence policy."

IALANA and the other members of the Project European Constitution were successful in ensuring civilian capabilities and conflict prevention were included and prioritized in the text.

However, the draft text of the European Constitution also contains several provisions that have to be criticized from the perspective of the peace movement. That is particularly true for Article I-40, paragraph 3, sentences 3 and following.

Member States shall undertake progressively to improve their military capabilities. A European Armaments, Research and Military Capabilities Agency shall be established to identify operational requirements, to promote measures to satisfy those requirements, to contribute to identifying and, where appropriate, implementing any measure needed to strengthen the industrial and technological base of the defence sector, to participate in defining a European capabilities and armaments policy, and to assist the Council of Ministers, in evaluating the improvement of military capabilities.

Outlook

We are anticipating that the draft of the European Convention will be accepted without any major changes from the European Council which is competent for the final decision. Nevertheless, a continuing effort by the peace movement is necessary. An important shortfall in the draft constitution is the absence of a "European Agency for the prevention of armed conflict" that could improve and co-ordinate the co-operation between the member states. The draft foresees such an agency only for the military sector.

The European Union and the member states have to improve their capabilities for conflict prevention and conflict management decisively. Javier Solana has called for additional resources for civil crisis management in his strategy paper for the European Foreign and Security Policy presented at Porto Carras: "Almost all [armed] interventions, even those which are military efficient, are followed by civil chaos." That proves that even armed interventions that are seen as efficient - which can be doubted in almost all cases - do not solve any conflict.

Therefore, IALANA intends to help organize an international congress on civil conflict management in spring 2004 that should - among other subjects - call for the installation of a European Agency for the prevention of armed conflict and the establishment of sufficient civil forces to support its roles.⁵

4. For the full text of the draft see: <http://european-convention.eu.int/docs/Treaty/cv00850.en03.pdf>.

5. Anyone who wants to support the organization of this congress financially is asked for a short note to info@ialana.de.

Poisoned Air at Chemical Weapons body: Former Director-General vindicated by ILO decision.

*By Alyn Ware and Bob Rigg**

A little more than one year after José Mauricio Bustani was unanimously re-elected as Director-General of the Organisation for the Prohibition of Chemical Weapons (OPCW), the United States unilaterally, and without any prior notice, reversed its support and initiated an international campaign to have him sacked.

When the United States failed in its attempt, in March 2002, to persuade the OPCW Executive Council to initiate proceedings to remove Bustani, it then called a special session of the Conference of States Parties to the Chemical Weapons Convention, at which the US managed to garner enough votes to terminate the Director-General's contract. Even so, more Member States abstained or dissented than supported the US resolution. There was considerable international controversy about this incident at the time.

Bustani and supporters claim that he was removed because, by working to secure the accession of Iraq to the Chemical Weapons Convention, he was perceived as obstructing the US political agenda in favour of military intervention in that country. If, for example, OPCW chemical weapons inspectors had gone to Iraq early in 2002, and had failed to find banned chemical weapons by the end of that year, it could have hurt the Bush Administration's case for war in early 2003.

Brute power-politics seemed to have won the day, until Bustani took his case to the International Labour Organisation Administrative Tribunal (ILOAT), which, in a decision delivered on July 16, 2003, declared that he was unjustifiably sacked from his position and should be compensated.

The tribunal commented that the charges of incompetence brought against Bustani by the United States were "extremely vague", and emphasised that international civil servants should not be sacked for political purposes:

"in accordance with the established case law of all administrative tribunals, the Tribunal reaffirms that the independence of international civil servants is an essential guarantee, not only for the civil servants themselves, but also for the proper functioning of interna-

tional organisations. To concede that the authority in which the power of appointment is vested, in this case the Conference of the States Parties, may terminate that appointment at its unfettered discretion, would constitute an unacceptable violation of the principles on which international organisations' activities are founded, by rendering officials vulnerable to pressures and to political change."

ILOAT awarded Bustani material damages of approximately two and a half years' salary (up to the date on which his contract with the OPCW would have expired), in addition to moral damages of 50,000 Euro and costs of 5000 Euro. Bustani, who is now Brazil's Ambassador to the United Kingdom, had not requested reinstatement. He had advised the ILOAT that, should his appeal prove successful, he would contribute any moral damages awarded to him to the OPCW's technical cooperation programme.

While there is no appeal right against decisions of the ILOAT, it is rumoured that the US may try to block the implementation of its judgment at the next sessions of either the OPCW Executive Council, from 23-26 September, or of the Conference of the States Parties, from 20-24 October.



José Mauricio Bustani, former Head of the OPCW

Bob Rigg is former Senior Editor at the Organisation for the Prohibition of Chemical Weapons

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updated

Visit the websites of IALANA and
the Lawyers' Committee on Nuclear
Policy (our US affiliate)

www.ialana.org
and
www.lcnp.org

From UNSCOM to CWI

First there was UNSCOM, the United Nations weapons inspectors which were tasked with finding and destroying Iraq's weapons of mass destruction (WMD) following the 1991 Iraq War. Then came UNMOVIC, the UN weapons inspectors which were responsible for confirming whether or not Iraq was indeed free of WMD. In-between, but perhaps not quite so well known, came Citizens Weapons Inspections (CWI) - teams of non-governmental experts established to inspect military facilities to ascertain whether illegal weapons of mass destruction - in particular nuclear weapons - were continuing to be developed and deployed.

