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NGO in consultative status (Category II) with the United Nations Economic and Social Council  
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## **BOARD**

**Berlin, February 10th 2012**

### **Co-Presidents**

Judge Christopher Weeramantry,  
*Sri Lanka*  
Peter Weiss,  
*USA*  
Peter Becker,  
*Secretary, Germany*

**Dear colleagues,**

Belated but therefore no less heartily: all the best for a – hopefully more peaceful – Year 2012 from the bitterly cold Berlin.

### **Vice Presidents**

Pasquale Policastro, *Poland*  
Kenji Urata, *Japan*  
Phon Van den Biesen,  
*The Netherlands*  
Carlos Vargas, *Costa Rica*

With this newsletter we are continuing the tradition of email-newsletters of the international IALANA which started in 2011 and present current information from the organization.

### **Directors**

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Meindart Stelling, *The Netherlands*  
Toshinori Yamada, *Japan*

As you can see, after the successful General Assembly, the IALANA has interfered at many points nationally and internationally in the debate about war and peace. In this context we would like to emphasize the study on renewable energy carried out in Poland, which is a direct result of the decision of the General Assembly regarding phase out of nuclear power. Also, we would like to highlight the interesting national reports, which reflect the variety of activities of IALANA member organizations. Thanks to all authors who have helped to prepare this newsletter.

### **Treasurer**

Otto Jäckel, *Germany*

We would like to draw your special attention on the preparation of various activities of the IALANA at the first Prep.Com in preparation to the next NPT Conference, which will take place from 30<sup>th</sup> April to 11<sup>th</sup> May 2012 in Vienna. The IALANA is going to take part at several side events (as you can see in the newsletter).

### **Consultant**

Alyn Ware, *Aotearoa-New Zealand*

### **UN Liaison**

John Burroughs, *USA*  
Saul Mendlovitz, *USA*

Furthermore, we are involved in the preparation of a conference on the role of the International Atomic Energy Agency (IAEA), to be held at 3<sup>rd</sup> May at the City Hall of Vienna. From our perspective, it is high time to think and to discuss about the possibility of an organization, which promotes the civil use of nuclear energy and at the same time controls and limits the proliferation of nuclear weapons.

### **Associated Member**

George Farebrother, *U. K.*

### **Executive Director**

Reiner Braun, *Germany*

The position of the International Atomic Energy Agency regarding the “Iran-conflict” certainly increases the need for a reflection on the role of the IAEA.

### **International Coordinator**

Jenny-Louise Becker, *Germany*  
Robin Borrmann, *Germany*

We would be pleased if many of the “IALANA-family” would be able to participate in the events in Vienna. Anyhow, we would appreciate to welcome many of you and to engage in personal discussions.

Until then

With warm regards,

**Peter Becker**

**Reiner Braun**

**Co-President**

**Executive Director**

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## Side events at the NPT PrepCom, Vienna 2012

### 1. Nuclear weapons in Europe and nuclear sharing - MONDAY, 7 May; 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, interferes contradicts the NPT, yet it is reality.

#### Speakers:

**Peter Becker** (IALANA): „nuclear sharing and a (yet unique) law suit against German participation in nuclear sharing”

**Jean Marie Collin:** French nuclear weapons and disarmament process (not yet confirmed)

**Kate Hudson/Dave Webb** (CND): British nuclear weapons modernisation

**Hans Kristensen** (FAS): Political process and next steps in Europe

#### Moderation:

**Arielle Denis** (ICAN)

### 2. The modernisation of the nuclear arsenals – a new arms race? - FRIDAY, 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:

**Jackie Cabasso** (WSLF): Modernization in the US (not yet confirmed)

**Kate Hudson** (CND): Modernization strategies in GB and France

**Subrata Ghoshroy** (MIT): Nuclear weapons in India and Pakistan

#### Moderation:

**Reiner Braun** (INES, IALANA)

### 3. Nuclear weapons convention - WEDNESDAY, 2 May; 15:00–18:00

Organized by IALANA, INES/INESAP, Nuclear Age Peace Foundation

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?

