Dear colleagues,

In this newsletter IALANA wants to reveal interesting thoughts on a world without nuclear weapons.

We want to contribute to a successful first PrepCom for the NPT Review Conference 2015. Unfortunately the writing on the wall of international politics is rather reading war than nuclear disarmament. We want to contribute to change. In support of the PrepCom we will host a set of side events in which we will elaborate on our arguments for nuclear disarmament, for the support of the ICJ Recommendation of 1996 and for the Nuclear Weapons Convention. You are more than welcome to join in the discussion.

In accordance with the work of IALANA which was agreed upon in the last general assembly in Sczezin, Poland, we want to tackle the complex of problems with civil and military use of nuclear technology. You will find more information and several articles regarding this topic in our newsletter. The challenge of tackling these problems is especially directed at jurists with competences and expertise in this field.

In particular we would like to invite you to the event regarding „the role of the IAE„ which will take place the 3rd and 4th of May in the city hall and the university of Vienna and is actively carried out by our organization. You can find the program to the event also in the newsletter.

The newsletter is made complete by contributions from the daily work of IALANA Affiliates, which we recommend as an interesting and informative read. They provide an overview of the active work of IALANA, of the variety and of the creativity of the commitment of jurists for peace.

We wish you a good read and hope that we will personally get in touch in Vienna.

With warm regards,
Peter Becker and Reiner Braun
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Symposium and public event
The role of the IAEA
Nuclear power after Fukushima

Thursday, May 3rd 2012 and Friday, May 4th
City Hall, Vienna.

Programme for Event in relation to the NPT PrepCom 2012.

Patron: Ulli Sima, City Council for Environment, Vienna

Aim of the Symposium is a critical re-assessment of the role of the IAEA.

History:
In 1957, the date of the foundation of the IAEA, most member states declared their peaceful intentions for the use of nuclear power. It was the era of ‘Atoms for Peace’. Since then much has changed. The control of fissile material leaves much to be desired and the civil use of nuclear energy has not proven itself: the promises of a safe, clean and cheap energy source have proved to be an illusion. Furthermore, nuclear power is not a satisfactory option for achieving reductions in CO₂. The majority of IAEA member states no longer have the aim of entering the nuclear economy; indeed some have now decided on a phase-out. The role of the IAEA concerning the catastrophes of Chernobyl and Fukushima merits severe criticism. For all these reasons it is necessary to discuss critically the outmoded function of the IAEA and to propose necessary changes.

The double role:
The double role of IAEA consists of the promotion of the civil use of nuclear energy, and the prevention of diversion for military uses. This double role is a contradiction, since the promotion of the mass production of plutonium prevents reliable control of fissile material. The promotional role has gained the upper hand over a realistic (critical) assessment of technology, and leads both to belittling the consequences and to a suppression of reputable scientific analysis of the health implications of nuclear economy.

Inhibition and disinformation:
The agreement between IAEA and WHO (May 28th 1959) which binds the two agencies to act only on a consensual basis, is de facto an oppressive limitation on the independence of the WHO. This contract has hindered reputable large-scale analysis of the health consequences of the Chernobyl catastrophe and has given rise instead to disinformation tending to minimize casualties.

Dealing with Concrete Proposals:
Proposals to draw the consequences from manifold experiences around Chernobyl, and including the need to establish a well-equipped international crisis reaction group, went unheeded by IAEA. The catastrophe of Fukushima in all its gravity has revealed the seriousness of this mistake.

Iran-Conflict:
In the conflict with Iran, the role of the IAEA is worthy of discussion so long as it is conducted on an objective basis. Peaceful conflict resolution attempts are hardly visible, and the current signals point rather to a tragic outcome. Questions regarding alternative strategies, such as societal verification, should be discussed.
These discussions do not aim at a pre-judgement but at the collection of critical questions which lead to a continuation of discussion on and with IAEA.

**Thursday, May 3rd**

**Symposium**

**16:00**

**Greetings:**
- Ulli Sima, City Council for Environment, Vienna
- Prof. Dr. Helga Kromp-Kolb (President FWU)
- Reiner Braun (for the international organizers)

**16:30**

**On the history of IAEA**
- Dr. Owen Greene (Department of Peace Studies, University of Bradford, UK)

**17:00**

**The Double Role of Military-Civilian Use and the Multi-class Nuclear Order**
- Dr. Wolfgang Liebert (INES/INESAP, IANUS, Technical University Darmstadt)

**17:30**

**Iran and the IAEA**
- Otto Jäckel (IALANA, Germany)

**18:00**

**The WHO-IAEA Problem**
- Klaus Renoldner (IPPNW Austria)

**18:30 Break**

**18:45 On the issue of a crisis task force**
- Iouli Andreev (First Commander of the Liquidators, Russia)

**19:15**

**“Mosaic of Fukushima” (Short statements)**
- Toshinori Yamada (Japanese IALANA, Japan)
- Georgui Kastchiev (former head of the Bulgarian Nuclear Regulatory Authority)
- Prof. Dr. Wolfgang Kromp (University of Natural Resources and Life Sciences, Vienna) on information given by the IAEA

- Tilman Ruff
  Moderation: Reiner Braun

**20:00**

**Proposals for Reform of the IAEA**
Panel with:
- Willy Kempel (Ministry for International and European Affairs, Austria)
- Otto Jäckel (IALANA, Germany)
- Wolfgang Renneberg (former Director of the Federal Nuclear Regulatory Authority of Germany)
- Dr. Peter Weish (ENRIC, Forum Wissenschaft und Umwelt, Austria)

Moderation: Prof. Dr. Helga Kromp-Kolb

**20:45 Networking Buffet**

**Friday, May 4th**

**Public Event: Discussion of the main results of the symposium with politicians**
*Focus: How do politicians and INGOs perceive the proposals and how can politics and INGOs work towards their realization? The aim is to engage a representative of the Austrian government, a representative of the UN and of the IAEA.*

**19:00-21:30**

**Short presentation of, and argumentation for, the reform proposals**
- Dr. Peter Weish

**Panel: Reflections and discussion on the future of the IAEA**
Invited speakers:
- Eva Hager (Ministry for International and European Affairs, Austria)
- representatives of international organizations (IAEA, WHO)
- representatives of INGOs: Alexander Egit (Greenpeace), NN of organizers
- Dr. Peter Weish (ENRIC, Forum Wissenschaft und Umwelt Österreich)

Moderation: Prof. Dr. Reinhold Christian (University of Vienna)
The Structure of the IAEA Safeguards System

by Dieter Deiseroth

I. Objectives

The IAEA was established by the United Nations (UN) as an independent organization in 1957. Its objectives and functions, the organizational structure and financial questions are regulated in the Statute of the IAEA. The IAEA is based on the principle of the sovereign equality of all its member states. They have to fulfill in good faith all their obligations assumed by them in accordance with the Statute.

The IAEA has two central – but conflicting - objectives (Art. II of the Statute):

1. „To accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world“
2. „To ensure, so far as it is able, that assistance provided by it or at its request or under its supervision or control is not used in such a way as to further any military purpose“

The whole IAEA Regular Budget for 2012 amounts to € 331 million; € 128 million of this sum is provided for Nuclear Verification.

II. Nuclear Verification

The IAEA is charged with providing its 151 member states and the international community with credible assurance that no nuclear material in the Non-Nuclear-Weapon-States (NNWS) is – in violation of Art. II of the NPT - diverted to nuclear weapons or other nuclear explosive devices.

Additionally, the IAEA verifies compliance with similar non-proliferation undertakings by parties to regional nuclear-weapon-free zone treaties: the Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Tlatelolco Treaty); the South Pacific Nuclear Free Zone Treaty (Rarotonga Treaty); the Argentine-Brazilian Declaration on Common Nuclear Policy; the Treaty on the Southeast Asia Nuclear Weapon-Free Zone (Bangkok Treaty); the African Nuclear-Weapon-Free Zone (Pelindaba Treaty); the Central Asian Nuclear-Weapon-Free Zone Treaty.

For these purposes the IAEA implements a system of safeguards agreements. To date, 178 States have concluded safeguards agreements with the IAEA.

III. Safeguards Agreements

There are the following main types of safeguards agreements:

1. Mittig the so-called Comprehensive Safeguards Agreements

1.1 Agreements with NNWS

Such safeguards agreements which are concluded with the NNWS according to Art. III NPT. They follow the structure and the content set out in an IAEA document, approved by the IAEA Board of Governors and published in IAEA Information Circular No. 153, dated June 1992 (INFCIRC/153 <Corr.>, 1972). INFCIRC/153 is the product of a longer period of controversies and negotiations. It cancelled – especially on the request of Germany, Japan and other
“threshold states”- the former IAEA-principle “access at all times to all places and data”.

Under such an agreement the involved NNWS undertakes to accept IAEA safeguards – within the limits of the agreement - on all source or special fissile material in all peaceful nuclear activities within its territory, under its jurisdiction, or carried out under its control anywhere. The IAEA has a corresponding right and obligation to ensure that safeguards are so applied on all such material, for the exclusive purpose of verifying that such material is not diverted to nuclear weapons or other explosive devices.


Although the IAEA has the authority, under such agreements of the model INFCIRC/153, to verify the absence of undeclared nuclear material and activities, its tools to do so are very limited. They focus essentially on declared nuclear material and safeguard conclusions drawn at the facility level – instead of the entire nuclear fuel circle of a NNWS. These measures – authorized under NPT-type comprehensive safeguard agreements – generally are based on nuclear material accountancy, complemented by containment and surveillance techniques, such as tamper-proof seals and cameras that the IAEA installs at facilities. The IAEA has the legal authority (within the limits of its personal, technical and financial capacities)

- to carry out on-site inspections („ad-hoc-inspections“, „routine inspections“, „special inspections“ and „safeguard visits“) which have to be pre-announced and notified to the NNWS to be controlled
- during and in connection with on-site inspections or visits at facilities to audit the facility’s accounting and operating records
- to compare these records with the accounting records delivered by the NNWS to the IAEA
- to verify the nuclear material inventory and inventory changes
- to take environmental samples and
- to apply containment and surveillance measures (i.e. seal application, installation of surveillance equipment).

The IAEA’s inspectors normally carry out inspections only at agreed „key measurement points“ in the plant/facility concerned. If there is a significant loss of nuclear material or another unusual event, or if the IAEA considers that the information provided is inadequate, it may, but only with the agreement of the government concerned, carry out special inspections at places not specified in the „facility attachment“ which was drawn for each plant or storage facility.

The results of safeguards implementation are evaluated by the IAEA Secretariat in Vienna. Annually the conclusions of the Secretariat are reported („Safeguard Implementation Report“ – SIR) to the IAEA Board of Governors. The Board of Governors with its delegates of 37 IAEA member states decides on the consequences to be drawn (e.g. to ask the UN Security Council to decide on further steps).

The discovery in 1991 of Iraq’s clandestine nuclear activities demonstrated the shortcomings of safeguards implementation based on agreements with the structure and content of IAEA document INFCIRC/153 (Corr.) 1972.

1.2 Agreements with EURATOM–NNWS

On strong requests of Germany and other member states of the European Community the NNWS who are members of the EURATOM have concluded a
special Safeguards Agreement with the IAEA in 1973 (INFCIRC/193 of 5 April 1973). Japan succeeded in reaching a quite similar agreement. This special agreement was an important precondition for the willingness especially of Germany, Italy and Japan to ratify the NPT. It limits the role of IAEA on the purpose to verify the safeguards system of EURATOM (control of declared nuclear material flows on strategic points). The official reason for it was to avoid „repeated controls“. Actually the EURATOM member states wanted to protect their nuclear capacities and facilities against „industrial espionage“ by IAEA inspectors and co-operating states.

2. Item-specific safeguard agreements

The IAEA has concluded item-specific safeguard agreements with three states: India, Israel and Pakistan. These states reached the status of nuclear powers outside the NPT which they didn’t ratify. Such agreements, based on IAEA document INFCIRC/66/Rev. 2, cover only the nuclear material, facilities and/or materials specified in the agreement. There remain great loopholes for clandestine activities.

3. Voluntary Offer Agreements (VOAs)

The NPT does not require the five „old“ Nuclear-Weapon-States (NWS), i.e. China, France, Russia, the United Kingdom and the USA, to accept safeguards provided for in the NPT (Art. III). For rather symbolic reasons these old NWS have concluded VOAs under which they have voluntarily offered nuclear material and/or facilities from which the IAEA may select to apply safeguards. By this the NWS corresponded to the expectations especially of the governments of Germany and other western countries who had requested that the non-military nuclear facilities in the U.K. and the USA should be verified by the IAEA safeguard systems too. Their purpose was: If there will be no „discrimination“ between NNWS and NWS concerning the safeguards system for non-military nuclear plants and facilities, the NWS would be more interested in limiting the „burden of verification“ for the NNWS.

These VOAs (USA: INFCIRC/288; U.K.: INFCIRC/263; Russia: INFCIRC/327; France: INFCIRC/290; China: INFCIRC/369) follow the format of agreements based on INFCIRC/153 (Corr.), but vary in the scope of materials and facilities covered. All VOAs exclude those nuclear material and facilities which have been declared by the specific NWS to be one of national security significance. And they guarantee the possibility of withdrawing such material and facilities from safeguards.

So it depends on the decision of the national government of a NWS which materials and facilities should and could be verified by the IAEA. Conclusion: There is no comprehensive and effective safeguards system managed by the IAEA on the territories of the NWS or in areas controlled by them.

4. Additional Protocol

On 15 May 1997 the IAEA-Board of Governors approved the Model Additional Protocol on the basis of a draft developed by the IAEA-Secretary and subsequently published as INFCIRC/540 (Corr.) 1998. The purpose was to strengthen the IAEA’s inspection capabilities. The Additional Protocol should enable the IAEA not only to verify the non-diversion of declared nuclear material but also to provide assurances as to the absence of undeclared nuclear material and activities in an NNWS. The IAEA inspectorate should be enabled to provide assurance about both declared and undeclared activities. It grants the IAEA complementary inspection authority in addition to that provided in concluded underlying safeguards agreements - especially expanded rights of access to information and sites. According to its drafters the Model Additional Protocol is enabling the IAEA to obtain additional safeguards-relevant information and access to locations, and to benefit from new technology (from open and other sources).
The Model Additional Protocol needs to be ratified by every NNWS. To date, the Additional Protocol is ratified by most of the IAEA-member states excluding (i.a.) Argentina, Brazil, India, Iraq (only signed on 9 Oct. 2008), Iran (only signed on 18 Dec. 2003), Israel, Pakistan, Saudi Arabia, Sri Lanka, Syrian Arab Republic, Venezuela, Yemen.