However, CWI were not directed at Iraq's suspected WMD programs, but the much larger and more threatening programs of other States that the UN Security Council was ignoring - especially the UK, and US. Citing international law affirmed in 1996 by the International Court of Justice (ICJ) that the threat or use of nuclear weapons is generally illegal and that there is an obligation to negotiate for their elimination, teams of citizens have been attempting to inspect nuclear weapons facilities in order to ascertain whether illegal activities are continuing.



Citizens warcrimes inspection at NATO Headquarters, 1998

CWI began on July 8th 1997, the first anniversary of the historic ICJ advisory opinion, when an international delegation of peace activists handed over notarised Citizens Summons to all NATO heads of state during a NATO Summit in the Spanish capital Madrid. Following a lack of response by the NWS to the Madrid summons, an international CWI team travelled to Brussels and temporarily 'closed' NATO headquarters on August 6th 1997 for 'war crimes inspections'. This was the start of a long series of citizens' verification teams in Netherlands, Belgium, France, Scotland, USA, Israel and Australia..

For more information see www.motherearth.org

"Blix, they're here"; Inspectors find nuclear weapons

One of the key justifications given by the UK and US for a rush to war against Iraq was that the Iraqi government was suspected of possessing weapons of mass destruction (WMD) which could be used against other countries at a moment's notice. However since the overthrow of the Iraqi government, the occupying US and UK forces have been unable to find any of these suspected WMD.

In contrast, a civilian weapons inspection team with unsailable evidence of the illegal possession and deployment of WMD capable of being used at a moments notice by the US and UK, attempted to inspect a nuclear weapons deployment site to confirm such suspicions on August 12.

Petter Joelson, a peace worker, and Linus Larsson, a web designer, both of whom are 23 and from Sweden, were arrested attempting to gain access to Faslane Naval base where nuclear armed Trident submarines were believed to be deployed. They intended to spray the words "*Blix, they're here*" on the hull of the nuclear armed Trident submarine, referring to the inability of the UNMOVIC weapons inspection team (led by fellow Swede Hans Blix) to find evidence of weapons of mass destruction in Iraq.

In a separate action Juho Vuori and Elina Hinkkanen, from Finland, were arrested at the perimeter fence of Coulport nuclear weapons depot, near Faslane. The actions formed part of a two-week international disarmament camp organised by Trident Ploughshares.

Trident Ploughshares spokesperson, David Heller, explained, "*The British government was willing to wage a highly destructive war against Iraq, based on fabricated evidence of the presence of weapons of mass destruction. Yet, it still maintains its own arsenal of illegal nuclear weapons on board the Trident nuclear submarines based at Faslane. Today's action highlights the immorality, illegality, and sheer hypocrisy of this position.*"

There have been 34 arrests so far at the disarmament camp, which has been attended by anti-nuclear activists from Sweden, Finland, Belgium, Germany, Ireland and the United States, as well as from across Britain.

For more information see: www.tridentploughshares.org

Citizen Weapons Inspections Update and Resources

Pol D'Huyvetter, For Mother Earth

The recent round of UNMOVIC weapon inspections in Iraq (2002-2003) led to renewed interest in the citizens inspections model of non-violent direct action. In May 2003, on the edges of the Non-Proliferation Treaty Preparatory Committee Meeting in Geneva, a Citizens Inspections Working Group (CIWG) was established with a particular focus on ensuring compliance with NPT Article VI which obliges all Nuclear Weapon States (NWS) to pursue complete nuclear disarmament. CIWG condemns the hypocrisy and use of double standards by some NPT member states regarding Weapons of Mass Destruction (WMD). CIWG aims to support Citizens groups who inspect sites where WMD are being researched, produced, tested or deployed. CIWG will assist Citizens Inspectors to report their findings to the public, United Nations, national governments and other interested parties. CIWG is a clearinghouse for Citizens Inspectors. It is being co-convened by the Los Alamos Study Group (USA) and For Mother Earth (Belgium).