#### Speaker:

**Peter Weiss** (IALANA): NWC - the challenge of abolishing nuclear weapons

**Alyn Ware** (PNND): Next steps towards the NWC

**John Borroughs** (LCNP): NWC and the International Court of Justice

**Jürgen Scheffran** (INES/INESAP): NWC and environmental loads

**Kenji Urata** (IALANA): NWC and Criminality

**Arielle Denis** (ICAN): Which strategy for the Abolition of Nuclear weapons?

### 4. Nuclear deterrence and climate change - MONDAY, 30 April; 10:00–13:00

Organized by INES, WFC

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.

#### Speaker:

**Jürgen Scheffran** (INES/INESAP): Climate change and nuclear deterrence

**David Krieger** (NAPF): Nuclear weapons and environment

**Rob van Riet** (WFC):

#### Moderation:

**Lucas Wirl** (INES)

### 5. The role of science in military related research and technology development; - MONDAY, 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:

**Subrata Ghoshroy** (MIT): The dynamics of science, research and technology in the field of weapons development

**Reiner Braun** (INES): Military research and civil

clause

**Stuart Parkinson** (SGR): Military research and conversion projects in GB

Moderation:

**Ingeborg Breines** (IPB)

*(Draft from February 10<sup>th</sup> 2012 – changes possible)*

## Draft programme for event in relation to the NPT PrepCom, Vienna 2012

### **(Version 4.3)**

**Symposium and public event on the role of IAEA on Thursday, May 3rd and Friday, May 4<sup>th</sup> 2012 in the City Hall, Vienna**

**Patron: Ulli Sima, City Council for Environment, Vienna**

Aim of the Symposium is a critical reprocessing of the role of IAEA:

a) History:

1957, in the period of the foundation of IAEA most member states declared their “peaceful” intentions of the use of nuclear power. 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 resource of energy proved to be an illusion. Also, nuclear power is not a reasonable option for reductions of CO<sub>2</sub>.

The majority of members of IAEA does not anymore have the aim to enter the nuclear economy, indeed some have decided the phase-out.

The role of IAEA concerning the catastrophes of Chernobyl and Fukushima highly deserves criticism. Thus it is necessary to critically discuss the outmoded role of IAEA and to propose the necessary changes.

b) The double role:

The double role of IAEA consists of the promotion and support of the civil use of nuclear energy and the effective prevention of proliferation of the military use of nuclear energy. This double role is an oxymoron since the promotion of the mass production of plutonium

prevents a reliable control of fissile material. The endorsement gains the upper hand against a realistic (critical) assessment of technology and leads to a belittlement of the consequences and to a suppression of reputable scientific analysis on health-ramifications of nuclear economy.

c) Inhibition and disinformation:

The treaty of IAEA and WHO (May 28<sup>th</sup> 1959)<sup>1</sup> which binds the two organizations to only act consensual, de facto is an oppressive contract on the WHO. So far this blockade hindered reputable large-scale analysis of the consequences for health of the catastrophe of Chernobyl and caused belittled disinformation instead.

d) Dealing with Concrete Proposals:

Proposals to take consequences from manifold experiences around Chernobyl and thus to establish a well-equipped international crisis reaction group, went unheeded with IAEA. The catastrophe of Fukushima in all brutality reveals this mistake.

e) Iran-Conflict:

The role of the IAEA over Iran's nuclear programme requires careful discussion, and should be conducted on an objective basis. Over the last few years, the West has been increasing its

<sup>1</sup> See: [http://www.independentwho.info/manifeste\\_DE.php](http://www.independentwho.info/manifeste_DE.php)

diplomatic pressure on Tehran and toughening its sanctions. But current signals from Israeli and US media point rather towards some form of military intervention with no doubt tragic outcomes. A range of alternative strategies, including societal verification, have been put forward by experts and

should be discussed as a matter of urgency.

These discussions do not aim at a pre-judgment but at the collection of critical questions which lead to a continuation of discussion on and with IAEA.