IV. Conclusions

1. The Additional Protocol (INFCIRC/540 (Corr.) 1998) must be ratified as soon as possible by all those states who didn’t do it to date: i.a. Argentina, Brazil, India, Iraq (only signed on 9 Oct. 2008), Iran (only signed on 18 Dec. 2003), Israel, Pakistan, Saudi Arabia, Sri Lanka, Syrian Arab Republic, Venezuela, Yemen. The Additional Protocol could strengthen the IAEA’s inspection capabilities. This would close a lot of loopholes which were caused especially by the governments of those states (like Germany, Italy, Japan and others) between 1966 and 1973 who succeeded in preventing an IAEA-safeguards system based on the principle „necessary access for the IAEA inspectorate at all times to all places and data”.

2. The existing IAEA safeguards system grants unjustified privileges: All NWS should not be allowed to exclude those nuclear material and facilities which have been declared by them to be one of national security significance; all NWS should renounce their existing power of withdrawing such nuclear material and facilities from comprehensive IAEA safeguards.

3. There should be established a qualified special entity inside or outside of the IAEA to collect, to register and to evaluate all relevant information and material concerning the compliance of the NWS with their duties stated in Art. VI of the NPT (“Each of the Parties to the Treaty undertakes 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, and on a treaty on general and complete disarmament under strict and effective international control”).

4. The Item-specific safeguards agreements with India, Israel and Pakistan should be evaluated with the purpose to be replaced by comprehensive safeguards agreements.

5. The privileged special status of the EURATOM member states (according to the Verification Agreement of 5th April 1973) should be evaluated to avoid any further inequality and discrimination between NNWS.

6. The financial and personal inspection capacities of the IAEA and its access to relevant sources of information concerning possible violations of the safeguards system must be increased.

7. IAEA’s traditional safeguards system should be strengthened with supplementary elements of “Societal verification” (see special article on “Societal Verification” in this Newsletter)

IAEA is missing opportunity to improve shortcomings in reactor safety

by Susanne Gerber

Nine months after the worst nuclear disaster in decades, the world’s atomic-energy watchdog has yet to dedicate additional money to improve reactor safety.

The delay has prompted the U.S. to call for the International Atomic Energy Agency to prepare a budget for its so-called action plan and to clarify how it will respond to future nuclear emergencies. The United Nations-funded agency said the allocation
will be determined after a team draws up the “main activities associated with the action plan,” according to a Dec. 5 statement to Bloomberg News. Money wasn’t included in the IAEA’s budget agreed to in September.

The agency classifies safety as one of its top three priorities, yet is spending 8.9 percent of its 352 million-euro ($469 million) regular budget this year on making plants secure from accidents. As it focuses resources on the other two priorities — technical cooperation and preventing nuclear-weapons proliferation — the IAEA is missing an opportunity to improve shortcomings in reactor safety exposed by the Fukushima disaster, said Trevor Findlay, a former Australian diplomat.

“The IAEA did not seize the opportunity of this dreadful event to advance the agency’s role in nuclear safety,” said Findlay, who is finishing a two-year study of the Vienna-based agency at Harvard University. Director General Yukiya Amano “has been tough on Iran and Syria, but not when it comes to nuclear safety.”

The IAEA was founded in 1957 as the global “Atoms for Peace” organization to promote “safe, secure and peaceful” nuclear technology, according to its website. A staff of 2,300 work at the IAEA’s secretariat at its headquarters.

Conflicting Role

Its mission statement encapsulates the same conflict as Japan’s failed nuclear-safety regime: playing the role of both promoter and regulator of atomic power, according to scientists, diplomats and analysts interviewed by Bloomberg News.

About half of the IAEA’s budget is devoted to restricting the use of nuclear material for military purposes, and the agency has spent a decade investigating Iran’s atomic program because of suspicion the country is developing weapons.

As the agency targeted weapons, the meltdowns at Tokyo Electric Power Co.’s Fukushima Dai-Ichi nuclear plant capped years of faked safety reports and fatal accidents in Japan’s atomic-power industry. The country’s Nuclear and Industrial Safety Agency was in a conflict of interest because it was under the control of the Ministry of Economy, Trade and Industry, which had a mandate to promote nuclear power.

Accepting Overlaps

The IAEA “accepted for years the overlap between regulation and industry in Japan,” said Johannis Noeggerath, president of Switzerland’s Society of Nuclear Professionals and safety director for the country’s Leibstadt reactor. “They have a safety culture problem.” The agency encourages “safe, secure and responsible use of nuclear energy in those countries that independently decide to embark on a nuclear power program” said Gill Tudor, an IAEA spokeswoman. “Part of the agency’s mandate is to advise and work with independent national regulators.”

Since coming to office in 2009, Amano has spent five times more money fighting terrorism and preventing proliferation than on making the world’s 450 nuclear reactors safer, UN data show.

The agency’s safety division garnered little respect in U.S. diplomatic cables that described the department as a marketing channel for countries seeking to sell atomic technology.

Credentials Questioned

They also questioned the credentials of Tomihiro Taniguchi, the IAEA’s former head of safety who helped create the regulatory regime in Japan, which is being blamed for failings that led to the Fukushima disaster.

“The department of safety and security needs a dedicated manager and a stronger leader,” U.S. IAEA Ambassador Glyn Davies wrote in December 2009 in a cable released by Wikileaks, the anti-secrecy website. “For the past 10 years, the department has suffered tremendously because of Deputy Director
General Taniguchi’s weak management and leadership skills.”

The U.S. backed Amano’s bid to replace Mohamed ElBaradei in 2008 because he was believed to be supportive on confronting Iran. ElBaradei was accused by the U.S. and its allies of overstepping his IAEA mandate in seeking compromise solutions to resolve the Iranian nuclear issue. Amano was “solidly in the U.S. court,” according to a U.S. cable in October 2009 released by Wikileaks. The U.S. IAEA mission declined to comment on the cables.

Threat Downplayed

By the time Amano reached office, the IAEA’s nuclear-safety division had downplayed the threat from natural disasters. In 2010, the director general’s first full year in office, anti-terrorism spending rose at three times the rate of safety expenditure.

“Tsunamis, floods, hurricanes and earthquakes have affected many parts of the world and nuclear installations everywhere responded admirably,” Taniguchi said in a December 2005 speech. “The design and operational features ensured that extreme natural conditions would not jeopardize safety.”

Taniguchi was also an executive of Japan’s Nuclear Power Engineering Corp., which promotes public acceptance of the operation of atomic-power plants, before joining the IAEA.

“I made contributions to significantly improving safety systems around the world,” Taniguchi said when asked about the U.S. cables. Now a professor at the Tokyo Institute of Technology, he lectures graduate students on nuclear security.

Promoting Atomic Power

The IAEA’s own mission to promote atomic power may also contradict the Convention on Nuclear Safety.

“Each contracting party shall take the appropriate steps to ensure an effective separation between the functions of the regulatory body and those of any other body or organization concerned with the promotion or utilization of nuclear energy,” says article 8.2 of the convention.

In the U.S., the Nuclear Regulatory Commission reports to Congress and is responsible for the licensing and oversight of atomic power operators, according to its website.

The IAEA has been tarnished by a series of nuclear-safety mishaps, including the combustion of plutonium in 2009 at an Austrian lab and a mishandled vial that contaminated part of a Belgian facility in 2011, according to the agency.

One IAEA plant inspector fell into a Czech nuclear-fuel cooling pond in 2007, according to four officials who declined to be identified. The agency won’t make public a full list of incidents involving its own staff.

“IAEA inspectors and field workers are largely on their own when it comes to safely carrying out their jobs,” said Robert Kelley, a former IAEA director who led inspections in Iraq. “They receive little guidance or support and they are very dependent on the facilities they are inspecting to protect their health.”

Fukushima Failure

The agency’s failure on Fukushima is due to its timid leadership and an over-reliance on Japanese data, said Findlay, who will present the Center for International Governance Innovation’s report on the IAEA in Vienna in April. “The agency’s self-promotion led outsiders to naturally expect the agency to leap into action, so it only has itself to blame for that.”

Japan’s public remains uneasy about the reactors at Fukushima, which are still exposed to damage from earthquakes, said Akio Matsumura, a former diplomat and chairman of the World Business Academy. The absence of independent information about the meltdown compounds those fears, he said.
“The IAEA has disseminated reports on updates at Fukushima, but the source of the information is the Japanese government,” Matsumura said. “If the Japanese government chooses to remain opaque in its dealings, then the IAEA reports will be useless.”

Deflecting Criticism

The IAEA had to deflect criticism from its members for weeks following the Fukushima disaster because it refused to analyze risks from the meltdown. The U.S. NRC provided more risk assessments than the IAEA by independently widening the areas it labeled dangerous around the reactors beyond where Japanese officials set limits.

The Fukushima meltdowns have already spread more radiation over Japan than the Hiroshima and Nagasaki nuclear bombs combined, Arnie Gunderson, a U.S. nuclear engineer who testified before the NRC on the Fukushima meltdowns, wrote in an e-mail. The stricken plant is expected to be brought under control before the end of the year, according to Tepco.

From:
http://news.businessweek.com/article.asp?documentKey=1376-LVW4SI0YHQ0W01
15 March 2012

The Importance of Whistleblowing in the IAEA Safeguards System

by Dieter Deiseroth

The central - traditional - purpose of the Safeguards System of the IAEA (stated in the so-called „comprehensive safeguard agreements“) is to ensure that source material or special fissionable material is not diverted to nuclear weapons or other nuclear explosive devices (see para. 1 and 2 of the model agreement INFCIRC/153) in all Non-Nuclear-Weapon-States (NNWS).

The technical objective is „the timely detection of diversion of significant quantities of nuclear material from peaceful nuclear activities to the manufacture of nuclear weapons or of other nuclear explosive devices or for purposes unknown, and deterrence of such diversion by the risk of early detection“ (see para. 28, INFCIRC/153). The fundamental measures to achieve this technical objective are:
- nuclear material accountancy (initial inventory declaration; facility attachment; examining facility records and comparing them with reports submitted by the NNWS)
- on-site inspections (verifying declared inventories and flows of nuclear material etc.)
- containment and surveillance.

A second purpose – beyond INFCIRC/153 safeguards agreements - should be the detection of undeclared nuclear material and activities in all NNWS. This purpose, stated in the „Additional Protocol“, requires very different tools from those measures needed for
the timely detection of the diversion of declared nuclear material. It requires

- to take the entire nuclear fuel circle of a NNWS in consideration (instead of only individual declared and notified individual facilities)
- to get complementary access to the declared facilities or locations outside facilities (LOF)
- to strengthen the access of the IAEA inspectorate to information from open and other sources.

Under the „Additional Protocol“ the IAEA inspectorate is authorized to request complementary access for any of the following reasons:

- to assure the absence of undeclared nuclear material and activities at sites of facilities or location outside facilities (LOFs), or at mines, concentration plants or other locations declared under Art. 2 as containing nuclear material,
- to resolve a question relating to the correctness and completeness of the information provided pursuant to Art. 2 or to resolve an inconsistency relating to that information
- to confirm, for safeguard purposes, the declaration of the NNWS of the decommissioned status of a facility or location outside the facility (LOF).

Nevertheless, the existing verification techniques, measures, methods and tools have inherent loopholes. In order to enable the IAEA to detect the existence of clandestine nuclear activities in a NNWS, the IAEA would have to be given the authority, the staff, resources and intelligence apparatus needed to control and to scour the territories of the more than 150 NNWS party to the NPT. There is no realistic prospect of this.

In any case, an additional system of verification would be useful: societal verification which should be an integral part of the NPT verification system of the IAEA.

Although there is no agreed legal definition, societal verification connotes the involvement of civil society in monitoring national compliance with, and overall implementation of, international treaties or agreements. It includes the monitoring of the implementation of national regulations designed to facilitate treaty compliance by states. Potentially the whole of society or broad groups within it may be involved, in contrast to specialised organisations, with their professional experts, which are established for official verification purposes.

One important element of societal verification is ‘citizens’ reporting’ of violations or attempted violations of agreements in their own countries, including by their own government. ‘Whistleblowing’ is a specific type of citizens’ reporting. Whereas citizens’ reporting relies on members of the general public finding out, in one way or another, about violations of or attempts to violate an international agreement, such actions can also be detected directly by employees, such as scientists and technologists, working in the relevant industries, departments, agencies or firms. Whistleblower are encouraged and willing to report to the public or to the national or international (IAEA) verification regime regarding violation of the respective treaty (NPT) or verification agreement (INCIRC/153, IFCIRC/640 or others) of which they have become aware.

Fortunately, the IAEA has caught on one small part of this idea.

At its homepage (see:www.iaea.org/About/whistleblower1109.pdf) there is posted a paper on „PROCEDURES FOR WHISTLE-BLOWER REPORTING TO THE IAEA BY EXTERNAL PERSONS“.

How to Report to the IAEA

Whistle-blowers may use any of the following options to make a report to the IAEA:

Telephone – A dedicated telephone line (+43-1-2600-26111) has been set up in the Office of Director, Internal Oversight Services (OIOS) to receive telephone reports and messages and will only be accessible to authorized OIOS staff.
Email – A dedicated email account (whistleblower@iaea.org) has been set up and will only be accessible to authorized OIOS staff.

Facsimile – A dedicated fax machine (+43-1-2600-29126) has been set up in the office of Director, Office of Internal Oversight Services and will only be accessible to authorized OIOS staff.

External Mail – Written reports should be placed in an envelope, sealed, and marked “Confidential to be opened by the addressee only”. The envelope should be addressed to Director, Office of Internal Oversight Services, P.O. Box 6, Vienna Austria.

Who is addressed? The answer: „IAEA has zero tolerance for fraud, corruption or related forms of misconduct in its programmes and activities. External persons who wish to convey a concern, allegation or information that such action is occurring or has occurred, may submit a whistle-blower report to the IAEA. External whistle-blowers are any persons such as consultants, vendors, contractors or others who convey this information with the knowledge or belief that it is true.“

Obviously, in this declaration the IAEA doesn’t have the purpose to use whistleblowing as an important and valuable element within its verification system. The cited declaration only refers to the detection of „fraud, corruption or related forms of misconduct“. It is not mentioned at all that whistleblowing and societal verification would and could strengthen the effectiveness of IAEA safeguards systems (INFCIRC/153 and others; the Additional Protocol) and that it could build confidence in state adherence to obligations under national and international verification systems.

One of the famous examples for societal verification by citizen reporting and whistleblowing is the activity of the German Nobel Peace Prize Laureate Carl von Ossietzky who worked as a journalist, writer and editor in Germany (“Republic of Weimar”) in the 1920s and 1930s. In his periodical, „Die Weltbühne“, he disclosed the secret military co-operation between the German Army (“Reichswehr”) and the communist soviet authorities which violated the international agreements concerning disarmament measures stated by the Peace Treaty of Versailles of 1919. Nevertheless, in 1931 Carl von Ossietzky and one of his colleagues were accused of treason and espionage, and then convicted and sent to prison by the German Supreme Court (“Reichsgericht”). This condemnation of the courageous journalist aroused tremendous acts of solidarity, both in Germany and in many other countries. Many contemporaries realized and honoured the important role of citizens like Carl von Ossietzky. In 1935 Carl von Ossietzky became laureate of the Nobel Peace Prize. The "case of Ossietzky" demonstrates the important (potential) role, which "Societal verification" can have, i.a. in the area of arms control and disarmament. Had the citizens of Germany and the governments of the states which were parties to the relevant disarmament treaties taken Ossietzky’s disclosures about the German violations of important disarmament and arms control regulations more seriously, which he published in the "Weltbühne" and uncovered ahead of the world public, it would have been an important contribution to the common goal to avoid a new war initiated by a remilitarized Germany. Germany could not have started the Second World War had it not been armed in violation of the Peace Treaty of Versailles.