Activities and resources of CIWG

- * Email list-serve for messages about citizen weapons inspections. Abolition-CIWG@yahoo.com
- * *Authorisation for Citizens Inspections* which is gathering signatures to rally a broader support for the inspectors.
- * *Mandate for Citizens Inspections* which gives more details about the composition, the reporting requirements, the mandate and the Citizens Inspection Rights.
- * *Inspection Template* which can be used and completed at Citizens Inspections..
- * Reports from CWI teams, including information ascertained about illegal WMD programs, to the UN Security Council, International Atomic Energy Agency and to the next NPT Prep Com Meeting in New York, April 2004.
- * *International day for citizens weapons inspections.* Saturday October 25th. This year the day will include a large Citizens Inspection of NATO's military headquarters SHAPE near Mons in Belgium. (www.bomspotting.be)

For more information see
www.motherearth.org/nuke/inspection.php

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Steven Staples, Polaris Institute, Canada
Phone: 613-237-1717 steven_staples@on.aibn.com

Other Resources:

- Citizens Weapons Inspection Handbook:*
www.motherearth.org/nuke/inspectbook1.php
- Civilian inspection guide:* www.wagingpeace.org/new/get-involved/civilianinspections.htm
- Citizen Weapons Inspection Teams project:*
www.cwit.org/
- Nuclear Weapons in Europe Map:*
www.motherearth.org/nuke/adays/map/index.htm
- Map of U.S. Weapons Sites:*
http://images.indymedia.org/imc/nyc/terrormap_24x36.pdf
- Map of weapons of mass destruction around the world:*
www.greenpeace.org/wmdmap

Inspection of U.S. Strategic Command

On August 3, 2003, Nebraskans for Peace and other regional peace groups conducted a Citizens Weapon Inspection at U.S. Strategic Command Headquarters. The Citizens Inspection was part of a weekend of activities, *SpeakOut at StratCom 2003*, intended to raise awareness of the key role played by U.S. Strategic Command in efforts by the United States to make nuclear weapons more useable in warfare. These efforts range from research on nuclear weapons with new military capabilities, such as the Robust Nuclear Earth Penetrator, to upgrades in the computer systems and software that Strategic Command would use to plan and execute nuclear strikes.

The Citizens Inspection was led by Western States Legal Foundation Program Director Andrew Lichterman and Greg Mello, Executive Director of the Los Alamos Study Group of Albuquerque, New Mexico. They delivered a letter documenting the participation of Strategic Command in planning for the deployment and use of illegal weapons of mass destruction.



Outside US Stratcom prior to weapons inspection
photo: *Speak out at Stratcom, 2003*

Court Cases

French Court decides in favour of nuclear test victim

On 18th March 2003 the Administrative Court of Appeal of Bordeaux declared the French State "responsible" for the irradiation of a former conscript, Mr. Alain Duterde during a nuclear test conducted in 1962 in South Algeria. Under the Court's ruling, the State will have to pay compensation to the victim.

Mr. Duterde, who was at that time doing his national service as a driver for the Defense Minister Pierre Messmer in the 621st group of Special Arms based in the Sahara desert of Algeria, was irradiated on 1st May 1962 during a high-powered test conducted by the French Army on the Talafela Mountain.

After similar cases involving Jean-Paul Ruet and François Janas, it is the third time the French State has been sentenced for the consequences of its nuclear testing. This paves the way for further cases that are currently in progress.

Working together with the Association of the Veterans of Nuclear Tests (AVEN) in metropolitan France and with the association of the Algerian veterans, and confronted with the lack of good will by the French authorities, Moruroa e tatou has decided to take court actions against the French State for "breach of the criminal law" and to claim full compensation for the damages suffered by all the civilian and military victims of the nuclear tests.

Contact: *Association Moruroa e tatou*
Siège : 403 Boulevard Pomare, Papeete Tahiti, B.P. 5456, 98716 Pirae. Tél : + 689. 430905. E-mail : moruroaetatou@mail.pf

Fiji's nuclear veterans' claim builds momentum

The Fiji Nuclear Tests Veterans Association (FNTVA) is building momentum for compensation claims from nuclear testing, according to the Research and Documentation Centre for Peace and Conflicts (CDRPC), based in Lyon.

In Fiji, veterans include mostly those survivors among close to 300 ex-soldiers who served in the British army in the 1957-1958, when nuclear tests were conducted on the islands of Malden and Christmas, under the code-name of "operation Grapple". They have published a book, "Kirimasi" (Christmas in indigenous language) co-written by Fiji MP Losena Salabula, veteran Josua Nameo and activist Nic Maclellan.

Earlier this month, the CDRPC reported the FNTVA was in the process of reaching an agreement with the British government so that their once-rejected compensation claims could be "reviewed".

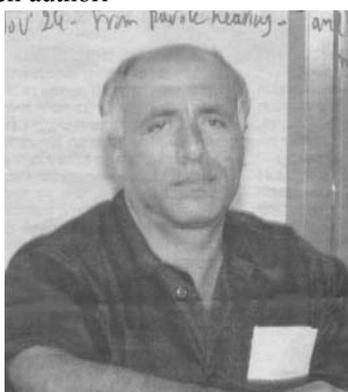
Contact: PCRC www.pcrc.org.fj

More money for Marshall Islanders of Bikini and Enewetak

Marshall Islands: A nuclear claims tribunal has recently made decisions regarding the tests performed by the US army on Bikini and Enewetak islands. It is expected to pay out some 1.3 million US dollars (as part of a multi-million dollar fund) in compensation to Marshall islanders for the impact of the tests. However, the sum is believed to be much smaller than previous payments made by the same tribunal, and is miniscule compared to the \$325 million which the Tribunal in 2000 deemed necessary for compensation for Enewetak alone - but which is unlikely ever to be paid.