### **Thursday, May 3rd**

#### **Organizers:**

International Association of Lawyers Against Nuclear Arms (IALANA), International Network of Engineers and Scientists for Global Responsibility (INES), International Peace Bureau (IPB), International Physicians for the Prevention of Nuclear War (IPPNW) (tbc) , European Nuclear Risk Cluster (ENRIC), Forum Wissenschaft und Umwelt Österreich

#### **Symposium**

#### **16:00: GREETINGS**

**16:30**

#### **On the history of IAEA**

(20 minutes presentation, 10 minutes discussion)

**17:00**

#### **Double Role of Military-Civil**

(20 minutes presentation, 10 minutes discussion)

**17:30**

#### **The WHO-IAEA Problem**

(20 minutes presentation, 10 minutes discussion)

**18:00**

#### **Iran and IAEA**

(20 minutes presentation, 10 minutes discussion)

**18:30: BUFFET**

**19:30**

#### **On the issue of a crisis task force**

(20 minutes presentation, 10 minutes discussion)

**20:00**

#### **“Mosaic of Fukushima“**

(Short statements)

**21:00**

#### **Proposals of Reform for IAEA**

**21:30: ENDING**

### **Friday, May 4<sup>th</sup>**

#### **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. Aim is to engage a representative of the Austrian government, a representative of UN and of IAEA.*

**19:00-21:30**

**Short presentation of and argumentation for the proposals of reform**

#### **Panel:**

**Reflections and discussions on the future of IAEA**

#### **Invited speakers:**

→ **politicians from Austria**

→ **representatives of international organizations (IAEA, WHO)**

→ **representatives of INGOs**

Registration: [kongress@ialana.de](mailto:kongress@ialana.de)

## **MacBride Prize Ceremony of the International Peace Bureau City Hall Potsdam, October 29, 2011**

### **In praise of Peter Becker – Laudatio by Otto Jaeckel**

Dear Ms. Breines,  
 dear Mr. Magnusson,  
 dear Ms. Edwar,  
 dear Peter,  
 Ladies and Gentlemen

When I saw Peter for the first time nearly 40 years ago I thought to myself: how can he be a politician of the Free Democratic Party, the German liberals – he looks like being a member of the band of Jimi Hendrix.

Only later on I got to know, that he is a very gifted musician indeed. At that time he played Jazz and Rock and Roll. This year I heard him play Chopin.

This is typical of Peter. He sets himself always the most difficult goals and never gives up striving for the highest perfection.

As a young lawyer he was a specialist in the law of higher education and constitutional law. He fought to get the University entrance for hundreds of students who did not fulfill the formal requirements. Many German Physicians owe him the possibility to have studied medicine.

In this way having become well known all over Germany since the early seventies he became the first choice for anti-nuclear activists seeking legal advice in the struggle against the construction of nuclear power stations.

The expertise he collected as a litigator in many law suits which he filed to the Federal Administrative High Court and the Federal Supreme Constitutional Court was the basis to build up one of the biggest law firms in Germany.

In fact “Becker Buettner Held” is probably one of the biggest law firms in Europe specialized in Energy Law. Now he still remains committed as a senior consultant and lectures in Energy Law at the Humboldt University in Berlin.

Throughout all these years of hard work he remained a passionate fighter for peace and human rights. As his career as a parliamentarian of the FDP came to an

end in 1982 when Hans Dietrich Genscher and Otto Graf Lambsdorf turned the page of west German history from Helmut Schmidt to Helmut Kohl, his new political career as the leader of NGOs started. Let me add: thank god and thanks to Genscher and Lambsdorf.

After the change of the FDP from a left wing social-liberal to a right wing neo-liberal Party, Peter remained a social liberal “solitaire” who he is still today.

His fame as a lawyer and his great political experience enabled him to open many doors and bring together people of different convictions from communists and social democrats to liberals and Christian democrats. This is one of his outstanding talents.

At the beginning of the eighties he became speaker of the Marburg Peace Pressure Group.

Later on he was one of the Cofounders of the International Association of Lawyers Against Nuclear Arms (IALANA) Germany and its chairman for over 20 years. Now he is one of the Co-Presidents of the International IALANA and still the honorary chairperson and treasurer of IALANA Germany.

I am convinced that one of the main reasons why Peter can make all this – the work in his office and his civil-society engagement - is that he has a wonderful wife Professor Marita Metz Becker and three beautiful daughters Jenny, Lena and Lesley by his side.

IALANA is the organization which initiated the world court project together with IPPNW and the IPB. Peter was one of the main promoters of the campaign in Germany.