This argument that societal verification can play an important role holds true even today, especially for verifying nuclear and conventional arms control and disarmament as well as verifying biological and chemical disarmament.

The 1991 revelation that Iraq, a long-standing party to the Non Proliferation Treaty (NPT) and to a comprehensive safeguards agreement with the IAEA, had been able to establish clandestinely a considerable nuclear weapons programme demonstrated a lot of loopholes and defects in the IAEA safeguard system. Despite the of seperated plutonium from the reprocessing of civilian spent fuel, the very difficult task to
place the former military nuclear material in Russia and other states under the IAEA’s supervision, and the spread of nuclear enrichment technologies. In this situation it could be very important to increase the possibilities of detection of undeclared or hidden nuclear material or of prohibited co-operation with other countries pursuing (potentially or really) clandestinely nuclear programmes. Achievements which had been reached after the IAEA’s failure to detect the Iraqi nuclear programme and which led to a modified „Strengthened Safeguard System“ (Additional Protocol) remain severe problems in the verifying system: especially the shortfall in personal and financial resources needed to deal with growing demands on the safeguards system, such as the mounting stocks

The same is true of the arms trade and export of embargo-relevant „dual use“-technology. National control and licensing authorities are usually under the control of governments which can, however, override the stated policy in the interest of money making or other substantial issues. The formal requirements (e.g. end-use-certificates) can easily be adapted to the wishes of the supplier-country so that on paper these requirements are shown to be fulfilled but in reality there is hardly any check on actual use. The transfers of nuclear, chemical and other material to Iraq from the U.K. (and other countries) between 1980 and 1990 are illustrative examples. In the „Arms To Iraq Scandal“ it was a whistleblower who helped to disclose and stop the violations against the embargo regulations: An employee of the British company „Matrix Churchill“ wrote a letter to the U.K.Foreign Secretary warning that munitions equipment was being exported, violating the U.N. embargo, to Iraq. Though this letter was ignored by civil servants for a number of years, it was feared that the whistleblower at „Matrix Churchill“ might contact the press during the prosecution of the company for breaching the arms embargo and this caused the Deputy Prime Minister to refuse to suppress evidence that the Government had been aware of the suspected exports.

Because any serious attempt to violate an international treaty like the NPT or an agreement like INFCIRC/153 (or a corresponding national legal legislation or regulation) would require the involvement of technologists, scientists and other employees, societal verification is nearly worthless without a special protection for those employees who „blow the whistle“.

(1) By international treaties as well as by domestic law there should be established legal protection against retaliation, discrimination and criminal prosecution. This could an important task even and especially for the IAEA: to implement whistleblower-protection-clauses into its safeguards agreements and other relevant documents. Additionally, due-process protection for dissenting employees should be developed and established by state legislation and regulations. The IAEA agreements and state legislation should include the rights of all persons, especially of all professionals and employees

• to inform in good faith appropriate bodies or, if necessary, the public in case of plans, projects and measures in the area of their own working-place or outside their working place which violate national or international law or principles of professional ethics and
• to refuse work on such projects.

(2) There should be guaranteed exemption from punishment in case of self-disclosure (revelation of one’s own involvement in prohibited activities)

(3) There should be guaranteed by international and domestic law that a whistleblower could rely on legal protection in foreign countries in case of discrimination or criminalisation by or in their own state (i.e. the right to asylum for whistleblowers).

In 1997, an international consortium of lawyers, scientists, and disarmament specialists under the coordination of the US-Lawyers’ Committee on Nuclear Politics drafted a Model Nuclear Weapons Convention (Model NWC), which was circulated by
the United Nations in 1997 as an UN-Document. Art. VII B of the Model NWC states, that „persons shall report any violation of this Convention to the Verification Agency established by the Convention. This responsibility takes precedence over any obligation not to disclose information which may exist under national security laws or employment contracts. Information received by the Agency under the preceding paragraph shall be held in confidence until formal charges are lodged, except to the extent necessary for investigative purposes. Section C of Chapter VII of the Model NWC states „Intra-State-Protection“ and „Inter-State-Protection“. It proposes the following Intra-State-provisions:

• „Any person reporting a suspected violation of this Convention, either by a person or a State, shall be guaranteed full civil and political rights including the right to liberty and security of person“ (par.6);
• States Parties „shall take all necessary steps to ensure that no person reporting a suspected violation of this Convention shall have any rights diminished or privileges withdrawn as a result“ (par.7).
• Any individual who in good faith „provides the Agency or a National Authority with information regarding a known or suspected violation of this Convention cannot be arrested, prosecuted or tried on account thereof.“ (par.8).
• According to par.9 „it shall be an unlawful employment practice for an employer to discriminate against any employee or applicant for employment because such person has opposed any practice as a suspected violation of this Convention, reported such violation to the Agency or a National Authority, or testified, assisted, or participated under this Convention.“
• Any person „against whom a national decision is rendered on account of information furnished by such person to the Agency about a suspected violation of this Convention may appeal such decision to the Agency within ... months of being notified of such decision. The decision of the Agency in the matter shall be final.“ (par. 10)

The „Inter-State-Provision“ includes that „any person reporting a violation of this Convention to the Agency shall be afforded protection by the Agency and by all States Parties, including, in the case of natural persons, the right of asylum in all other States Parties if their safety or security is endangered in the State Party in which they permanently reside.“ (par.11)

Additional Provisions of the Model NWC state that the Executive Council established by the Convention „may decide to award monetary compensation to persons providing important information to the Agency concerning violations of this Convention.“ (par. 12) And: „Any person who voluntarily admits to the Agency having committed a violation of this Convention, prior to the receipt by the Agency of information concerning such violation from another source, may be exempt from punishment. In deciding whether to grant such exemption, the Agency shall consider the gravity of the violation involved as well as whether its consequences have not yet occurred or can be reversed as a result of the admission made.“ (par.13)

To encourage and to enable citizens for whistleblowing as an important element of „Societal Verification“, it is necessary, additionally, to establish a loyalty to a much larger group than to one’s own company and to one’s own nation. There must be developed and strengthened a universal loyalty to mankind. This is a very important task especially for the educational system and the mass media. The responsibility of scientists, technologists and other employees could be developed through training to identify activities that are, or are bordering on being, prohibited or activities which seem to be ethically questionable. Scientists in the universities and academies could develop special programmes and curricula for teaching and learning

• how to realize ethical problems in research and development,
• how to act in an ethical responsible manner as a professional and an employee and
• how to manage ethical conflicts (whistleblowing).

It could become an obligatory part of every academic examination of students and academics to scrutinize the possible ethical consequences of scientific and technological proposals, inventions and developments.

Organisations and enterprises could develop due-process procedures for dealing with dissents and dissenters in a fair and responsive manner. Principal general approaches could be:

• to work on a „Code of Ethics and Professional Conduct“ of the organisation which guarantees that nobody should be discriminated if he or she makes a „protected disclosure“ to a specified internal or external person or body
• to establish an ombudsman within the organisation (concerning ethical behaviour) and
• to establish a hot-line for complaints (anonymous or under full name) of employees who ask for advice.

Besides this, organizations of scientists and technologists and the other employees could support and encourage potential and acting whistleblowers, which would monitor the activities of individuals and groups likely to become involved in projects contravening international agreements and conventions or violating domestic law or standards of professional ethics. They could

• develop a „Model Code of Ethics and Professional Conduct“ (for their membership)
• publish appropriate whistleblower-cases and ethical conflicts
• publish the names and cases of employers, who have discriminated responsible professionals or other ethical employees
• offer professional advice in concrete conflicts
• organize acts of solidarity with whistleblowers
• establish „ethical support-funds“
• award whistleblowers
• lobby for better legal protection of whistleblowers („Public Interest Disclosure Act“).

Dignity, liberty and security from nuclear warfare: what we may learn from Koller and Melis cases

by Pasquale Policastro

The recent Italian Melis case and the case Koller have in common the dangers related with nuclear warfare. In the Italian Melis case the heirs of an Italian soldier, Mr. Melis, who died of a cancer due to the exposition to substances coming from the use of bullets added with (depleted) uranium, claimed for contractual and extra contractual damage. In the case of Ms. Dr. Koller, a German pharmacist, living nearby a military base, where nuclear weapons are kept and are guarded, maintained, and operated by German personnel, she claims that the contrariety to Fundamental Law and to international law of such procedure.

The family of the late Mr. Melis pled in front of the court of Cagliari (Tribunale di Cagliari), while Ms. Dr. Koller pled in front of the competent administrative court of the Land Nordrein-Westfalen. In the Melis
case the claim addressed to the State concerned the payment of contractual and extra-contractual damage, in the Koller case the claim addressed to the State related to refrain from possessing nuclear weapons for the purpose of military use, also in the context of nuclear sharing within NATO. It demanded also U.S. forces to refrain from asking the grounds of the Büchel air base for weapons storage, for the purpose of use in an armed conflict of for training purposes to this task and for the participation in NATO.

The heirs of Mr. Melis claimed their rights on the base of the effects of the exposition of their relative, to the dangerous effects of the blast of bullets added with depleted uranium, and eventually of the blast of other bombs or ammunition with heavy metals. The court of Cagliari acknowledged the rights of Melis family, both on contractual and extra-contractual ground. In particular the “Tribunale” of Cagliari took into account the insurgence of the so-called “danno catastrofale” - “the catastrophic damage”, which is the “damage consequent for the suffering of the person, who consciously had to assist to the ending of his life”. Ms. Dr. Koller claimed her rights taking into consideration the potential danger arising from the fact that she is living not far from the Büchel air base, and is exposed to the risk, that any accident or deliberate attack to the base may have especially for the neighboring people. The competent administrative court dismissed the claims of Ms. Koller, stating in substance that the need to protect the nation from the extreme risks of a nuclear attack justifies such possession of nuclear bombs, shared with U.S. forces. The appeal on the decision of the Koller case stresses, however, that a fundamental right to access to the Court exists also as a manifestation of the free development of the human personality and that, therefore, legal evidence of such need to protect the nation through nuclear weapons shall be given in any case.

The subtle argument purported by the Koller side, opens the way to another kind of connection with the Melis case. Indeed, both the cases refer to the protection of the human person and the human personality against unjustified actions of the political power, which put at risk the most fundamental legal goods related to the protection of the individual. Also the kind of action, which as an individual nature, and not the one of a class action, stresses the intrinsic relation between the case and the individual personality.

Looking at the logic of the two cases, we deal, both in the Melis case and in the Koller case, with a three sided legal conflict.

From the one side we have the State duties to protect public good, called in Middle-Age thought as “gubernaculum”. Performing such public duties managed for long ages to skip, totally or partly, from legal accountability.

From the other side we have the formalistic approach to law, descending from the ancient “formulæ” and their evolution in the “pretorian” approach. According with this principle, we have action only on specific pre-determined issues (Tatbestanden). This principle, however, which is very well functioning in the relation between individuals, may not resist the cases in which the most fundamental manifestations of the individuals, have to be protected. Either the remedy “ex lege Aquilia” concerning the responsibility for the protection of the “right to the free development of the personality”, as well as the “right to life and to personal integrity” (art. 2 German Basic Law), open the system of the legal remedies to deeper insights and deeper approaches to reach the proof.

The third side of the conflict is related to the fundamental rights. Indeed, both in the case Melis and in the case Koller we deal with a problem related to the passing over the enumeration of the rights, that is the shift from the question of which are the fundamental rights to what are the fundamental rights. In both the cases human dignity, although not truly mentioned, appears as the cornerstone of the third side of the conflict at stake.
Taking into account the issue of fundamental rights, the legal tool invoked by the party in both cases has indeed, when considered in a historical perspective a similar foundation. The responsibility in tort goes beyond any formalization and reduction to type of the action given. It goes directly to the protection of the person against any “unjust fact”. The same is the role of the right to the “free development of the personality” which, read together with the human dignity, opens the catalogue of the fundamental rights in the Basic Law.

Although dignity is not explicitly mentioned in the Melis decision and in the Koller decision, and is not mentioned also in the field appeal in the Koller case, it is however the cornerstone of the legal reasoning in the Melis decision and in the Koller case appeal. Indeed the proof of the causation of cancer to Mr. Melis due to the exposition to radiation deriving from the blasts of impoverished uranium enriched bullets, and the consciousness of the disease, together with the insufficient help received is considered enough by the Court of Cagliari. The appeal file in the Koller case requires, conversely, a full proof that keeping the nuclear bombs in “Teilhabe” may not put at risk fundamental aspects of Ms. Koller’s existence.

The lack of consideration on the Koller decision of first instance shows in its perspective the rather artificial character of the distinction between public subjective rights and objective obligations of protection in the German approach.

Indeed, in the case that a nuclear accident would occur, a terrorist attack would take place, or military operation by foreign powers caused as strategic duties to counterfeit the deterrence, there would be the proof that “a present danger did exist”. Therefore, conversely it appears fully justified the request of the appellant Koller, of a full evidence that the military atomic equipment does not impair the protection of the fundamental rights beyond any sound and proportionate justification.

The right of a fair remedy indeed (art. 19.4 GG), is closely connected with the public duty to guarantee the protection of the “essence” of the rights (art 19.2 GG). Such substance may indeed vary, but may not go beyond the limits of a sound justification. A failure in this would indeed harm primarily the respect of human dignity, and, furthermore, would impair the full development of the personality.

In the Koller decision of first instance (VerwG Köln, 26 K 3869/10), we see however an example of the rules concerning the activity of the public order are being conceived as if they did maintain an “exceptional” regime with respect to the fundamental rights, consisting basically in a general exemption for what concerns the burden of proof. In this sense the approach to the subjective rights adopted in the decision is based on a paradox, since it completely separates subjective rights (Abwehrrechte) from objective public duties of protection (Schutzpflicht).

Logically speaking, if this approach would be accepted, then all the cases (Tatbestanden) related to Fundamental Rights [which we may call E(AR) : E - events] ought to be completely disjoined from the cases concerned with the objective duties of protection [which we may call E(SP)]. We should have then that the set of the legal events (Tatbestanden) made by the intersection between the events covered by the cases E(AR) and the cases E(SP) should be empty in all the cases! E(AR)∩E(SP)=Ø is false! Indeed after carrying a due activity of subsumption we may have only that in some cases the legal event (Tatbestand) is either composed by events related with “Fundamental Rights” (AR) or with the events related with objective public “Duties of Protection” (SP).