Vanunu: Parole denied

Mordechai Vanunu is in Ashkelon Prison in Israel, having served 17 years of an 18-year sentence for informing the public about Israel's secret nuclear weapons program. Vanunu was kidnapped in Rome by the Mossad in 1986 and whisked back to Israel where he was convicted in secret of espionage and treason. He has had a number of parole hearings over the past few years, the latest being on February 16, all of which have been unsuccessful despite Vanunu being a model prisoner. He is scheduled to be released in April, 2004.



Mordechai Vanunu, Israeli nuclear whistleblower

There is little doubt among Vanunu's supporters in Israel, that the court's ruling, while partially an act of vindictiveness by the security establishment, is mostly motivated by the Israeli government's fear, that Vanunu's release at the time would inevitably lead to increased international attention to Israel's weapons of mass destruction. Like other states, Israel maintains facilities for manufacturing nuclear, biological, and chemical weapons. It also has a large stockpile of nuclear weapons. Yet the country has not signed the Non-Proliferation Treaty and refuses to allow any independent inspection of its facilities.

The court's ruling came the day after an historic 3,000-strong anti-war demonstration in Tel-Aviv. Several demonstrators held placards reading: "Blix, come to Israel" "U.N.: Inspect Dimona; Disarm Israel" and "We also have Weapons of Mass Destruction". Of the four people who were arrested at the Israeli Embassy in Washington, D.C. on September 30 calling for Vanunu's freedom, three had their charges dismissed after being told their arresting officers were not present at the December 12 trial, and the fourth was acquitted.

For more information, contact
U.S. Campaign to Free Mordechai Vanunu
freevanunu@mindspring.com, www.nonviolence.org/vanunu.
Messages of support can be sent to Mordechai Vanunu, Ashkelon Prison, Ashkelon, Israel.

U.S. court rules on U.S. withdrawal from ABM Treaty

On December 30, 2002, Judge John Bates of U.S. District Court in Washington, D.C., delivered a decision on a case brought by Dennis Kucinich and 31 other members of the U.S. House of Representatives challenging the right of the US President to withdraw from the Anti-Ballistic Missile Treaty without congressional approval.

Peter Weiss, President of the Lawyers' Committee on Nuclear Policy (LCNP), acted as lead counsel for the plaintiffs, with considerable assistance from LCNP Executive Director John Burroughs.

Judge Bates dismissed the case ruling that the plaintiffs did not have standing to challenge the president in this instance, and also that the question raised was political and thus not falling within the jurisdiction of the court. Despite the failure of the challenge, the decision leaves open the possibility of recourse to the courts in the future on issues of U.S. withdrawal from treaties should there be a dispute between the Congress and the President.

Standing and merits

Judge Bates held that individual members of Congress have no standing to obtain judicial determination of a dispute with the executive branch unless they can show *'personal injury.'* As such, Judge Bates did not reach the merits of the question, i.e. whether the President has the authority to terminate treaties without obtaining the approval of Congress. However, various comments in the 31 page opinion indicate that Congress could assert its authority with respect to approval for treaty termination. These included references to *'extensive self-help remedies'* for the Congress regarding its authority in treaty termination, but that in this case *'there is no claim that Congress, as an institution, has asserted its role in the treaty termination process.'*

Peter Weiss noted therefore that *'Congress as an institution has standing to raise constitutional questions in court, individual members do not.'*

Other comments of the opinion reinforce this position, but indicate possible conditions for future legal challenges. Judge Bates cited for example, Justice Powell from *Goldwater v Carter*:

Prudential considerations persuade me that a dispute between Congress and the President is not ready for judicial review unless and until each branch has taken action asserting its constitutional authority.



U.S. Rep Dennis Kucinich and Peter Weiss outside the Federal Courthouse in Washington D.C., 30 October 2002

Weiss notes that the decision therefore *'lays to rest two myths which seemed to paralyze congressional action following the President's announcement that he had - without consulting Congress - given notice of termination of the ABM Treaty to Russia'* these myths being that *Goldwater v Carter* decided that unilateral treaty termination by the President is constitutional, and that regardless of *Goldwater v Carter*, the President had authority to terminate treaties unilaterally.

Political question

The Judge also made much of the fact that the Kucinich suit was not brought until two days short of the six month period when termination of the ABM treaty was to become effective. This, according to the judge, brought it within the parameters of the *Baker v Carr* standard of *'unusual need for unquestioning adherence to a political decision already made.'* Weiss asks whether this political question rationale will *'fall away if Congress acts more promptly in a future treaty termination case?'* Burroughs answers that *"Future decisions regarding matters as momentous as withdrawal from the ABM Treaty must involve Congress if the United States is to remain a democracy. The framers of the Constitution rejected the monarchical system of government and did not intend that a president could rule by fiat.'* Weiss adds that *'Time will tell'*

See:

Judge Allows Bush's Withdrawal from ABM Treaty to Stand; Future Role of Congress Preserved, by John Burroughs
Judge Bates' Decision in Kucinich v Bush: Is the Glass Half Empty or Half Full? by Peter Weiss
Both articles in *Bombs Away: Newsletter of the Lawyers' Committee on Nuclear Policy*, Spring 2003. www.lcnp.org

Global Action To Prevent War: UN Working Group Highlights

Nya Gregor Fleron

The Global Action to Prevent War UN Working Group, composed of a dozen or so civil society groups actively involved in UN work, is located in New York and meets about every two months. The Lawyers' Committee on Nuclear Policy serves as the secretariat. In the past year, the Working Group explored ways to implement the Global Action program in the context of the UN. The group has held meetings with UN officials, diplomats, and civil society representatives to present the Global Action program. Beginning in September, Global Action will have a coordinator, Jennifer Nordstrom.