In this way he took over the baton from Shawn MacBride in our world- wide relay team for nuclear disarmament. Following an initiative of Shawn MacBride over 14.000 Signatures for nuclear disarmament of jurists from all over the world have been collected in the eighties.

Peter has now filed a lawsuit against the German government in order to abolish the B 61 Atom bombs

still deployed in Germany. Day by day Pilots of the German army in Büchel are trained to drop these bombs. So he tries to make use of the advisory opinion of the International Court of Justice from 1996 about the Illegality of nuclear weapons. Practical steps need to be taken to put the advisory opinion into practice. And Peter is the one who has the courage to bring this question to court.

The so called “nuclear sharing” of the German Army is a clear breach of the Non Proliferation Treaty and of the advisory opinion of the ICJ.

From the beginning Peter also objected to the wars against Yugoslavia, Iraq and Afghanistan. Under Peter’s leadership IALANA Germany provided peace activists and politicians with lots of legal expert opinions and aide memoires against the wars, based on international and constitutional law.

Our critical position concerning the illegality of the war against Iraq was even shared by the German Federal Administrative High Court.

Last Friday President Obama announced that he would withdraw all U.S. forces from Iraq. As we could read in the Washington Post of October 21 Obama said: ”The rest of our troops in Iraq will come home”, adding that they “will be home for the holidays”. “After nearly nine years, America’s war in Iraq will be over”, he said at the White House.

But in the same article only a few lines further down we read that about 16.000 civilian contractors will remain posted in Iraq. Are these really conditions which allow us to speak of the end of the armed conflict? And can we now really speak of the re-acquisition of the full sovereignty of Iraq? I have my doubts.

The same goes for the announcements of the speakers of NATO concerning Afghanistan. On the one hand they tell us that they are going to decide on the withdrawal of the troops from Afghanistan during the Summit on the Petersberg near Bonn at the beginning of December. On the other hand the German defense Minister De Maiziere is asking for “strategic patience” in this matter.

At this point I’d like to quote a few lines from the book of Mohamed ElBaradei “The Age of Deception”. At the beginning he describes his last conversation with officials of Saddam Hussein. Blix and ElBaradei said in this encounter: “Help us to help

you... We need more evidence. The more transparency you show, the more documentation and physical proof you can produce, the better it will be for Iraq.

And Husam Amin, the head of Iraq’s UN-interface group responded: “Let us be frank. First we cannot give you anything more because there is nothing more to give.

But, second, you cannot help us, because this war is going to happen and nothing you or we can do will stop it. Whatever we do, it is a done deal.”

ElBaradei continues: ”In the years since, multiple sources have confirmed that the premise for the march 2003 invasion – the charge by the United States and the United Kingdom that Saddam Hussein’s Weapons of Mass Destruction programs represented an imminent threat - were groundless.” And he concludes: “What we need is a commitment to nuclear diplomacy”.

Peter Becker would say that he is right but diplomacy will not be enough.

I say this in consideration of the proposal which he has developed during the debate on a European Constitution.

He proposed that no state should be allowed to go to war against another state before having brought the conflict to court and having attempted a peaceful settlement.

Imagine what would have happened if the United States and the United Kingdom had been obliged to show their forged proofs to the International Court of Justice in the Hague. The Judges would not have been betrayed as easily as the members of the Security Council in Colin Powell’s darkest hour.

I am convinced Peter’s proposal would be an important step to the prevention of wars. Every conflict should have to be referred to the International Court of Justice in an obligatory way and this should not only be taken into consideration as it is said in Article 36 of the UN Charter. We have to demand this of our Governments.

We need such steps very urgently because we can already see the preparation of the next war against Iran coming at the horizon.

The prevention of war is not an easy task. But I know we can make it because we are the 99%! Finally I’d like to thank the members of the steering committee

of the International Peace Bureau for their wonderful decision!



Dear Hanaa Edwar, dear Peter Becker, I warmly congratulate both of you from the bottom of my heart!