To show however that the legally relevant event relates only with subjective public rights or with objective public duties (E(AR) v E(SP)) is true) in a given case (Tatbestand), needs a proof, which may be given only through the production of a full judicial evidence (Peczenik, Zieliński, Radwański-Zieliński).
In the judgment Koller, instead, following the statement of the defendant, the judge has simply pointed out that the art. 25 GG does not - notwithstanding its formulation - create rights and duties. The allegations of the plaintiff have not been followed by any complete proof of the fact that the activities related both to the presence of the atomic bombs in the German territory and to the nuclear sharing are both justified and safe, when confronted with the individual positions at stake.

There has been of course the attempt to stress that the rights and the duties stemming from international law are only the ones related to the “prohibition of torture” or “the prohibition of racial discrimination”. There is no evidence given however, that the risk of a nuclear accident, of a terrorist attack or of an accident caused by the military activities accompanying deterrence are so little to avoid harm to the fundamental rights.

On the contrary; To avoid such a proof is contrary to the constitutional duty which embodies the respect of the untouchability of the human dignity in the German Basic Law, and namely that of the different facets of such dignity, which are the fundamental rights. They oblige indeed to all the powers of the State, and therefore the practice not to prove that the fundamental rights have been respected in all the activities of the State appears incorrect.

Indeed, liberty and security follow from the respect of the value of the dignity by the public authorities, within a State and within their international organization. To balance liberty with security without a preliminary proof that all the powers of the State (also in front of their duty stemming from international co-operation), unavoidably leads to put the State over the persons, and therefore to violate human dignity.

For the said reasons we see that the formal respect of the constitutional rules by the powers of the State may not be sufficient to justify the constitutional validity of action with respect to the fundamental rights.

Indeed, in any case where we find that the action of the public bodies creates a limitation in the existential manifestation of the person protected under a fundamental rights, the constitutionality of the activity of the State shall be evaluated not in abstract, but within the context of the form and the extent in which the fundamental rights at stake have been compressed.

A rule of the exercise of the political power which exceeds from the possible limitations of the fundamental rights involved with it embodies a concept of sovereignty (based on exception), which is not the concept which may be accepted within the Fundamental Law and within the Charter of the Fundamental Rights of the European Union.

In the case Kadi Al-Barakaat, the Court of Justice of the European Union, even in front of activities performed after the United Nations, and implemented in the European Union, has been stressing that “the obligations imposed by an international agreement cannot have the effect of prejudicing the constitutional principles of the EC Treaty, which include the principle that all Community acts must respect fundamental rights, that respect constituting a condition of their lawfulness which it is for the Court to review in the framework of the complete system of legal remedies established by the Treaty”.

This approach has been called European dualism. However, we may more precisely refer to it as a relative monism with respect to the human rights, which requires a coherent and consistent protection of the existential manifestation of the person with respect to the interaction of the different orders of the legal experience where rights are protected. Such a perspective requires an adequate motivation. Such motivation has been given in the Melis case, while the allegation of given by Ms. Koller are still waiting a true consideration.
Let us hope that in the meantime, nothing wrong happens.

Speech presented at the international conference on Fundamental Rights in the Age of Globalization - European University in Wiadrina 1-2 March 2012

What Is “The Revealed True Nature of Radiation Exposure”? Elucidating the Message of Class-Action Lawsuits on Atomic Bombing-Induced Illnesses: Record of Our Struggle

by Kenji Urata

This Record of Our Struggle communicates the “the revealed true nature of radiation exposure” to people of present and future generations through the Class-Action Lawsuits on Atomic Bombing-Induced Illnesses, and attempts to “hitch the hibakusha wagon to a lucky star.” If you read the book in this way, it is a treasure trove for carrying over the memory of the atomic bombing experience into the world of the Fukushima nuclear accident, and holding that memory in common.

Class-action lawsuits seeking atomic bomb injury certification.

Even though nearly 290,000 people have Atomic Bomb Survivor’s Certificates, the Minister of Health, Labor and Welfare has certified only 2,082 as atomic bomb injury victims. Certified persons have all their healthcare expenses paid by the government, and receive a special healthcare allowance of ¥137,000 every month. For that reason the certification rate is only about 0.73% (as of March 2001). This certification system has continued under the 1957 Medical Treatment for Atomic Bomb Victims Act, the 1968 Law on Special Measures for Atomic Bomb Victims, and the 1994 Atomic Bomb Victims’ Relief Law, which integrated the former two laws. Meanwhile, lawsuits on how certification should be done have established the criteria for determining causation by radiation, the extent of the burden of proof, and the need for medical care. This process started with the Ishida lawsuit and progressed to the Matsuya lawsuit, which led to the Konishi and Azuma lawsuits, and continued on to the Kinki lawsuit. Nevertheless, the Japanese government and the Minister of Health, Labor and Welfare have not abided by these court judgments, citing as reasons the balance with war victims in general and the budget framework. Instead, they have unsparingly and repeatedly turned down certification applications. In response to a recommendation by Mr. Hiroki Bito of the counsel for the Kinki lawsuit that a class-action suit can be brought even in an administrative case seeking rescission of a rejection, 306 victims worked on a lawsuit campaign. For over six years as a part of the atomic bombing victims’ movement, they have demonstrated the insights and strengths of the Japan Confederation of A- & H-Bomb Sufferers, counsels, experts, and supporters.

How should we perceive this court battle?

National counsel leader Masanori Ikeda has supported the hibakusha for many years in his capacity as a lawyer, and he makes the following statements: These lawsuits have been victorious in that they
made the government revise DS86 and other criteria for determining causation by radiation, but from the standpoint of basic demands by the hibakusha, one finds no change at all in the government’s view (vol. 1, p. 3). Mr. Shuntaro Hida (age 84 at the time of testimony) has, from his experience as a clinical physician, long been exposing the seriousness of internal exposure to low-dose radioactivity. In his words, if nuclear weapons and radioactivity in their entirety are the Yamata no Orochi,** then the certification battle now being fought in court is just one of its legs. No matter how much we fight this, we cannot attack the real nuclear evil (vol. 2, p. 537). By “leg” he probably means tail. Nevertheless, this great physician is right on the mark.

But these are atomic bombing trials in which hibakusha challenged the Minister of Health, Labor and Welfare and the government, and they are class-action suits with a connection to Minamata disease trials; if we see them in close association with each other, then the significance of these lawsuits changes. Mr. Masayoshi Naito, leader of the Tokyo counsel, has this to say based on the genealogy of atomic bombing lawsuits: In view of the 1996 ICJ opinion, the atomic bombings were international crimes (vol. 1, p. 258). Additionally, nuclear weapons are inadmissible in view of the ban on indiscriminate attacks and the principle of balance in military effect. Further, the plaintiffs revealed the sustained impact of radiation based on the “true nature of radiation exposure,” and posed a problem which transcends the limitations inherent in the framework of the Atomic Bomb Victims’ Relief Law (vol. 1, pp. 257–258).

Mr. Tetsuro Miyahara, secretary-general of the national counsel, minutely analyzed the movement and lawsuits for a period of six years, and gives decisive significance to them. He observes: These were lawsuits for winning certification under the Atomic Bomb Victims’ Relief Law (Articles 10 and 11). Therefore, in the sense that they are part of current law itself, they were dominant. State compensation-backed consideration is shown, and it had become established; there were humanitarian provisions for relief regarding special medical conditions; and further, the very demand for strict scientific substantiation in the requirement for causation by radiation was not consistent with the intent of the law (vol. 1, p. 157). However, the framework of current law also imposed a limitation, and therefore the trials “looked for a non-existent solution from the experiences of previous class-action lawsuits” such as Minamata disease, Hansen’s disease, and hepatitis caused by tainted blood products (p. 160). As Mr. Miyahara was present at all the trials throughout Japan when the decisions were handed down, this enabled him to arrive at these observations.

The petition submitted to Hiroshima District Court by the Hiroshima lawsuit counsel (headed by Takeya Sasaki) included the same general remarks as other lawsuits around the nation. The final preparatory document submitted by the Tokyo lawsuit counsel (headed by Shoji Takamizawa) to Tokyo District Court summarizes the “revealed true nature of radiation exposure.” Mainly in this regard, the validity of the plaintiffs’ position has been corroborated by the experts’ written opinions and other means, and the document is a compilation of the position that the plaintiffs set forth in the trials (vol. 2, pp. 1–169). For lawyers working hard on these trials, this is a must-read section.

Entities involved in the interpretation and application of the provisions of current law have various standpoints. But I shall take special note here that in this case administrative power has assumed an especially stubborn attitude. On May 12, 2006 Osaka District Court handed down a decision canceling the certification rejection for all nine plaintiffs, and the hibakusha asked than an appeal be given up. Nevertheless, the Ministry of Health, Labor and Welfare cruelly refused this, and since then has continued the confrontation in class-action lawsuits. Administrative agencies gave precedence to their own policies and looked down on the judiciary. The adminis-

**A giant snake from Japanese mythology, having eight heads and eight tails.
trative position, which is maintained by means of the
council system, can be characterized thus: Atomic
bombing disasters should be tolerated, and the
manufacture, testing, threat, and use of nuclear
weapons is permitted for security reasons. This is
the domestic and foreign public opinion that admin-
istrative power wants to maintain.

This logic and power, which reject the politics of
democracy that has shaped such majority opinion,
are a product of the hibakusha movement. There-
fore if we focus on this point, the words of Mr.
Terumi Tanaka (secretary-general of the Japan Con-
federation of A- & H-Bomb Sufferers) are, I think, a
precious treasure: “Struggle changes people,” and
“The plaintiff hibakusha were transformed by the
trials” (vol. 1, p. 26).

What is the “gift to Fukushima” from the class-
action lawsuits for atomic bomb injury certification?

Let’s make an association with the following words.
“Through the release of atomic energy, our genera-
tion has brought into the world the most revolu-
tionary force since prehistoric man’s discovery of fire.
This basic power of the universe cannot be fitted
into the outmoded concept of narrow nationalism.
For there is no secret and there is no defense; there
is no possibility of control except through the
aroused understanding and insistence of the peoples
of the world” (Albert Einstein, 1947). Broadening our
horizon connects the heavens with life.

This being the nuclear age, I think that we should
once again fix our gaze on the forms that appear,
and consider ways to survive in this world. If we
focus on the events concerning nuclear energy be-
tween Japan and the US, we find the signing of the
1955 Agreement for Cooperation Concerning the
Civil Use of Atomic Energy between the U.S. and
Japan, and the 1968 revision of the agreement. The-
se events occurred under the system of domination
by the Japan-US Security Treaty, and they are con-
nected to the events at Hiroshima and Nagasaki.
And now for that “revealed true nature of radiation
exposure” that emerged in the class-action lawsuits:
(1) Atomic bomb injury is characterized by appear-
ance long after exposure, causes are intertwined in a
complex manner, and there is a lack of symptoms
that are peculiar to radiation exposure; (2) the only
way to find out about the true state of exposure is to
observe the daily lives of hibakusha with low-dose
internal exposure and listen to what they have to
say, instead of using the scientific findings concocted
by those in power; and (3) in deciding how to pro-
vide compensation, we should see their plight as the
infringement of rights under the Constitution’s Arti-
cle 14 and the second paragraph of the Preamble
(the right to live in peace, free from fear and want)
(vol. 1, pp. 167–169).

Granted that damage from the Fukushima disaster
has a characteristic nature and peculiarities, what
we must focus on is the problems in common with
the harm suffered by atomic bombing victims.

This text is a book review of
“Class-Action Lawsuits on Atomic Bombing-Induced
Illnesses, Records Publication Committee, ed., Nip-
on Hyoronsha, December 2011”

This book includes a DVD called “Give Us Back Our
 Humanity.” I hope that this book will be widely read
now, and also by succeeding generations.
Nuclear Weapon Modernisation!
Disarmament Disappearing into the Dustbin of History?

by Reiner Braun

The Doomsday Clock once again shows five minutes to midnight. On January 11, 2012, the 18 Nobel Laureates who watch over the clock moved the time one minute forward from its previous position, where it had been since 2010 when the discussions about a nuclear-free world initiated by President Barack Obama had led to the clock being adjusted to "6 to midnight".

This decision highlights the fact that the risk of nuclear war is high. Our greatest attention is called for. There are many reasons for the current levels of risk – here we highlight just one: the modernisation of nuclear arsenals being undertaken by all the official and non-official (NPT non-signatory) nuclear weapon states.

In accordance with the accounting system under the New START treaty, the United States maintains an arsenal of 1790 deployed strategic nuclear warheads. These include warheads on intercontinental missiles (ICBM), submarine-launched ballistic missiles (SLBM) and strategic bombers. Maintenance and upgrading costs approximately USD 31 billion per year.

In the coming four years, the Pentagon will spend an additional 9.6 billion US dollars on modernisation. This will then increase the maintenance costs to over USD 33,000,000,000 per year. All existing strategic delivery systems and warheads are to be modernised and since this process will fit many of them out with completely new parts, it could actually be seen as creating a new type of nuclear weapon.

These efforts include:

- **Modernised Strategic Delivery Systems**: US nuclear delivery systems are continually modernised, including the complete rebuild of the Minuteman III ICBM and Trident II SLBM. The service life of the Ohio-class Trident submarines (carrying ballistic missiles) are being extended. Additionally, a new ballistic missile submarine, the SSBNX, is being planned to replace the existing Ohio-class – this program is predicted to cost USD 96-101,000,000,000. Even a relatively new system such as the B-2 strategic bomber is also being modernised, as is the veteran B-52H. The Air Force is also planning a new Long Range Penetrating Bomber (LRPB) and a new cruise missile to replace the air-launched ALCM.

- **Nuclear Warhead Refurbishment**: The US supplies of nuclear warheads and bombs are continually refurbished under the NNSA Life Extension Program (LEP). On April 6, 2010, Secretary of Defense Gates wrote that the NNSA budget was to be increased and the LEP was necessary in order to modernise and ensure the deterrence effect.

- **Modernisation of Production Facilities**: New plants are being built for the production of nuclear weapons and existing ones modernised. To name but two examples: the Chemistry and Metallurgy Research Replacement plutonium facility (CMRR) at the Los Alamos National Laboratory in...
New Mexico, and the Uranium Processing Facility (UPF) in Oak Ridge, Tennessee.

There now follows an elaboration of the nuclear weapons upgrading for each element of the “nuclear triad”:

1. Intercontinental Ballistic Missiles (ICBM)
The United States Air Force currently has 450 Minuteman III intercontinental ballistic missiles deployed at FE Warren Air Force Base, Wyoming; Malmstrom Air Force Base in Montana; and Minot Air Force Base, North Dakota.

Modernisation of the Minuteman III missiles will include the following upgrades:
- Rapid Execution and Combat Targeting System (REACT); Service Life Extension Program. Major advantage: quicker and more accurate launching and re-targeting.
- Safety Enhanced Reentry System Vehicle (SERV): maintaining and improving the delivery system
- Propulsion Replacement Program (PRP): improvement in propellant usage
- Guidance Replacement Program (GRP): increase in reliability of the systems
- Propulsion System Rocket Engine Program (PSRE)
- Solid Rocket Motor Warm Line Program: improvement of propulsion capacity

The modernisation programme essentially leads to a “new” missile with extended targeting options, better accuracy and improved survivability.