The following projects were discussed at UN Working Group meetings and are beginning to take shape:

UN Rapid Response Forces:

Briefly in the spotlight 10 years ago, proposals for UN civilian police and limited military capabilities are again receiving attention. In September 2002, Don Kraus, Executive Director of Campaign for UN Reform in Washington, D.C., briefed the Working Group on Peter Langille's recently published *Bridging the Commitment - Capacity Gap: A Review of Existing Arrangements and Options for Enhancing UN Rapid Deployment* (order at www.unreformcenter.org). Professor Saul Mendlovitz, UN liaison for IALANA, subsequently pursued this topic at meetings in Canada, and another meeting is planned for fall 2003 in Santa Barbara, California.

UN Charter-Based Demilitarization Proposal:

Articles 11 and 26 of the UN Charter provide that the General Assembly and Security Council may make recommendations (GA) and plans (SC) with respect to "the regulation of armaments." The provisions form a potential basis for a program of comprehensive demilitarization like that called for by Global Action, reaching both conventional and non-conventional forces. In winter 2003, Felicity Hill of the UN Development Fund for Women (UNIFEM) spoke to the Working Group about the possibility of creating an Article 11/26 campaign that would seek to implement the Global Action plan. Preliminary conversations have been held with some governments about such an approach.

Strengthening the WMD Regime:

In April 2003, Amb. (retired) Jonathan Dean (Union of Concerned Scientists) briefed the Working Group on his paper, "The Non-Proliferation Regime After Iraq" (www.globalactionpw.org/DeanPostIraqApril03.htm). Dean laid special emphasis on the imperative of making the Security Council work properly as "the instance of last resort" for enforcement of the nuclear, biological, and chemical treaties.

Civil Society Conflict Prevention Global Process:

In his report on Prevention of Armed Conflict (June 2001), UN Secretary General Kofi Annan urged NGOs to organize an international conference "on their role in conflict prevention and future interaction with the UN in this field". The European Centre for Conflict Prevention now proposes to organize six regional conferences that would culminate in a major international conference at UN Headquarters in New York in 2005. The first meeting was held in the Netherlands in June 2003; Nicole Deller of LCNP attended on behalf of Global Action (see www.globalactionpw.org/conprevconf603.htm).

Minutes of meetings, papers, and speeches can be found at www.globalactionpw.org. Global Action program statement can be ordered from lcnp@lcnp.org (\$2 each).

Sergio Vieira de Mello: Servant of Humanity

IALANA pays tribute to Sergio Vieira de Mello, the United Nations special representative to Iraq, and the other 20 people killed in the bomb attack on the UN Mission in Baghdad on August 20, 2003. Mr Vieira de Mello made an outstanding contribution to peace and security in his various roles as a human rights advocate, refugee commissioner and troubleshooting diplomat for the UN over 30 years. He was well respected for his dignity, charm and integrity and for the successes he achieved in very difficult situations such as East Timor, Kosovo, Lebanon and Mozambique.

In Iraq, Mr Vieira de Mello was juggling an incredibly difficult situation. The UN was pledged to assist Iraqi reconstruction but had to work with the unpopular occupying



Photo: REUTERS/Denis Balibouse

forces of the US and UK. The task was made even more difficult by the UN's sorry record in Iraq of the past ten years of imposing crippling sanctions, allowing US and UK control of much of Iraqi airspace and then finally doing nothing to stop the US and UK invasion and occupation. Mr Vieira de Mello recognised this in his last published interview when he said: "It must be one of the most humiliating periods in their history. Who would like to see their country occupied?"

IALANA expresses its condolences to the families of Sergio Vieira de Mello and the others killed in the attack, and hope that their lives, which were dedicated to peace, will inspire and be a catalyst for greater efforts for peace and justice.

Nuclear Free Pacific: Now What?

NFIP conference debates next steps for a Nuclear Free World.