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## Minutes of the conference on energy-change in Poland University of Szczecin, September 23<sup>rd</sup>/24<sup>th</sup>

By Anika Nicolaas Ponder, IKEM (Institute for Climate Protection, Energy and Mobility) in Berlin

### Chairs:

Prof. Pasquale Policastro, University of Szczecin  
Prof. Michael Rodi, IKEM, Berlin/Greifswald  
Dr. Peter Becker, IALANA  
Mr. Reiner Braun, IALANA

### Friday, 23 September, University of Stettin

**18:00 Reception and introduction by Mr. Policastro**

On Friday evening the conference started with Mr. Policastro welcoming the conference participants and speakers. The latter consisted of experts from the legal, academic and non-profit sector, a potent interdisciplinary mix. The conference was attended by mostly students, researchers and teachers who are active or interested in the field of energy, and the move away from nuclear in particular.

Mr Policastro drew attention to the ever-increasing need for energy change. From an economic or environmental point of view, it is becoming clear that our

current fossil and nuclear-based energy mix is unsustainable. Energy policy across Europe takes this new reality into account, but often fails to convey the urgency of the matter. The media could contribute significantly; through the dissemination of accurate information they can raise public awareness on the dangers of fossil fuels and nuclear energy, and on the benefits of renewable alternatives. Information and awareness play a crucial role in successfully moving forward with the energy transition. Overall this awareness of both the public and of policy makers has increased all over Europe, resulting in a general trend away from conventional energy and towards renewable energy sources (RES).

Poland stands in strong contrast with this trend. Already heavily relying on a mix of fossil and (imported) nuclear, Poland is now planning the construction of its first nuclear power plant, locking the country further into the tight web of conventional energy, infrastructure and economic subsidies. Could the Polish government realize their nuclear plants if the public, as well as policy makers, were fully aware of the risks, economic costs and available alternatives?

Speakers Prof. Michael Rodi from the University of Greifswald and Dr. Peter Becker, one of the founders of IALANA addressed the availability of other alternatives such as renewable energy and renewable storage. Through international cooperation and investment in research, the use of these alternatives can be further explored and optimized. Dr. Becker stated that the nuclear movement made spectacular progress over the past decades, although much work still needs to be done. A combination of increased public awareness, current events such as Fukushima and overall environmental concerns, the movement has gained widespread public support and even shapes policies on a national level. In terms of size, influence and credibility the movement is at a height it has never reached before, illustrating the potential and capacity of a civilian movement to turn into a true influential political voice. This is an inspiring development, and all the speakers agreed that through international cooperation and initiatives like this conference, true energy change can be achieved.

After a brief round of audience participation, the meeting ended and participants were invited to continue discussions during a joint dinner at the University.

#### **Saturday, 24 September, University of Stettin**

**I) The process of finalizing civil use of nuclear energy**

**9:30 Welcome of the participants and aims of the conference**  
**Pasquale Policastro**

Prof. Policastro welcomes all participants, speakers and other interested parties and applauds their motivation to foster the discussion on nuclear energy and related questions. He mentions that this debate is taking place all around Europe. However, the level and extent of the discussion differs significantly from country to country, and populations' attitudes can vary significantly too. France, Germany and Poland are all European countries; what's more, part of the European Union, but their population, policy and ensuing energy matrix is extremely different.

Of course, there are fundamental historical differences between these nations that account for much of this diversity. For decades Poland has known a com-

munist-socialistic rule of law, where powers were concentrated without sharing.

The transition of the energy system in Poland in the 90's was marked by a trend of authority shifting away from smaller states, and smaller power plants too. This was supported by cities and large municipalities, since the change of the economy (manifesting in for instance an increase in shares) was very important for business and trade (brokers etc). The EU is not in favor of long term contracts, considering this system of concentration of capital to be against the Union's market principles. When Poland joined the EU, this authority and financing structure was one of the first points of reform on the Polish agenda. This and many other underlying historical and economic causes leading up to our current situation will be discussed during this day.