The Air Force is also modernising the Minuteman nuclear warheads: older W78 warheads are being replaced with W87s.

2. Submarine-Launched Ballistic Missiles (SLBM) and Ballistic Missile Submarines
The United States Navy currently has 288 Trident II D5 SLBM missiles for 12 Ohio-class ballistic missile submarines (SSBN) in Bangor, Washington (7 submarines) and Kings Bay, Georgia (5 submarines).

The navy is planning to replace all these vessels starting in 2029 and to fit them out with new ballistic missiles and warheads.

For example: Each submarine in the Ohio class serves as a launch platform for up to 24 SLBM, each carrying up to 8 warheads.

3. Strategic Bombers
The United States Air Force currently has 18 B-2 Spirit bombers at Whiteman Air Force Base in Missouri and 76 B-52H bombers at Minot Air Force Base, North Dakota, and Barksdale Air Force Base, Louisiana.

The whole arsenal will be modernised.

A new nuclear weapon-carrying long-range bomber is being developed (LRPB).

The Air Force is continually modernising its B-2 fleet.

The B-2 is the delivery plane for the B61 and B83 strategic bombs. The modernisation of these planes will see them being equipped to fulfil a range of different deployment options, each with a corresponding modification code number in their name.

The B-52H fleet, the first of which was built in 1961, is to be further developed and modernised. It will be deployable with conventional or nuclear weapons, the latter including the modernised version of the cruise missile (ALCM).

Nuclear Weapon Modernisation in Germany, too.

There are still stores of US nuclear weapons in Germany. They no longer play a military role but they still pose a danger.

Plans for the modernisation of these US nuclear weapons in Büchel have already been drawn up in the Pentagon, with the replacement of the old nuclear weapons to begin in 2017. The plan does not foresee these Cold War relics being pulled out of the country.

In the fiscal year 2010 in the USA, 32.5 million US dollars were already invested to investigate how aerial bombs such as the B61 can be modernised.

A further 15 million dollars are currently being assigned after the US government confirmed in its Nuclear Posture Review (an assessment of the future
role of nuclear weapons in the US security strategy) that a new bomb is necessary.

The bomb is currently being referred to as B-61 Mod 12 and should be ready for service in 2018. Initially the investigation will only be considering the options for modernising the non-nuclear components.

And the other Nuclear Weapon States

The arsenals of all the nuclear powers are being modernised in a wide-ranging and significant way. One example can be seen in the current British debate around the modernisation of Trident. The costs for the new British nuclear submarines and the new generation of nuclear weapons will amount to at least EUR 30 billion over the next 20 years.

France intends to spend some 17 million euros by 2018 to modernise its nuclear weapons capability. This includes the commissioning of a fourth nuclear submarine in the Triomphant class, the development of a new nuclear missile (M51) with a range of up to 8000km, and a comprehensive simulation program for testing purposes.

Addressing the Russian parliament on February 24, 2012, President Vladimir Putin declared that Russia is developing new nuclear weapons and high-precision conventional weapons. Plans include the introduction of 400 new strategic intercontinental missiles. Armament efforts in the next 10 years are expected to cost 580 billion euros.

President Putin had already mentioned a new nuclear weapon in 2004, with observers assuming that this refers to a modification of the ballistic missile “Topol-M”. A mobile version of this missile fitted with a multiple warhead was tested in 2004 and put into production in 2005. The modification could therefore probably be operational within two years. Topol-M missiles have a range of 9600 kilometres. Furthermore, reports suggest Russia is developing a ballistic missile with a 4.4-tonne payload, compared to the usual 1.32 tonnes. This would mean it could carry as many as 10 warheads.

Additionally, Russia also wants to purchase Bulava missiles (Russian designation 3M14, NATO reporting name SS-NX-30). The Bulava is comparable to the SS-27 (Topol-M) but is designed to be launched from submarines rather than silos or land vehicles.

Reacting to US plans for a missile defence system, Vladimir Putin announced that Russia was considering withdrawal from the Intermediate-Range Nuclear Forces (INF) Treaty signed in 1987. If this does actually occur, it would represent an enormous destabilisation of the international situation.

China is expending great efforts to modernise its strategic missile forces (SAC). The priority is to increase the operational range. An improvement to the performance of the DF-31 missile in 2005 gave it a range of some 8000km, enabling China to expand its ability to strike at Russia and, for the first time, to pose a missile threat to Hawaii and Alaska. It carries a nuclear warhead with an accuracy (CEP) of 300-600 metres. A new version with further improvements, the DF-31-A, probably became operational in 2010, able to reach targets at ranges of up to 12,000km. This would then affect the heartland of the USA.

As well as land-based missile systems, China also has one aging Type 92 nuclear-powered ballistic missile submarine (SSBN).

It is commissioning a new class of modern submarines (Type 94), each carrying up to 16 JL-2 nuclear missiles (SLBM) with a range of 8,000km. These missiles are believed to be versions of the D-31 and were tested in 2004. Commissioning and operational details for the submarines are unclear.

The Chinese air force has a maximum of 120 strategic mid-range bombers (Type H-6) capable of carrying nuclear weapons. The H-6 has repeatedly been used to drop test bombs.

To complement the deployment of strategic nuclear weapons, China also has an unknown number of tactical nuclear weapons ready for deployment.
And we also need to remember the continuing modernisation of the Israeli arsenal of approx. 200 nuclear weapons.

How much poverty, misery and starvation could be successfully relieved with the money spent on nuclear weapons?
It’s time for the peace movement to act!

Appendix:

<table>
<thead>
<tr>
<th>System</th>
<th>Modernisation Plan</th>
<th>Costs</th>
<th>Length of Deployment</th>
<th>Additional Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minuteman III ICBM</td>
<td>Modernisation and replacement programme</td>
<td>$7,000,000,000</td>
<td>Through 2020 and possibly 2050</td>
<td>Modernises the propellant, guidance systems, propulsion system, targeting system, re-entry vehicles and continues work on the rocket motors.</td>
</tr>
<tr>
<td>Next ICBM</td>
<td>ICBM follow-on study.</td>
<td>$26,000,000 for the fiscal year 2012-2014</td>
<td>Analysis of Alternatives will be completed in 2014, at which point the Air Force will determine if it will go forward with the programme.</td>
<td></td>
</tr>
<tr>
<td>B-2 Bomber</td>
<td>Modernisation Programme</td>
<td>$9,500,000,000 (FY 2000-2014)</td>
<td>2050s</td>
<td>Improves radar and high frequency satellite communications capabilities for nuclear command and control.</td>
</tr>
<tr>
<td>B-52H Bomber</td>
<td>On-going modifications</td>
<td></td>
<td>2040s</td>
<td>Incorporates global positioning systems, updates computers and modernizes heavy stores adapter beams, and a full array of advance weapons.</td>
</tr>
<tr>
<td>Long Range Penetrating Bomber</td>
<td>R&amp;D phase</td>
<td>$ 40-60 billion (estimate)</td>
<td></td>
<td>The exact specifications of the LRPB are yet to be determined.</td>
</tr>
<tr>
<td>Long Range Stand-off Cruise Missile</td>
<td>Replacement for the ALCM</td>
<td>$ 1.3 billion (estimate)</td>
<td></td>
<td>Air Force is completing the Analysis of Alternatives. If they choose to go forward, production is estimated to begin in 2025.</td>
</tr>
<tr>
<td>SSBNX</td>
<td>New ballistic missile submarine</td>
<td>$ 96101,000,000,000</td>
<td>2029-2080</td>
<td>Replacement for the existing Ohio-class SSBN submarines</td>
</tr>
<tr>
<td>Trident II DS SLBM LEP</td>
<td>Modernisation and life extension</td>
<td></td>
<td>2042</td>
<td></td>
</tr>
</tbody>
</table>
A groundbreaking report released on 5 March 2012 by the International Campaign to Abolish Nuclear Weapons (ICAN) identifies more than 300 banks, pension funds, insurance companies and asset managers in 30 countries with substantial investments in nuclear arms producers. The 180-page study, *Don’t Bank on the Bomb: The Global Financing of Nuclear Weapons Producers*, provides details of financial transactions with 20 companies that are heavily involved in the manufacture, maintenance and modernization of US, British, French and Indian nuclear forces.

Nuclear disarmament campaigners are appealing to financial institutions to stop investing in the nuclear arms industry. “Any use of nuclear weapons would violate international law and have catastrophic humanitarian consequences. By investing in nuclear weapons producers, financial institutions are in effect facilitating the build-up of nuclear forces. This undermines efforts to achieve a nuclear-weapon-free world and heightens the risk that one day these ultimate weapons of mass destruction will be used again,” said ICAN campaigner Tim Wright, a co-author of the report.

South African activist and Nobel Peace Prize winner Desmond Tutu, a supporter of ICAN, contributed the foreword to the report, in which he called on financial institutions to “do the right thing and assist, rather than impede, efforts to eliminate the threat of radioactive incineration”, noting that divestment was a vital part of the successful campaign to end apartheid in South Africa. “Today, the same tactic can – and must – be employed to challenge man’s most evil creation: the nuclear bomb. No one should be profiting from this terrible industry of death, which threatens us all,” he wrote.

Nuclear-armed nations spend in excess of US$100 billion each year maintaining and modernizing their nuclear forces, according to the report. Much of this
work is carried out by corporations such as BAE Systems and Babcock International in the United Kingdom, Lockheed Martin and Northrop Grumman in the United States, Thales and Safran in France, and Larsen & Toubro in India. Financial institutions invest in these companies by providing loans and purchasing shares and bonds.

Of the 322 financial institutions identified in the report, roughly half are based in the United States and a third in Europe. Asian, Australian and Middle Eastern institutions are also listed. The institutions most heavily involved in financing nuclear arms makers include Bank of America, BlackRock and JP Morgan Chase in the United States; BNP Paribas in France; Allianz and Deutsche Bank in Germany; Mitsubishi UJF Financial in Japan; BBVA and Banco Santander in Spain; Credit Suisse and UBS in Switzerland; and Barclays, HSBC, Lloyds and Royal Bank of Scotland in Britain.

The report emphasizes the humanitarian, legal and environmental arguments for divestment, noting the unique destructive potential of nuclear weapons. Setsuko Thurlow, a survivor of the US atomic bombing of Hiroshima in 1945, writes in the report: “Anyone with a bank account or pension fund has the power to choose to invest his or her money ethically – in a way that does not contribute to this earth-endangering enterprise.” In addition to stating the ethical case for divestment, the report also warns of the reputational risks associated with financing nuclear arms, and highlights the positive role that financial institutions could play in the quest for a world free from such weapons.

From: http://www.icanw.org/node/5869

US draws up plans for nuclear drones

Technology is designed to increase flying time 'from days to months', along with power available for weapons systems

by Nick Fielding

American scientists have drawn up plans for a new generation of nuclear-powered drones capable of flying over remote regions of the world for months on end without refuelling.

The blueprints for the new drones, which have been developed by Sandia National Laboratories – the US government's principal nuclear research and development agency – and defence contractor Northrop Grumman, were designed to increase flying time "from days to months" while making more power available for operating equipment, according to a project summary published by Sandia.

"It's pretty terrifying prospect," said Chris Coles of Drone Wars UK, which campaigns against the increasing use of drones for both military and civilian purposes. "Drones are much less safe than other aircraft and tend to crash a lot. There is a major push by this industry to increase the use of drones and both the public and government are struggling to keep up with the implications."

The highly sensitive research into what is termed "ultra-persistence technologies" set out to solve three problems associated with drones: insufficient "hang time" over a potential target; lack of power...
The Sandia-Northrop Grumman team looked at numerous different power systems for large- and medium-sized drones before settling on a nuclear solution. Northrop Grumman is known to have patented a drone equipped with a helium-cooled nuclear reactor as long ago as 1986, and has previously worked on nuclear projects with the US air force research laboratory. Designs for nuclear-powered aircraft are known to go back as far as the 1950s.

The research team found that the nuclear drones were able to provide far more surveillance time and intelligence information per mission compared to other technologies, and also to reduce the considerable costs of support systems – eliminating the need, for example, for forward bases and fuel supplies in remote and possibly hostile areas.

A halt has been called to the work for now, due to worries that public opinion will not accept the idea of such a potentially hazardous technology, with the inherent dangers of either a crash – in effect turning the drone into a so-called dirty bomb – or of its nuclear propulsion system falling into the hands of terrorists or unfriendly powers.

Sandia confirmed that the project had been completed: "Sandia is often asked to look at a wide range of solutions to the toughest technical challenges. The research on this topic was highly theoretical and very conceptual. The work only resulted in a preliminary feasibility study and no hardware was ever built or tested. The project has ended."

According to a summary of the research published by the Federation of American Scientists, an independent thinktank, computer-based projections were used to test the concepts. "Based on requirements and direction provided by Northrop Grumman, Sandia performed focused studies to translate stated needs into conceptual designs and processes that could be transferred easily from Sandia to industry design and production personnel," the document says.

So sensitive is the issue that the summary does not spell out the fact that it is referring to a nuclear-powered drone, referring instead to "propulsion and power technologies that went well beyond existing hydrocarbon technologies". However, the project's lead investigator at Sandia, Dr Steven Dron, is well known as a specialist in nuclear propulsion, having co-chaired a session at the 2008 Symposium on Space Nuclear Power and Propulsion, held at the University of New Mexico in 2008.

The research summary also stated that the results "were to be used in the next generation of unmanned air vehicles used for military and intelligence applications", where they "would have provided system performance unparalleled by other existing technologies".

It added that "none of the results will be used in the near-term or mid-term future", due to political constraints.

The potential impact of nuclear-powered drones can be gauged by comparing them with existing aircraft such as the MQ-9 Reaper, which is used extensively in Afghanistan and Pakistan in operations against insurgents. The Reaper presently carries nearly two tonnes of fuel in addition a similar weight of munitions and other equipment and can stay airborne for around 42 hours, or just 14 hours when fully loaded with munitions.

Using nuclear power would enable the Reaper not only to remain airborne for far longer, but to carry more missiles or surveillance equipment, and to dispense with the need for ground crews based in remote and dangerous areas.

Coles believes the increasing sophistication of drones poses many threats: "As they become low-cost, low-risk alternatives to conventional warfare, the threshold for their use will inevitably drop. The consequences are not being thought through."

From: www.guardian.co.uk
2 April 2012
Call to Action: Retire NATO, Create Jobs & Fund Peace
Chicago – May 2012

Sponsored by: Network for a NATO-Free World: Global Peace and Justice

_Nota bene:_

_In a land that's known as freedom_
_How can such a thing be fair_
_Won't you please come to Chicago_
_For the help that we can bring_
_We can change the world_
_Re-arrange the world_
_It's dying ... to get better_

Crosby, Stills & Nash

NATO, the North Atlantic Treaty Organization, is holding a summit meeting in Chicago, May 2012. We, peace and justice activists, will gather at a counter summit to voice a new vision of global security and peace.