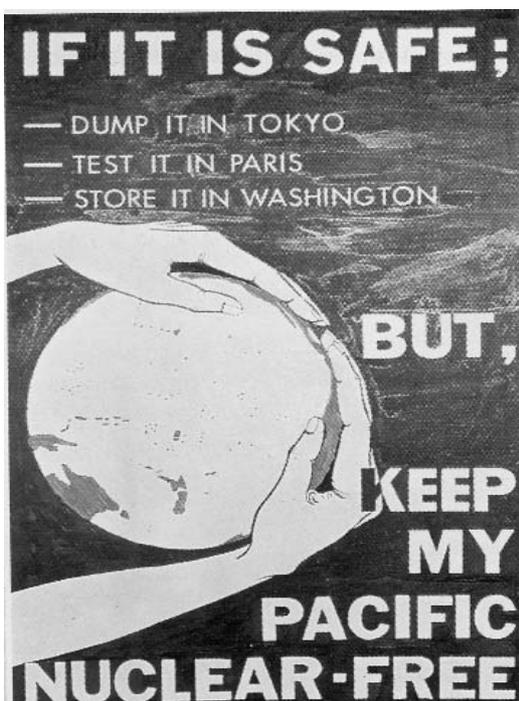
In 1975, civil society representatives from around the Pacific met to consider how to work together to stop the increasing nuclearisation of the region. Pacific peoples were experiencing yet another vestige of colonisation from the nuclear weapon states with the testing of nuclear weapons, dumping of nuclear waste, expropriation of land for nuclear bases, and deployment of nuclear weapons through the oceans.

The first Nuclear Free and Independent Pacific Conference resulted in the launch a Peoples Charter for a Nuclear Free and Independent Pacific and the creation of a Nuclear Free and Independent Pacific Movement, which since then has been successful in achieving a ban on nuclear waste dumping, a South Pacific Nuclear Free Zone Treaty and end to nuclear testing in the Pacific among other things.

In January 2003, representatives from around the Pacific met in Tonga for the 9th NFIP Conference to evaluate progress in achieving the aims of the Peoples' Charter, and to discuss further campaigns and actions Pacific peoples could take. The conference was organized by the Pacific Concerns Resource Centre which acts as the coordinating organization for the NFIP Movement. IALANA, a partner with PCRC, attended in an advisory role.

NFIP decided to act on a number of disarmament and security issues including to:

- * Encourage Pacific governments to support the Southern Hemisphere and Adjacent Areas Nuclear Free Zone and participate in the proposed conference and declaration.
- * Request the Pacific Islands Forum to amend the South Pacific Nuclear Free Zone Treaty to prohibit the transit of nuclear weapons, nuclear powered vessels and nuclear material shipments through the South Pacific Nuclear Free Zone.



- * Call for the complete close down of the Ronald Reagan Ballistic Missile Testing Range on Kwajalein atoll and the conversion of the facility to civilian use;

- * Promote the establishment of a Peace Museum on Rongelap - one of the most radiated islands in the world - to keep alive the stories of those who have died from nuclear testing.

- * Insist that France open all military medical archives, so that the truth and light can shine on the thirty years of French nuclear tests on Moruroa and Fangataufa Atolls.

- * Support court cases proceeding for compensation for Christmas Island nuclear test veterans in the European Court of Human Rights or the High Court in England;

- * Call on all Pacific states to oppose the preventive use of force, including against Iraq and North Korea and to support instead non-violent resolution to the conflicts.

For more information contact www.pcrc.org.fj

Notable Books

The World Court in Action: Judging Among the Nations

Howard Meyer

Rowman & Littlefield, 2002. ISBN 0-7425-0924-9

Nominated for a Pulitzer Prize, *The World Court in Action* is a highly readable history of the International Court of Justice. It traces the origins of the Court, highlighting the role of the pre-World War I U.S. peace movement, which saw international adjudication as the path to prevention of war. And it provides fascinating and insightful accounts of major cases decided by the Court. They include the multi-episode struggle over the status of Namibia and the system of apartheid, Nicaragua's challenge to U.S. support of the "contras," and the controversy over how to prosecute Libyan nationals accused of destroying Pan Am Flight 103 over Lockerbie, Scotland.

Not least, the book examines the initiative resulting in the Court's seminal 1996 opinion on the legality of threat or use of nuclear weapons.

The author, Howard N. Meyer, is a lawyer and well-regarded social historian. He is a member of the LCNP board of directors. *The World Court in Action* is essential – and enjoyable – reading for anyone concerned about the future of the International Court of Justice and a global rule-of-law system.

A more in depth review is available in the Santa Clara Law Review, 43 Santa Clara Law, 319 (2002)

Armageddon or Brave New World: Reflections on the Hostilities in Iraq

C.G. Weeramantry

*Former Vice-President of the International Court of
Justice*

In possibly the first book to be published about the current military invasion and occupation of Iraq by the US and some of its allies, Judge Weeramantry explores the legal and political ramifications of the US actions, the reasons force is too often used in international relations and legal mechanisms which could be employed to prevent war.

The treatise is directed primarily at the US and those who might be able to influence the US in order to '*raise America to its full stature of world leadership not only in wealth and power, but also in adherence to the higher principles of the law of nations out of which their great nation was born.*'

Armageddon or Brave New World, while critical of US actions in Iraq, is far from being anti-American. On the contrary, Judge Weeramantry goes to considerable efforts to understand US perspectives and to draw upon the strong legal and human rights tradition of the US. The illegality of the US use of force and its occupation of Iraq is framed as an anomaly from this tradition which, if allowed to pass unchecked could erode international law and lead to a conflagration of military conflicts.