#### **II) The steps to energy change**

**10:00 The Protest Movement: NGO's and Greens**

**Reiner Braun, Executive Director of IALANA and the German section**

Originally, the anti-nuclear movement was the core of a social movement, which considered civil nuclear use and nuclear arms to be 2 sides of the same coin (or sword in this case). The Green Party, founded in 1980, is today very successful and can in the future be part of the national government. One of Germany's Länder, Baden-Württemberg, now has a prime minister from the Green Party for the first time in history, showing how this previously considered 'radical' movement has become an accepted and mainstream organization. As mentioned, the Green Party came in part from the anti nuclear movement, inspired by President Eisenhower's speech 'Atoms for Peace' of 1953. Arguments against nuclear focused on security and safety risks, waste problems, the terror threat, proliferation risk and uranium mining (the latter has a considerable destructive effect on the land and the local population). In the 70's about 400 nuclear plants were operational world wide, and there were plans for the construction of 24 000 more! This news sparked actions across the globe starting in France and the US with students mostly. In Germany the movement was led by a mix of conservative par-

ties who valued traditional life conditions, and ‘left’ thinkers who shared a vision of a nuclear free world. Three locations should be mentioned with regard to incidents with nuclear energy plants: Harrisburg in the US (only 3 new plants were built in the US after Harrisburg), Tschernobyl (which marked the general German attitude) and of course Fukushima. Mr. Braun met with Japanese scientists before the Fukushima incident, and surprisingly enough they were very much against nuclear weapons, but in favor of nuclear energy.

Across the globe, the anti-nuclear organizations took different shapes. The Greens’ anti-nuclear movement was the first one to get more than 100 000 people on the street in a collective non-violent effort involving a wide variety of people (ranging from mothers and lawyers to farmers and priests even). In Latin America the anti nuclear movement was a fundamental part of the democratization process. The movement triggered strong counter reactions, of course. Large public demonstrations like the anti nuclear ones were very rare in those days, and it attracted a lot of attention and rather brutal repressions.

One of the main arguments brought forth by the pro-nuclear camp is that nuclear energy is cheap. This is not true, no nuclear plant could be built without vast amounts of state subsidies, which are necessary for R&D, waste disposal, plant removal and maintenance purposes. Since this is to a large extent financed with government funds, *the costs are not paid by the nuclear industry, but by the government and therefore the taxpayers (us).*

One thing is clear: The intense energy-consuming lifestyle of the 80’s and 90’s can no longer continue. Alternative solutions to nuclear are the 3E’s, which stand for:

1. Energy savings
2. Energy efficiency
3. Renewable energy

Central is the fact that nuclear power is loosing its legitimacy and support. Even in France, a country that has long supported nuclear energy, 56% of the population is now anti-nuclear. These successes,

though encouraging, are also evidence of a deep contradiction within society.

The major lesson learnt through this movement is the power of collective action and the importance of constant voicing of opinions and of awareness raising, networks and internationality. Finally, legal actions made a significant contribution to the slow down and stop to constructions of nuclear plants, showing once more that law and society are inextricably linked.

**10:45 The legislation leading to the finalization of civil use of energy**

**Dr. Peter Becker, IALANA and law firm Becker Büttner Held**

Mr. Becker started his career as a lawyer taking on political law suits, and has won important cases that improved and reshaped the previously restrictive admission system of medical schools in Germany. He sees law as an instrument that can adjust flaws in the legal system and society in general. It is a tool that, when wielded correctly, has the capacity to improve people’s lives.

Nuclear energy has been woven into the fabric of today’s energy system through historical developments. The bombs Little Boy and Fat Man were dropped on Japan in 1945 driven by scientific curiosity, rather than by conflict resolution. President Eisenhower stated this:

*‘The Japanese were ready to surrender and it wasn’t necessary to hit them with that awful thing<sup>2</sup>’*

It was in the political interest of the State to integrate nuclear power. The research process around nuclear was starting to receive significant state subsidies due to the combination of technical possibilities, potential for improvement and the unknown (and often neglected) risks. From that point in time until now, we can see that nuclear goes through different phases:

*Phase 1:* Research into nuclear power mainly to obtain the **nuclear bomb** (arms race)

*Phase 2:* Nuclear know-how applied to energy sector:  
**Civil use**

<sup>2</sup> <http://hnn.us/articles/44317.html>

*Phase 3: Increased risk awareness: the **end of nuclear** power entirely?*

Let's take a look at the history of nuclear in Japan. In the beginning, the novelty of the nuclear sector clouded the risk evaluation and the high potential of this new energy made people (excessively) optimistic, thinking the risks will diminish and then be eliminated altogether given more time and thorough research. The probability of accidents was grossly underestimated (as was the case with the melting core of nuclear research facility Chalk River Laboratories in Canada in 1952). Even prudent Switzerland suffered a nuclear power incident before their plant ever even became operational. The lesson we can learn from this is that no matter how good the research is and how thorough the precautions are, there will always be unknown/underestimated risks associated with nuclear.