Join us in Chicago May 18 & 19 for a counter-summit conference to conceive and help build a more peaceful, economically secure and environmentally sustainable world.

As the majority of the U.S. people know, it’s long past time to end the U.S./NATO war in Afghanistan, bring home all U.S. and NATO troops from Afghanistan, Iraq and around the world, to end the attacks on Libya and to begin to rid the world of weapons of mass destruction and redirect monies from wars and weapons back to our communities.

Despite its claims, NATO was never a defensive alliance, and since the end of the Cold War has been transformed into global alliance structured to wage “out of area” wars in Asia, the Middle East and North Africa, as well as to “contain” China. NATO’s creed is aggressive, expansionist, militarist and undemocratic.

From Yugoslavia to Afghanistan and Libya the US has used NATO to enhance and extend its military, economic and political aims that ensure U.S. and European dominance of the resources, markets and labor of the Global South. It has spread the cost of these adventures to its NATO partners.

While ignoring human needs here at home, the U.S. has spent more than a trillion dollars on the Afghanistan and Iraq wars, and tens of billions of dollars more each year to maintain hundreds of military bases and nuclear weapons across Europe. Instead of wasting money on NATO, our tax dollars should be used to provide real security by creating green jobs and investing in infrastructure modernization for the 21st century, clean water, education, housing and health care for all.

The crisis of every day life in countries around the globe demands international cooperation based on respect for international law, and national sover-
eighty, not wars and an escalating global arms race - an arms race of one, driven by the US.

The NATO summit provides an opportunity to join in solidarity with our international counterparts to mount an education campaign to help people across the United States and in other NATO nations understand the true nature of NATO and mobilize to abolish it.

By joining together, we can visibly and nonviolently demonstrate how NATO undermines people’s real security in every dimension of life. As we discuss and demand alternative and life-affirming foreign policies, we will help to build the worldwide movement that opposes NATO and its wars, and create a world of peace, justice and economic prosperity.

Diplomacy, international law, national sovereignty, international collaborations, and nonviolent conflict resolution are the foundations of real, global security.

Help us mobilize activists to come to Chicago to participate in an international conference.
A better, more peaceful, secure and prosperous world is possible.

We demand:
• Complete withdrawal of all U.S. and NATO troops from Afghanistan.
• Withdrawal of all foreign deployed U.S. troops, bases, nuclear weapons and “missile defenses,”
• Substantial reductions in U.S. and NATO military spending to fund our communities and to meet human needs.
• Restitution of the UN Charter and International Law as means of resolving international disputes.
• Retire NATO!

Network for a NATO-Free World: Global Peace and Justice (List in formation): American Friends Service Committee-Peace and Economic Security Program, Code Pink, Fellowship of Reconciliation, Lawyers Committee on Nuclear Policy, Maryknoll Office of Concerns, Nuclear Age Peace Foundation, Peace Action, United for Peace and Justice, US Labor Against the War, US Peace Council, War Resisters League. Chicago: American Friends Service Committee-Chicago, Code Pink, Greater Chicago Area Peace Action, New New Deal, US Labor Against the War, For additional information and to sign onto this call contact: Judith Le Blanc (jleblanc@peace-action.org) or Joseph Gerson (jgerson@afsc.org)

For more information see: www.natofreefuture.org

Actions around the NATO summit in Chicago

March 12-13 CANG8 People’s Summit
March 12 Occupy Music Fest
March 14-17 Direct Actions by Stand Up! Chicago
March 18-19 Counter-summit for Peace and Economic Justice
March 18 National Nurses United rally at Daley Plaza
March 20 CANG8 march
March 20 IVAW march
and actions of solidarity around the world
Germany against Italy - General List n. 143

“THE COURT,
(1) By twelve votes to three,
Finds that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by allowing civil claims to be brought against it based on violations of international humanitarian law committed by the German Reich between 1943 and 1945

(3) By fourteen votes to one,
Finds that the Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by declaring enforceable in Italy decisions of Greek courts based on violations of international humanitarian law committed in Greece by the German Reich;”

by Jo Lau

When the judges entered in the morning of 3 February 2012 in the court room of The Hague, probably started one of the most black Fridays in the history of international public law- the location was well chosen as it is this place which a certain Mister Carnegie donated to the world, one hundred years ago, for being the home for the international Court of Justice which should contribute to the ensuring of the human rights.

Instead of that, the international community of States will be constrained to live with the fact that though a massive violation of humanitarian international law- for which a State is responsible- can be a reason for which other States can bomb a State with aerial attacks with the aim to remove an unpopular dictator from the government causing thousands of collateral victims, it is not possible that an individual claims in front of the court of another State the serious violation of human rights he suffered by another State, even if the State which did the violation has excluded any claim and jurisdiction, violating article 23 h of the Hague Convention respecting the Laws and Customs of War on Land and art. 8 paragraph 2 b XIV of the Rome Statute.

The message of the Court is clear: the involved States and their governments, when acting for the settlement of international future crises using force they are not anymore constrained to consider bothersome international humanitarian law: when the judge is missing, does neither exist a claimant.

During World War II the German army command imposed (Babarossa order) the massive violation of humanitarian law at that time already in force in the occupied territories, in order to realize their war aims, causing devastating consequences for the civil population (Distomo, Kalavrita, Mazzabotta, Civitella, to name only a few of the places where have been realized massacres by the “Wehrmacht”).

Moreover, the German army command, after Italians ceasefire in 1943, has obliged all Italian men aged over 18 years to compulsory labor and ordered their deportation (ca. 650.000 men), among them were many ex-soldiers which belonged to the disbanded Italian army (a detailed description is included in the publications from Schreiber, Klinkhammer and Hammermann regarding Italy and from Anesstis Nessou regarding Greece).

After the defeat of the dominion of the Nazi in Europe those criminal acts were rarely part of criminal trials and were never object of civil trials because of the conflict with the ex communist allies which was
getting worse and because of the necessity to integrate the federal Republic economically and militarily in the West.

At the London Debt Agreement the regulation of this claims arising out of the occupation had been postponed to a future peace treaty and the German reunification.

However, the German government refused in 1990, at the time of the reunification, to renegotiate the indemnity owed due to the war crimes committed. Moreover, the German Courts rejected all individual claims before and after the reunification.

The person concerned instituted proceedings against the Federal Republic in front of American, French, Polish, Italian and Greek Courts in order to obtain a indemnity.

Germany raised the objection of their immunity which was admitted in all countries except Italy. The Italian Supreme Court and therefore all lower courts maintained, contrary to the wanting of the Italian government, that jurisdiction since the judgment “Ferrini”\(^3\), pronounced more then 7 years ago. In this judgment the Court ascertains that a foreign State, in case of violation of human rights, cannot rely on their immunity.

Subsequently, the German government set in motion, on national and international scale, an enormous diplomatic and journalistic activity in order to animate their (reactionary) point of view regarding the theory of State immunity which at that time was losing adherents.

That legal bullying, together with a dubious agreement with a dubious Italian prime minister (Berlusconi) to agree to a proceeding in front of an incompetent Court (the ICJ) cognizant because of missed deadlines, has after many years produced poisoned fruits.

The motivation of the judgment will stimulate professors and students in the coming decades to work on legal writings, of more or less quality.

The way how it came to the proceeding is a sad example for States which paying lip service regarding humanitarian international law still leave the door wide open hence their responsibility for the injury of law cannot be subject of a claimable indemnity.

At first glance the motivation of the Court seems almost plausible. However, upon closer examination strikes that the Court missed in a sensible way to examine that Germany has waived to their immunity regarding to all proceedings, including the one involving the enforcement of the Greek sentence “Distomo”, this is the result of applying the legal norms the ICJ applied \textit{mutatis mutandis} (art.8 and 9 of the United Nations Convention on the Jurisdictional Immunities of States and their Property of 2004). Thus, until now, there is no violation of international public law.

Moreover, the ICJ has mistaken methodological scales when interpretation and construing the principle of immunity and is converting the principles regarding the burden of proof respectively the existence of a norm of generally accepted international public law, valid until now.

The theory with growing importance which has been discussed since many years involving the unity and uniformity of public international law, which guarantees all men and their social organizations (States) on this Planet a minimum standard of legal norms and which ensures that when interpreting international conventions must be considered “\textit{every valid international norm that is applicable between the parties}” (Art. 31 of the Vienna Convention from march 23 1969) has suffered a definite setback.

The Court is therefore holding on a thesis which has been scraped since decades according to which

\[^3\text{Judgment n.5044/04 from 11.3.2004; the undersigned is now since nearly 15 years the lawyer of Mr. Ferrini, at the present the lawsuit is pending for the forth time in front of the Italian Court of Cassation, this in consequences of a sentence n. 480/ 2011 of the lower court where the German Republic had been condemned to pay 30.000 Euros as a indemnity to Mr.Ferrini who had suffered deportation.}\]
there cannot be a legal conflict between the principle of immunity and the right of the individual to have access to the Court.

With good reason, therefore, has been discussed the abolishment of the International Court in its current composition (Fischer-Lescano). It seems that until the creation of a democratically legitimated World Court its function can be better fulfilled by regional tribunals.

It continues to be a diminutive hope that the European Court of Justice in the parallel lawsuit Curra and others against Germany and Italy (ref.: C-466/11) will take the opportunity to reduce the injury that the Italian and German government had caused to the Protection of Human Rights.

Press conference report:
IALANAA takes the German government to court—Wolfgang Jung files suit against the German government for unlawful use of the Ramstein Air Base

translated by Tomislav Chagall

The following is a presentation of Wolfgang Jung’s law suit against the German government regarding the use of the Ramstein Air Base within the International Security Assistance Force (ISAF) framework, as well as in order to conduct war in Afghanistan as part of the “Operation Enduring Freedom” (OEF), which is contrary to international law and a breach of the German Constitution.

The Ramstein Air Base is of indispensable for said purpose, as it is the largest and most important military base outside the United States, with the Kaiserslautern Military Community (KMC) including 45,000 U.S. soldiers, their families and civilian personnel living in the region. Each year, it handles 30,000 take-offs and landings; the U.S. Army uses Rhineland-Palatine and the Saarland as its training areas for aerial maneuvers.

On cursory observation, these operations appear legally sound. Ramstein Air Base was built in 1951 based on occupation law and has been used by the U.S. Air Force since 1952. Over time, it developed from a “fighter area” into a military airfield, its main task being tactical airlift and deployment of U.S. armed forces. Following a bilateral agreement in 1990, military forces began relocating from Frankfurt/Main Airport to the Ramstein and Spangdahlem Air Bases.

Increased military air transport operations necessitated the expansion of facilities at Ramstein. In order to carry out and finance the expansion, Germany, the USA, Rhineland-Palatinate and Hessen signed another relocation agreement with the objective of relocating the U.S. Air Forces to Rhineland-Palatinate by December 31, 2005. The expansion was approved in June 2003, including the construction of a second main runway (New Southern Runway) and the expansion of the existing runway (Northern Runway).

For several decades, Ramstein also served as a nuclear weapons base of the U.S. Armed Forces, and so-called storage “tombs” were erected. The nuclear missiles were in part later transferred to Büchel. The
tombs shall now be reactivated for the air defense system adopted by the North Atlantic Treaty Organisation (NATO).
The contractual agreements essentially ensure only the provision of land by the Federal Republic of Germany, which begs the question what the Americans will do with it. They wage wars that are illegal, as was the war against Yugoslavia, which the Americans led from Ramstein. The legal basis was the so-called “humanitarian intervention,” which in turn violated the prohibition of the use of force laid down in the Charter of the United Nations (UN) in Article 2, Paragraph 4.

The Iraq War in 2003, led by the so-called “coalition of the willing,” also violated the prohibition of force of the UN Charter, as explained by the German Federal Administrative Court on 33 pages of its “Pfaff Verdict” from June 21, 2005.

Regarding the war against Afghanistan that began in October 2001, the U.S. government has claimed the right to self-defense according to Article 51 of the UN Charter. However, there was no “armed attack” and thus no necessary premise for the case of self-defense to become applicable. Furthermore, the UN Security Council had already dealt with the alleged terrorist threat based in Afghanistan and had adopted resolutions, which rendered the claim of self-defense moot. The German Federal Constitutional Court stated in its “Tornado Verdict” of 2007 that OEF and ISAF must be precisely separated from each other. Following the Court’s judgement, the German Army withdrew its support for OEF in 2009.

ISAF alone, established to protect the Karzai government, operates under a mandate from the Security Council and seems legal at first glance. ISAF however, conducts targeted killings, which led to the deaths of 3,873 individuals between 2009 and 2011; only five per cent were combatants and the rest were civilians, according to research by Afghanistan Analysts Network. This makes targeted killings illegal.

Wolfgang Jung demands, based a letter to the German Ministry of Defense which will be distributed at the press conference, information about the illegal aerial maneuvers of the U.S. Armed Forces and their illegal warfare from air bases located in Germany, particularly from Ramstein. Following said information, all illegal military action must immediately cease. By decision of the Federal Administrative Court, Germany must not tolerate war launched from its soil that is contrary to international law.

In case the Federal Ministry of Defense declines taking action as demanded by Jung, a suit will be filed in the Administrative Court of Cologne. A draft will be circulated at the press conference.

Peter Becker, Attorney-at-Law
Otto Jäckel, Attorney-at-Law

Peter Becker. Piano concert against nuclear weapons, Büchel, Germany. March 24 2012
IALANA’s annual meeting took place at Air Base Büchel in Rhineland-Palatinate within a stone’s throw from ca. 20 US nuclear weapons. Right in front of the main entrance of the air base, IALANA conducted a piano concert against nuclear weapons.

In the musical yet highly political event of the annual meeting, Peter Becker, Co-Chair of the international IALANA, performed ragtime, jazz and Bach compositions. Bernd Hahnfeld, board member of the German IALANA, confronted the commander of the Air Base with the immorality and illegality of nuclear weapons and their deployment. Otto Jäckel, Chair of the German IALANA, reminded of the lucky coincidences that kept the world from nuclear war and stated that IALANA will work on erasing nuclear weapons for as long as it takes. Despite invitations of IALANA, no personell of the air base would discuss these and other issues with the concert audience.

In a public event “No nukes in Büchel” Otto Jäckel, Peter Becker, and Elke Koller (plaintiff in IALANA’s lawsuit against nuclear sharing in Büchel; see IALANA newsletter 7/2011) informed on the lawsuit against NATO’s nuclear sharing in Büchel and addressed the region’s economic dependence on the air base.

Prior to the annual meeting, IALANA held a press conference introducing a lawsuit against the German government for the use of Air Base Ramstein in the state capital Mainz.

To watch videos of the piano concerts against nuclear weapons and pictures of the events of the annual meeting, please visit: www.ialana.de
Rio plus 20
Disarmament for Sustainable Development
An international appeal

In 1992 the United Nations Conference on Environment and Development (the Earth Summit) connected the challenges concerning environmental threats and development around the world. It named this connection, following the Brundtland Report “Our common future” of 1987, sustainable development, a term that was at once accepted internationally as “the challenge of the decade”. However, the related challenges of peace and disarmament were excluded.