On the other hand, Weeramantry indicates a number of concurrent developments which strengthen international law and an increasing public consciousness of the illegality of the use of force and the potential of alternatives. He thus argues that the Iraq situation has provided humanity with '*an opportunity for taking stock of its situation and making a choice between the law of force and the force of law. If this opportunity is not taken the next major violation of the rule against the unilateral use of force may well lead the world to the lawlessness that precedes Armageddon. If this opportunity is taken we can advance towards the Brave New World that has been the philosopher's dream.*'

US\$10 (plus postage and packaging)

Available from:

Weeramantry International Centre for Peace Education and Research, 5/1 Roland Towers, Dharmaraja Mawatha, 3, Off Alfred House Avenue, Colombo, Sri Lanka, phone (94) 1 555028, or from Aotearoa Lawyers for Peace - Wellington Office, PO Box 23-257, Cable Car Lane, Wellington, Aotearoa-New Zealand phone (64) 4 385-8192

Arms Control: The New Guide to Negotiations and Agreements

Jozef Goldblat

*UN Institute for Disarmament Research
(includes CD-Rom supplement)*

The thesaurus of arms regulation and disarmament... a precious tool for negotiators and treaty makers. Vladimir Petrovsky, former Secretary-General of the Conference on Disarmament.

In this new edition of *Arms Control*, Goldblat assesses all the major arms control agreements reached since the second half of the nineteenth century through to mid-2002. It is an invaluable resource not only for treaty negotiators, but for all academics and activists interested in international disarmament.

For anyone who needs the texts of agreements at their fingertips (even while travelling) the accompanying CD-Rom is invaluable.

Available from Sage Publications.

www.sagepublications.com

IALANA opens office in Sri Lanka

At a meeting of judges, lawyers, government officials and academics hosted by the *Weeramantry International Centre for Peace Education and Research* in Sri Lanka on 18 May, a decision was taken to establish a South Asian branch of IALANA.

The objects of the branch would be to:

- * Educate public about nuclear dangers and the possibilities for nuclear disarmament
- * Engage lawyers, parliamentarians and government officials in disarmament initiatives
- * Organise regional dialogue with particular reference to the dangers arising from the development and deployment of nuclear weapons in the South Asian region

In early August a coordinator for the office - Tharanga Jayawardena - was appointed and an action plan developed which includes:

- * A public meeting in October with Jayantha Dhanapala (former UN Under-Secretary-General for Disarmament) and Judge Weeramantry (former Vice-President of the International Court of Justice) as keynote speakers
- * A regional conference in mid-2004 to include lawyers, government officials, disarmament experts and parliamentarians from India, Pakistan, Sri Lanka and other countries in the region.

*For more information contact Tharanga Jayawardena
wicper1@ccom.lk*

News from the Lawyers' Committee on Nuclear Policy, U.S. Affiliate of IALANA

Over the past year, the New York-based Lawyers' Committee on Nuclear Policy (LCNP) kept working for the abolition of nuclear weapons, contributed on broader issues of war and peace, and made outreach a priority. Some highlights follow.

Outreach

* A law school tour supported by the Ploughshares Fund featured executive director John Burroughs, research associate Nicole Deller, LCNP president Peter Weiss, and LCNP consultant and former executive director Alyn Ware, with participation also by IALANA affiliate Western States Legal Foundation (Oakland, California, www.wslfweb.org). Presentations were made on the international law framework for nuclear disarmament and non-proliferation and global security at law schools throughout the United States, including in New York, Newark, Philadelphia, Des Moines, San Francisco, Seattle, San Diego, and Albuquerque. John also taught a seminar on legal controls of weapons of mass and indiscriminate destruction at Rutgers Law School, Newark

* Nicole (principal editor) and John worked with Arjun Makhijani of the Institute for Energy and Environmental Research to update the 2002 report, *Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties*, for its 2003 publication as an Apex Press book (order at LCNP website, www.lcnp.org). The book covers treaty regimes on nuclear, chemical, and biological weapons, landmines, global warming and international justice. Special attention is paid to nuclear issues, with chapters on the NPT, ABM Treaty, and Comprehensive Test Ban Treaty. Nicole and John made numerous presentations and media appearances regarding the book, and wrote an article elaborating its themes in the context of biological weapons for the summer 2003 issue of the *World Policy Journal* (available on LCNP website).

* LCNP gave more than two dozen radio and television interviews on international law and the Iraq war, the North Korea crisis, U.S. nuclear policy, etc., and published op-eds and articles as well.

* Program associate Nya Fleron kept the much visited website (www.lcnp.org) constantly updated, initiated email updates ("LCNP eNews") going out to hundreds of persons (to receive, email lcnp@lcnp.org), and produced the spring 2003 issue of the LCNP newsletter, available on the website.