Let's take a look at Germany. Germany's first Atomgesetz was written in 1959, and it transferred an obligation to promote the civil use of nuclear energy to the state. Several plants were implementing systems and procedures that were not transparent and therefore inconsistent with the terms of their contract. For instance, the capacity of the plant would far exceed the limitations foreseen in the contract. The state would find out about this breach of contract after the fact, basically too late to take any real measure. Though it displeased the state, these plants were not forced to decrease their capacity and construction since that made no economic sense anymore, the building was built, the damage was done. However, when the Greens came into power they inquired the state of Baden-Württemberg why their nuclear power plant, though not in compliance with the original contract, was approved in the end. A committee took a closer look at the matter and going through the paperwork, it turned out that the plant never obtained the official green light to operate. In the light of past violations that had been tolerated, plant owners had deliberately begun to operate without an official approval! The court ruled in favor of the Greens and subsequently, the plant had to be phased out. The State generally is not persistent (or brave) enough to implement its own legal system after the fact, which in combination with the general audacity of the nu-

clear industry has led to several cases of misuse and illegal plants.

The first step-out contracts and phase-out legislation came into place in 2000 and 2002 following an increasing political strength and presence of the Greens and the nuclear movement during the 80's. In 2009 the conservatives and the liberals won the election, and decided to prolong the running time of plants, to the displeasure of the German Minister of Environment. After the Fukushima incident, it appeared the German government made yet another 180° turn in policy. In reality, this 'sudden' change of heart had been brewing behind the scenes of German politics for months already due to the general dissatisfaction with the initial decision to prolong nuclear life spans. An Ethics Commission was to be installed with judges and experts to estimate to necessity and risks of nuclear energy, and they established that nuclear electricity was not entirely necessary these days. They came to this conclusion because, despite decades of research and subsidies, the problems of civil use of nuclear remain the same as in the beginning: high risks due to technical failure and human error, increasing costs (the Olkiluoto plant in Finland cost the government a whopping € 5 billion), and finally the long-term problem of nuclear waste, which lasts for 200 000 years.

**11:30 Reflections on spreading the experiences in Eastern and Western Europe**

**Dr Roman Ringwald, lawyer, Becker Büttner Held**

The disaster of Fukushima left us with many questions: Japan is modern, high-tech and well organized, one does not expect accidents like these to happen there. The shock amidst the Japanese population was therefore much larger too. The general belief that nuclear energy, when in competent hands, is reliable and certain is now called into question, even in Germany where natural disasters like earthquakes or tsunamis are not likely to take place. After all, the Fukushima reactor was built after a careful environmental study and was meant to be designed to match its surroundings. Still all the precaution and studies could not prevent this accident. It is not unthinkable

that German nuclear plants are subject to a similar design flaw.

Another important argument is a financial one: Who pays for the damage? Apart from the subsidies a plant requires to be built in the first place (and these are substantial to say the least) the potential post-accident phase should also be considered when thinking about the costs of nuclear. *No private insurance exists for nuclear power plants*, which means that in case of an accident or catastrophe they will and cannot be financially accountable for the damages. The insurance is 'covered' by the state (meaning the public), and not by the plant owners. The financial risk assessment in the industry can therefore not be accurate!

Across the European Union governments and politicians have many different points of view, but overall an apprehensive or full-out negative attitude can discerned. In France, a generally pro-nuclear nation, the population is becoming increasingly negative towards nuclear, and Ms. Aubry (left wing) openly stated to be against nuclear in the long run. In the UK politicians are of the general opinion that nuclear is currently economically efficient, but not sustainable in the long run.

When thinking about economically efficient, the inquisitive mind wonders about the following: Nuclear is a relatively old technology, and it has always received significant state subsidies.