Disarmament for Development – today’s challenge

In 2010 global military spending amounted to $1630 billion – despite the fact that 1 billion people suffer from hunger, even more do not have access to safe water or adequate health care and education, and even in the developed world millions are without work. The Millennium Development Goals cannot be realized while the world squanders its wealth on militarism.

Today’s climatic and environmental conditions exacerbate this imbalance. Ecological disasters pile up; the loss of biodiversity and the destruction of the eco-system are increasing dramatically. In addition, the current economic crisis has made the world’s governments reduce spending on critical human needs and is once again hitting the weakest the hardest.

However, apparently unlimited financial resources seem to be available for military jets, tanks, ships, bombs, missiles, landmines and nuclear weapons. The technological developments in the armaments field are becoming more and more sophisticated and murderous. How to reverse this process is the challenge of today.

The signatories of this Appeal demand that the governments of the world seriously address this neglected issue, and agree on a global plan for disarmament at the Rio Summit in June 2012. The freed-up funds should be used for social, economic and ecological programmes in all countries. Starting in 2013, military spending should be cut back substantially, that is, by a minimum of 10 percent per annum. The aim is to launch a dynamic towards sustainable development, which could start by establishing an internationally-managed Fund with a capital of more than $150 billion.

This plan for “Disarmament for Sustainable Development” should be announced in the final document of the Rio Summit and should be realized step-by-step under the direction of the United Nations.

Without disarmament, there will be no adequate development; without development, there will be no justice, equality and peace. We must give sustainability a chance.

Initiated by International Peace Bureau (IPB), International Network of Engineers and Scientists for Global Responsibility (INES), Foreign Policy in Focus (FPIF), and World Future Council (WFC).
Signatories as of April 15:

Colin Archer (Secretary-General International Peace Bureau), Prof. Dr. Ulrich Bartosch (Federation German Scientists (VDW), Germany), Susan Bazili (Director International Women's Rights Project, Canada), Dr. Peter Becker (Co-Chair IALANA, Germany), Heinrich Bleicher-Nagelsmann (Vice-President UNI-MEI Global Union for Media, Entertainment and Arts, Germany), Ludo De Brabander (Vrede vzw, Belgium), Reiner Braun (INES, Executive Director IALANA), Ingeborg Breines (Co-President International Peace Bureau), Prof. Dr. Ana Maria Cetto (Universidad Nacional Autonoma de Mexico, Mexico), Prof. Dr. Noam Chomsky (Massachusetts Institute of Technology, USA), Michael Christ (Executive Director, IPPNW, Nobel Peace Prize Awarded Organization of 1985), Shan Cretin (General Secretary, American Friends Service Committee, USA), Peter J. Croll (Director Bonn International Center for Conversion, Germany), Prof. Dr. Paul Crutzen (Nobel Prize Laureate in Chemistry 1995, Germany / Netherlands), Dr. Pablo A. de la Vega M. (Plataforma Interamericana De Derechos Humanos Democracy Y Desarrollo, Ecuador), Marie Dennis (Co-President Pax Christi International, USA), Prof. Dr. Dudley R. Herschbach (Nobel Prize Laureate in Chemistry 1986, USA), Prof. Dr. Hans-Peter Dürr (Right Livelihood Laureate 1987, Germany), Bishop Kevin Dowling (Co-President Pax Christi International, South Africa), Shirin Ebadi (Nobel Peace Prize Laureate 2003, Iran), Dr. Scilla Elworthy (Founder the Oxford Research Group, GB), Prof. Dr. Gerhard Ertl (Nobel Prize Laureate in Chemistry 2007, Germany), Adolfo Peres Esquivel (Nobel Peace Prize Laureate 1980, Argentina), John Feffer (Co-Director FIPF, USA), Nikolai Fuchs (Nexus Foundation – President, Switzerland), Prof. Dr. Johan Galtung (Right Livelihood Laureate 1987, Norway), Dr. Joseph Gerson (American Friends Service Committee, USA), Prof. Dr. Hartmut Graßl (Former Director of Max Planck Institute for Meteorology, Germany), Dr. Owen Greene (Department of Peace Studies, University of Bradford, GB), Prof. Dr. Hans Herren (Millennium Institute, USA), Dr. Angelika Hillbeck (ETH Zürich/VDW, Switzerland), Christine Hoffmann (Pax Christi, Germany), Dr. Kate Hudson (Chair of Campaign for Nuclear Disarmament, GB), Prof. Dr. Tim Hunt (Nobel Prize Laureate in Physiology/Medicine 2001, GB), Steve Killelea (Chairman Institute for Economics & Peace, Australia), Prof. Dr. Walter Kohn (Nobel Prize Laureate in Chemistry 1998, USA), Dr. David Krieger (INES, Nuclear Age Peace Foundation, USA), Prof. Dr. Harry Kroto (Nobel Prize Laureate in Chemistry 1996, GB), Ida Kuklina (Right Livelihood Award Laureate 1996, Russia), Otto Jäckel (Chair IALANA, German Section, Germany), Prof. Dr. Jean Marie Lehn (Nobel Prize Laureate in Chemistry 1987, France), Prof. Dr. Stefan Luby (Vicepresident European Academy of Sciences and Arts, Austria), Dr. Mairead Corrigan Maguire (Nobel Peace Prize Laureate 1976, Northern Ireland), Tomas Magnusson (Co-President International Peace Bureau), Prof. Dr. Luis de la Peña (Former President Mexican Physical Society, Mexico), Prof. Dr. John C. Polanyi (Nobel Prize Laureate in Chemistry 1986, USA), Prof. Dr. Pasquale Policastro (IALANA, University of Szczecin, Poland), Monty Schädel (Executive Director German Peace Society - United War Resisters, Germany), Camilla Schippa (Director the Institute for Economics & Peace, Australia), Dr. Vandana Shiva (Right Livelihood Award Laureate 1993, India), Sonia Silber (The Washington Peace Center, USA), Prof. Dr. Joseph Stachel (Biographer of Albert Einstein, USA), Prof. Dr. Jack Steinberger (Nobel Prize Laureate in Physics 1988, Switzerland), Prof. Dr. Ivo Šlaus (The World Academy of Art & Science, Croatia), Prof. Dr. Koichi Tanaka (Nobel Prize Laureate in Chemistry 2002, Japan), Ulrich Thöne (Chair of Gewerkschaft Erziehung und Wissenschaft, Member of Education International, Germany), Rigoberta Menchú Tum (Nobel Peace Prize Laureate 1992, Guatemala), Archbishop Desmond Mpilo Tutu (Nobel Peace Prize Laureate 1984, South Africa), Jakob von Uexküll (Founder the Right Livelihood Award, Sweden / Germany), Pierre Villard (President Mouvement de la Paix, France), Prof. Dr. Judi Wakhungu (Executive Director the African Centre for Technology Studies, Kenya), Dr. Paul Walker (Global Green/Green Cross, USA), Alyn Ware (Right Livelihood Laureate 2009, New Zealand), Prof. Dr. Dave Webb (Chair Campaign for Nuclear Disarmament, GB), Jody Williams (Nobel Peace Prize Laureate 1997, USA), Betty Williams (Nobel Peace Prize Laureate 1976, Northern Ireland)
At the UNCSD Earth Summit in Rio de Janeiro:

A Tank Made of Bread

Food for thought on poverty eradication – Disarmament for Sustainable Development

The idea

Every 6 seconds a child dies from starvation or malnourishment and a large part of society (and politics) is still turning a blind eye on this tragedy. Therefore the World Future Council wants to raise awareness that the fight against extreme poverty, hunger and malnourishment can be won, and indeed realistically financed – by diverting money spent on arms. Disarmament for Development!

Global military spending amounts to 1.6 trillion USD p.a.

If only 10% of this astronomical figure (so 160 billion USD) was spent on improving health, ecological and social conditions (i.e. medical treatment, sanitation and nutrition) for the most disadvantaged people of our world instead of armaments, we would have global food security within a matter of years. Additionally the reduction in arms around the world would contribute to the promotion of peace. Thus, we will be calling for the reduction of military spending by 10% at the Rio+20 Summit in favour of diverting that spending to the fight against hunger and extreme poverty. To give substance, visibility and media presence to this demand we are going to bake a tank.

An edible tank. The symbol of disarmament for development will be a powerful tank, transformed into food, to be seen for one day in or in front of the conference building (place and time still to be decided by UN). Its side walls, its wheels and chains, the entire bodywork will be crafted from flatbread (the typical bread in nearly all poor countries of Africa and Asia) and will have 5 meter long baguette-cannon. Inside the tank is hollow.

The tank is unavoidable in the eyesight of politicians and journalists. It will be life-sized, completely realistic.

Whoever walks past will be invited to break of a little of the tank and have a taste. Bit by bit, gaps will start to show in the facade of the tank. Looking into those gaps will reveal which goals can be achieved through the diversion of military spending. Images of class rooms full of children – especially girls, nurses giving vaccinations, tree-planting, wells being built.... – all these images with accompanying information and statistics.

Exhibition about the finance possibilities of sustainable development through military savings

The tank will be accompanied by information placards placing current arms spending in juxtaposition to the money required for reaching the Millennium Development Goals. Through photos, concrete cost statistics and impressive comparison-graphics the information will be quickly and clearly absorbed. An important element of the exhibition is a concrete
Press release:
„Disarmament for Sustainable Development“

In view of the occasion of the publication of the latest numbers of the Stockholm International Peace Research Institute (SIPRI) and of the announcement of the International Appeal for „Disarmament for Sustainable Development“ the IALANA and the DFG-VK criticized the immensely high spending on armament to the tune of 1.7 Trillion US-Dollars. They demanded more sustainable development instead of armament.

Considering the current trend of ignoring disarmament for development in international politics, IALANA’s Program Director Reiner Braun presented an International „Appeal of Taboo-Breakers“. „A constant destruction of values takes place through
armament. Values that remain unexploited for civil use and civil projects”, said Braun. “Without an international cooperation and a change of mind regarding the strategic goals the global question cannot be tackled.” Braun pointed out the “perversion of excessive military spending” and stressed that without disarmament and simultaneous poverty eradication there cannot be international development. To „stop the process of destruction of public funds it is key to develop a program for disarmament“, which will meet the requirements of UN and accomplishes „suitable conditions for the participation of all people“.

In the appeal which was signed by more than twenty Nobel Peace and Science Prize Laureates governments are being challenged to rethinking and disarmament. Demilitarization and denationalization are aspired worldwide. At the Rio Summit in June governments are supposed to conclude a plan for disarmament and to utilize redundant funds for social, economic and ecological programs.

Under the credo „Development instead of Armament“ the General Secretary of Pax Christi-Germany, Christine Hoffmann, summarized the claims of the peace movement. She criticized that „Germany is counted among the ten countries that spend most money for armament worldwide“ and that „on the other hand their self-commitment to provide 0.7 percent of the gross domestic product for development aid is not accomplished“.

That the Millennium Development Goal to reduce the spendings for armament cannot be reached due to the worldwide enormous expenditute in arms was also emphasized by Ulrich Thöne, chairman of the Union of Education and Science (Gewerkschaft Erziehung und Wissenschaft, GEW). He called upon a „reduction in military spending of at least ten percent to efficiently tackle the financial crisis and at the same time lift the development aid to a minimum dimension of 0.7 percent“. Countries like Greece, Spain and Portugal (each of them being affected heavily by the crisis) comparatively still make available huge sums for armament while Greece for example dismisses around 150,000 civil servants. The military sector stays unaffected by such cutbacks though.

Monty Schädel, political executive director of the German Society for Peace (DFG-VK), demands a rethinking in the national and international budget planning. „Principally, it can’t be due to lacking funds that there are shortages in the social, cultural, ecological and education sector...because apparently there are unlimited funds for military and preposterous armament projects."

**Photosession – A Tank of Bread:**

Tuesday the 17th of April at the „Global Day Against Military Spending“ ([www.demilitarize.org](http://www.demilitarize.org)) a tank made out of bread was occupying the historical Pariser Platz in front of the Brandenburger Gate in Berlin-Mitte. This project is part of the „Disarmament for Development“ movement which will also be represented in Rio at the World Summit with an even bigger tank made out of bread. Pictures and more information regarding this exciting happening are available on the IALANA homepage.
Nuclear Abolition Forum:
From nuclear deterrence to a nuclear-weapons-free world

Wednesday 9 May, 15:00-18:00
Room M2, Vienna International Centre
(During the time of the 2012 NPT Prep Com)

The Nuclear Abolition Forum: Dialogue on the Process to Achieve and Sustain a Nuclear Weapons Free World, will hold a special event on the topic of Moving Beyond Nuclear Deterrence to a Nuclear-Weapons-Free World during the 2012 NPT Prep Com.

The session will include discussion by a range of academics, policy analysts, diplomats and disarmament experts on the dynamics of nuclear deterrence in the 21st Century, and an exploration of the political conditions and security mechanisms that might be required to phase out nuclear deterrence in order to achieve a nuclear-weapons-free world.

This special session is being held as part of the preparation of the second issue of the Nuclear Abolition Forum magazine. The inaugural issue of the magazine had as its theme the International Humanitarian Law and nuclear weapons: Examining the humanitarian approach to nuclear disarmament.

Below is a short precise of nuclear deterrence by Alyn Ware, founder of the Nuclear Abolition Forum, written as a backgrounder for the 9 May event.

Nuclear Deterrence: Time to address the Sacred Cow!

by Alyn Ware

Probably the biggest barrier to making progress on nuclear disarmament and in preventing nuclear proliferation is the continued role of nuclear deterrence in security thinking and doctrines. As long as States believe that nuclear deterrence can protect them from aggression, they will resist or block efforts and initiatives for nuclear disarmament – even if they accept legal obligations or make political commitments otherwise.

The International Court of Justice, in considering the legality of the threat or use of nuclear weapons, affirmed that any threat or use would generally be inconsistent with the rules of law applicable in wartime including international humanitarian law. The Court rejected arguments by the Nuclear Weapon States that there were circumstances in which the threat or use of nuclear weapons would be legal. However, the ICJ also noted the practice of nuclear deterrence, which is ascribed to by the nuclear-weapon States and their allies (under extended nuclear deterrence relationships). As this was a practice that had been part of the security doctrines of a significant number of States, the ICJ could not conclude absolute illegality in all circumstances, noting
an uncertainty in the case of self-defence in which the very survival of a State is at stake.

The ICJ recognized a threat to international order and to international law by the ongoing divergence of opinion on nuclear weapons, and indicated that the resolution of this dilemma existed in States fulfilling the obligation to pursue in good faith, and bring to a conclusion, negotiations on nuclear disarmament in all its aspects under strict and effective international control. Such negotiations would need to include the development of security methods and mechanisms to replace nuclear deterrence.