Nuclear Abolition

* LCNP's Peter Weiss (lead counsel) and John Burroughs were among the lawyers representing members of the House of Representatives in a lawsuit challenging the Bush administration's withdrawal from the ABM Treaty without the consent of Congress. While the lawsuit was dismissed on procedural grounds, it created a record of resistance to the imperial presidency that may be important to future Congresses.

* Nya and Alyn represented LCNP at the 2003 meeting of Nuclear Nonproliferation Treaty states parties in Geneva preparing for the 2005 Review Conference. They organized and participated in workshops, distributed literature, met with diplomats, and networked with other civil society groups. While states accomplished little at this meeting, the level of energy among civil society groups was high, boding well for the future.

* LCNP staff and interns contributed to reporting in fall 2002 by *Reaching Critical Will* (www.reachingcritical-will.org) on the work of the First Committee on Disarmament and Security of the UN General Assembly.

* John and Alyn contributed to the preparation of briefing papers of the Middle Powers Initiative (www.middlepowers.org), an international civil society coalition supporting leading non-nuclear weapon states working for nuclear abolition. IALANA is a founding member.

War and Peace

* In the fall 2002 and winter 2003, LCNP prepared analyses and press releases for website posting and distribution at the United Nations regarding the illegality of the U.S. rush to war on Iraq. Nicole Deller and John Burroughs also published an article in an *American Bar Association, Human Rights* (winter 2003), explaining the international law framework for resort to the use of force and its incompatibility with the Bush administration doctrine of "pre-emptive" (really preventive) war. LCNP also organized a February press briefing at the UN for the release for the IALANA coordinated "International Appeal of Lawyers and Jurists Against the 'Preventive' Use of Force". Featuring LCNP president Peter Weiss and IALANA president Judge Weeramantry, the briefing resulted in a story in the *Financial Times*. LCNP interns Uchenna Umeagwali and Jeannie Gonzalez tracked Security Council deliberations on Iraq and prepared an in-depth report. (All of the Iraq war related material is available on the LCNP website.)

* LCNP published articles and gave press interviews opposing war as a solution to North Korea's nuclear weapons program and explaining the necessity for the United States and other nuclear weapon states to implement their disarmament obligations if promotion of non-proliferation in North Korea and elsewhere is to be successful.

* LCNP continued to serve as the secretariat for the UN Working Group for Global Action to Prevent War (www.globalactionpw.org), whose activities are reported elsewhere in this newsletter.

Rule of Power or Rule of Law? Apex Press 2003, \$26, 272 pp, soft cover

Rule of Power or Rule of Law? examines U. S. undermining of multilateral treaty regimes on nuclear, chemical, and biological weapons, landmines, global warming, and international justice. Updates 2002 report released by the Institute for Energy and Environmental Research and the Lawyers' Committee on Nuclear Policy.

A brilliantly conceived and executed study that documents unflinchingly the dangerous descent of the U.S. government into the bottomless pit of global lawlessness. It also illuminates the benefits for citizens and the world of an alternate law-guided approach based on negotiated treaty

- Richard Falk, Professor of International Law and Practice, Princeton University

This thoughtful book carefully examines the current disturbing U.S. approach to many multilateral treaties. It is essential reading for diplomats, policymakers and everyone else who is interested in global security as it relates to nuclear, chemical, and biological weapons, landmines, global warming, and international justice.

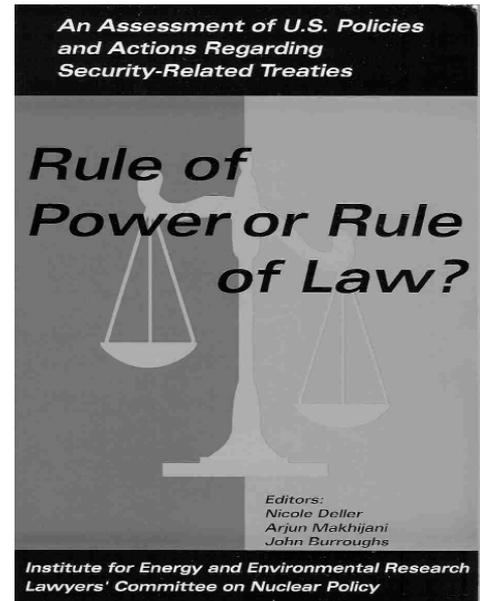
- Pierre Schori, Swedish Ambassador to the UN

This book provides a comprehensive overview of how, at a time when Americans are keenly aware of international threats to peace and security, the United States is systematically undermining the International Criminal Court and other mechanisms that would reduce those threats.

- Jayne Stoyles, former Program Director, NGO Coalition for the International Criminal Court

This study shows that the United States is obligated to reduce greenhouse gas emissions even in the absence of the Kyoto Protocol because of prior treaty commitments made by the first President Bush in 1992. It is a wake up call that unless the United States takes urgent steps to meet its key treaty obligations, the environment and security of its people and the world are in peril. Read this book and act to realize its recommendations.

- Brent Blackwelder, President, Friends of the Earth, USA



To order, mail in form below with check or use credit card at www.lcnp.org/pubs/rpbflie.htm

To order *Rule of Power or Rule of Law?* please fill in and return to LCNP*

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