Shultz, Perry, Kissinger, and Nunn, argue that while nuclear deterrence was vital to prevent world war and to ensure national security in the bipolar world that existed from 1945 until 1991, in a world which has outgrown the security framework of the Cold War, the doctrine “is becoming increasingly hazardous and decreasingly effective.” However, this perspective has not been embraced by the NWS and their allies, who continue to ascribe a key role to nuclear deterrence in providing security. There are some analysts who claim that security through nuclear deterrence is illusory, and that the real reason for States to hold onto nuclear weapons does not have to do with security but rather power projection, domestic politics or the political power of the weapons industry.

There are others who claim that nuclear deterrence is perhaps not required by countries with large and modern conventional forces or where there is little realistic risk of invasion that would threaten the existence of the State, but might perhaps be required by smaller countries in vulnerable positions that have been threatened with attack, such as Israel, Iran or North Korea.

**Deterrence v Defense**

Policy makers often talk about defense and deterrence as if they were the same. Ward Wilson makes a useful distinction between the two.

**Deterrence** is psychological. It is the process of persuading an opponent that the costs of a particular action are too high. It relies on the calculation of your enemy, on his mental acuity and rationality. In this way, deterrence can never work on a person who is insane, or whose ability to calculate has been overwhelmed by emotion. It relies on your opponent's ability and willingness to calculate the costs before acting and is therefore, to the extent that human calculation is unreliable, an unreliable means of protecting yourself and those you love.

**Defense**, on the other hand, can be thought of as interposing a physical presence between your enemy and those you wish to protect from harm. Defense can be a shield held up to deflect a sword stroke, a bullet proof vest, or a field army interposed between your enemy and your economically fertile valleys and prosperous cities.

Ward Wilson, *Rethinking Nuclear Weapons Project*, James Martin Center for Nonproliferation Studies

Regardless of whether nuclear deterrence is illusory or provides a real security benefit, if it is perceived as necessary by a State (and the State’s population) then it will not be possible to abandon the policy and achieve a nuclear-weapons-free world until there is a change in perception, or the replacement of nuclear...
ar deterrence by alternative security methods or mechanisms.

There is thus a need, and even a legal obligation, for those States that still ascribe to nuclear deterrence doctrine to identify the specific situations in which nuclear deterrence plays, or could play, a security role, and examine alternative approaches to achieving security in those situations.

A useful contribution to this exploration has been made by the International Commission for Nuclear Non-proliferation and Disarmament (ICNND) in their report *Eliminating Nuclear Threats: A Practical Agenda for Global Policy Makers* which identified a number of key rationales for nuclear deterrence, examined the validity of these, and provided possible approaches to reducing and replacing the genuine security roles for nuclear deterrence.

In essence, the ICNND indicated that some drivers for nuclear deterrence are totally illegitimate. These include:

- The argument that nuclear weapons cannot be un-invented so there is no point trying to eliminate them;
- The ascribing of status to nuclear weapons possession;
- The use of nuclear weapons as a tool of power and persuasion;
- The argument that disarmament is not necessary to advance non-proliferation.

Other writers have also identified the financial interest of corporations producing nuclear weapons systems and the nuclear weapons scientific communities as strong drivers for maintaining nuclear weapons policies.

The ICNND argued that other drivers or roles ascribed to nuclear deterrence are ill-founded, unproven or can now be met by other means. These include the beliefs that:

- Nuclear weapons have deterred, and will continue to be required to deter, war between the major powers;
- Nuclear weapons are required to deter any chemical or biological weapons attack;
- Nuclear weapons are required to deter terrorist attacks;
- Nuclear weapons are required to protect US allies;
- Any major move toward disarmament would be inherently destabilizing.

However, ICNND argues that there are some genuine security roles for nuclear deterrence which must be addressed in order to achieve comprehensive nuclear disarmament. These include the role of nuclear weapons to deter nuclear attack and the possible role of nuclear weapons in countries with inferior conventional forces to deter any large scale conventional attack.

A robust, verifiable and enforceable global prohibition and elimination of nuclear weapons, for example under a nuclear weapons convention, would remove the ‘necessity’ to possess nuclear weapons in order to deter against other nuclear weapons. Replacing the role of nuclear weapons to deter a conventional attack might require a range of measures including cooperative security mechanisms, legally binding security assurances and/or progress on conventional forces agreements.

*Nuclear deterrence is a scheme for making nuclear war less probable by making it more probable.*

Commander Robert Green
(Royal Navy, retired)
Breaking Free from Nuclear Deterrence,
Nuclear Age Peace Foundation

However, Ward Wilson (*Five Myths About Nuclear Weapons, to be published soon*) argues that the deterrence role ascribed to nuclear weapons is in most cases illusory and does not stand up to rational military or security thought. Wilson argues, that despite long-held beliefs to the contrary, nuclear weapons do not shock and awe opponents; nuclear deterrence is not effective in a crisis; massive damage and killing civilians does not cause leaders to back down; and that the bomb has not kept the peace for sixty-five years. Deterrence could thus be
abandoned even without the need to devise alternatives.

Up until recently the Sacred Cow of nuclear deterrence – the irrational faith in the policy - has been virtually un-examined and unquestioned by security planners. Wilson notes that nuclear weapons “are wrapped in a shroud of sixty years of rhetoric and hyperbole. We have attached such deep feelings to them that they have been transfigured. We constantly misconceive the problems and issues that are associated with nuclear weapons because we cannot see the weapons themselves with unblinking eyes.”

However, an increasing public acceptance of nuclear weapons as both contrary to international humanitarian law and counter-productive to national and human security could increase the rational analysis of nuclear deterrence, and lower the security threshold required for States to join a nuclear abolition process. Indeed the internationalization of finance, trade, communications, social relationships and culture is relegating nuclear deterrence to being a dinosaur of the 20th Century – totally irrelevant to current political conditions and security needs – particularly in the minds of the younger generations, including in the NWS, who increasingly see no rationale for maintaining nuclear weapons.

Helen Clark (then Prime Minister of New Zealand and now the Head of the UN Development Program) has noted that “In the 21st Century, as the ever-expanding exchange of peoples, cultures and trade across nations helps to ease nationalistic prejudices, and as the shibboleths of the Cold War subside, it is time to abolish nuclear weapons and make the world a safer place for all peoples.”

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25 years without nukes - Come join the Party!

by Alyn Ware

Check your social calendar for Friday June 8 and Saturday June 9. If you are not booked up, then come join us in Aotearoa-New Zealand for a two-day party to commemorate 25 years of being nuclear free. Or if that’s too far to fly in these carbon-footprint conscious times, then raise your glasses (filled with alcoholic or non-alcoholic drinks) to celebrate with us from afar.

Our victory 25 years ago demonstrates that we can change the addiction to nuclear weapons – we can beat the powerful pro-nuclear forces – and sustain a policy that not only rejects nuclear weapons, but has helped New Zealand grow from an appendage of the US military apparatus to being an independent and pro-peace country – raising even to the level of number one in the Global Peace Index three years running (although under our current conservative government we have dropped to number two. See No Longer Number 1 – Huffington Post, www.huffingtonpost.com/alyne-ware/no-longer-number-1_b_871383.html).

We were a country that celebrated the dropping of the nuclear bomb on Hiroshima with dancing on the streets (most New Zealanders believed that it saved us from being over-run by the Japanese). In the beginning we welcomed US, British and French nuclear tests in the Pacific and nuclear-armed vessels visiting our harbours. Now, even the conservatives are proud of our anti-nuclear policy and the dancing in the streets on June 8 and 9 will be to celebrate being nuclear free..
If Aotearoa-New Zealand can do it, so can others. That's why we are proud that New Zealand's anti-nuclear legislation is now being promoted globally by the World Future Council ( ) as an example to inspire other countries. Some parliaments, like in Bangladesh, are taking similar action. We are proud also that our legislation has provided the basis for New Zealand to take other initiatives internationally, including support for the ICJ case against nuclear weapons, supporting inclusion of the criminality of nuclear weapons in the International Criminal Court, divesting from corporations manufacturing nuclear weapons, and support for the UN Secretary-General's Five-Point Plan for Nuclear Disarmament.

Aotearoa Lawyers for Peace will continue to encourage our government to elevate its efforts to promote global abolition (our current government has done little to advance a nuclear weapons convention), and work with other IALANA chapters to advance nuclear abolition globally. Now let's enjoy the party!

For information on 25th anniversary celebrations contact:
Laurie Ross laurie-ross@xtra.co.nz
Alyn Ware alyn@lcnp.org

Further reading:


Parliamentary call to action:
Support diplomacy, not force, to prevent nuclear proliferation in the Middle East!

Growing concern about Iran's uranium enrichment and the possibility of Iran moving toward a nuclear weapons capability has prompted the United Nations, European Union and various national governments to impose increasingly comprehensive sanctions against Iran, and is prompting speculation – particularly in Israel and the United States, about the possible use of pre-emptive force against Iran's uranium enrichment facilities.

Any move by Iran to acquire nuclear weapons would most likely trigger further proliferation in the region and set back the already troubled Middle East peace process.

Iran remains party to the Nuclear Non-Proliferation Treaty, claims it has no intention to develop nuclear weapons, and the supreme leader Ayatollah Ali Khamenei has issued a fatwa denouncing nuclear arms as anti-Islamic.

However, recent revelations about Iran's research into nuclear triggers, coupled with Iran's lack of complete transparency to the International Atomic Energy Agency (IAEA) regarding all aspects of its nuclear energy program, fuel speculation that Iran is keeping its options open.

The call for strengthened sanctions against Iran is thus understandable. However, a number of analysts
argue that sanctions and the threat of force are counter-productive, unless they are part of a non-discriminatory approach to nuclear non-proliferation applicable to all actual and potential nuclear weapons proliferators in the region, coupled with progress on implementation of NPT obligations for global nuclear disarmament.

Focusing on Iran’s potential nuclear capabilities while ignoring the nuclear weapons programs of Iran’s neighbours, and the ongoing threats from other nuclear armed States, appears to be strengthening the internal support for the Iranian regime’s intransigence – pushing the country towards nuclear deterrence as a security option.

The use of force to ‘surgically destroy’ Iran’s uranium enrichment facilities would be unlikely to block a determined Iran from advancing its program, could lead to regional war, and could further prompt a move toward a nuclear deterrence option, not only in Iran but also in other Middle East countries.

A more promising alternative to preventing proliferation in the Middle East is for governments to rally behind the United Nations sponsored process for establishing a Middle East Zone Free of Nuclear Weapons and other Weapons of Mass Destruction. A recent public opinion poll in Israel indicated that a majority favoured this diplomatic approach over the threat or use of force against Iran.

Following up on a unanimous resolution in the UN General Assembly and a consensus decision at the 2012 Conference of States Parties to the NPT, the United Nations (in conjunction with the US, UK and Russia - and in consultation with countries in the Middle East) has appointed a host country and a facilitator to commence the diplomatic process for achieving such a zone, starting with a high-level conference of all countries from the region in Finland later this year.

A regional zone free from WMD would not only strengthen non-proliferation commitments and mechanisms applicable to all countries in the region, it would also come with security assurances by the Nuclear Weapon States that they would not threaten a nuclear attack on any countries within the zone – an important security requirement that would stem proliferation by removing a key stimulus to countries to adopt nuclear deterrence doctrines.

Establishing such a zone would be incredibly difficult and take some time, probably through a phased process that includes confidence-building measures, such as ratification of the Comprehensive Test Ban Treaty by all States in the region, and diplomatic recognition by all States in the region. Such security-enhancing measures would not only advance the WMD free zone process, but could feed into the Israel-Palestine peace process and strengthen the entire regional peace and security framework at large. What's important is political will and the commencement of negotiations. Parliamentarians have a vital role building this political will and supporting good faith negotiations.

Parliamentarians were active--indeed at times vital--in the establishment of Nuclear Weapon-Free Zones in other regions including Antarctica, Latin America and the Caribbean, South Pacific, Africa, South East Asia and Central Asia. Most of these zones were difficult to achieve, including countries or territories that were involved in nuclear testing, deployment or extended nuclear deterrence doctrines. The experience in overcoming these difficulties to develop security without nuclear weapons can encourage success in the Middle East.

Please report any actions you take to: alyn@pnnd.org.

Parliamentary actions:

- **Endorse the Joint Parliamentary Statement for a Middle East Zone Free from Nuclear Weapons and all other Weapons of Mass Destruction**

- **Ask parliamentary questions, or submit motions, on supporting a diplomatic approach to preventing nuclear proliferation in the Middle East**

- **Support the UN-sponsored process including the 2012 Conference on Establishing a Middle East Zone Free from Nuclear Weapons and all other Weapons of Mass Destruction**

From:http://www.gsinstitute.org/pnnd/archives/Call_to_Action-MidEast.htm
Nuclear weapons in Europe and nuclear sharing, 30 April; 10:00–13:00
Organized by IALANA, INES

US nuclear weapons as well as British and French still remain on the European continent. How can these stockpiles be included in efforts of disarmament, how can Europe become a nuclear weapons free zone? Nuclear sharing, for example in Germany, contradicts the NPT, yet it is reality.

Speakers:
Hans Kristensen (FAS): Political process and next steps in Europe. Jean Marie Collin: French nuclear weapons and disarmament process. Kate Hudson: British nuclear weapons modernization. Peter Becker (IALANA): „Nuclear sharing and a (yet unique) law suit against German participation in nuclear sharing”
Moderation: Arielle Denis (ICAN)/David Krieger

The role of science in military related research and technology development; 30 April; 15:00–18:00
Organized by IPB, INES

Science and research, generously sponsored, pushed the technological development of weapons. Military research is a significant beater of armament; civil alternatives against weapons research are available, for example civil clauses and projects of conversion.

Speakers:
Reiner Braun (INES): Military research and civil clause. Subrata Ghoshroy (MIT): The dynamics of science, research and technology in the field of weapons development. Stuart Parkinson (SGR): Military research and conversion projects in GB. Vappa Taipate (IPPNW)
Moderation: Ingeborg Breines (IPB)

Nuclear weapons convention, 2 May; 15:00–18:00
Organized by IALANA, INES/INESAP, Nuclear Age Peace Foundation, IPPNW

Still the Nuclear Weapons Convention is not the basis of international negotiations on disarmament. What are the major features of the convention and which next steps must be initiated towards its realization?

Speakers:
Moderation: Xanthe Hall (IPPNW)

The modernization of the nuclear arsenals – a new arms race? 4 May; 15:00–18:00
Organized by INES, IALANA

All nuclear weapons states are modernizing their arsenals. A new arms race of the old and new nuclear weapons states might take place. Are there alternatives?

Speakers:

Nuclear deterrence and climate change Monday, 7 May; 10:00–13:00
Organized by INES, WFC, IPPNW

In the future, nuclear and climate risks may interfere with each other in a mutually enforcing way. Preventing the dangers of climate change and nuclear war requires an integrated set of strategies that address the causes as well as the impacts on the natural and social environment.

Speakers:
Aron Tovish (Mayors for peace), Rob van Riet (WFC)
Moderation: Lucas Wirl (INES)