*But if a forty years old technology still needs subsidies to remain on the market, it is not economically efficient. It is not even economically independent!*

This is interesting because the main argument against an energy shift to renewables is often an economic one, stating that a full integration of these new technologies is simply too costly, especially in today's economic climate. True, like nuclear, renewables require subsidies. But they are a *new* technology with high potential development and a steep improvement curve, unlike nuclear which has not advanced for decades.

Let us get back to the question of risk insurance. How does one deal with the risk of nuclear energy? The risk must be related to the maximum potential damage in case of an incident. In the case of nuclear, this potential damage is so enormous that the price will

always be too high. Furthermore, the nuclear power plants are operated by dominant market players, and this weakens competition and severely distorts the market.

Nuclear plants produce cheap energy, but the costs of construction, maintenance, waste management, risks and removal costs should also be part of the price tag of nuclear. This would make for an incredibly high and unmarketable end price.

Many argue that nuclear energy is at least a temporary solution, a bridge to renewables if you will. However, energy supply from renewables is volatile, and the power plants to complement this volatile supply have to be *flexible* to fill in the gaps of renewables. Nuclear production is *constant* and is by definition not an energy source that could complement, help or integrate renewables.

Furthermore, on an EU level there is a serious issue of market distortion and competition. Nuclear energy's weakening effect on competition is against EU law. A court case about nuclear and competition issues is currently running in Belgium where a nuclear energy facility wanted to prolong the plant's life span. They were taken to court by another energy producer purely on competition grounds. The plaintiffs are making the case that the nuclear energy plant is weakening the market system and driving up prices by increasing the premium for 3 or 4 other market players.

Some facts argue in favor of nuclear energy. For instance, climate change is not caused by nuclear since the latter emits no CO<sup>2</sup>. But not emitting carbon does not make an energy source clean; nuclear waste is unsustainable in its own unique way. Moreover, the centralized nature of nuclear plants results in a loss during the transportation of energy, making it less cost effective than is often claimed. More decentralized energy production plants would be preferable in the interest of energy efficiency. There are many decentralized alternatives available, intelligent clean solutions such as smart modules, feed-in, storage, decentralized energy production, wind, solar, water, geothermal etc.

A non nuclear market is possible, but more legal instruments and policy are needed to drive us down that road.

**12:00 How to come to social awareness concerning energy-change?**

**Felix Ekardt, University of Rostock, Member of the Scientific council of the BUND (Bund für Umwelt und Naturschutz Deutschland) and Friends of the Earth, Germany**

Without social awareness, large public projects, initiatives and processes tend to fail. Energy and climate change are no exceptions to this. Sustainability in this context means long term solutions for future generations worldwide, and these solutions are linked to energy and climate. Can we say that climate and energy policy has been successful over the past decades, on both an EU and a national (German) level? Policy has certainly set ambitious goals and standards. But has this resulted in tangible results in practice? For instance, have emissions decreased? The answer to this very basic question is: no. In fact, despite our best policy efforts global emissions have *increased* by 40%. Though Germany says emissions have been reduced by 25% since 1990, this figure fails to take some determining factors into account. Take emissions or carbon per capita for instance. If you look at the figures per capita, Germany is actually one of the higher emitters with a whopping 9 ton per person, and is far away from the 1 ton target of the IPCC. Another distortion in emission statistics comes from the relocation of pollution; by producing elsewhere emissions on a national level are decreased, though in reality they simply take place elsewhere and are therefore not reduced (known as the relocation effect or rebound effect). Mr. Ekardt does not believe that the current legal system can and will achieve the emission reductions that are necessary. One flaw in the current approach is the lack of coordination of policies: we have separate legislation for the housing sector, for the automotive industry etc. None of these efforts are harmonized which leads to a fragmented and therefore less efficient system.

When trying to change energy habits and reducing emissions, social awareness of the energy consumer may be the more effective tool. Technical and legal

progress can not succeed without a change in consumer (and producer) behavior vis-à-vis energy use. New technical breakthroughs and legal initiatives can not successfully change our energy system or reduce emissions on their own. They must be accompanied with an increase in social awareness, and a structural change in attitudes and behavior.

If the public is more aware of the consequences of today's energy consumption, the change in overall behavior could trickle down to other parts of life too. For instance increased environmental consciousness could alter food habits; people may consider eating less meat or buying biologically produced goods.

One can argue that the change towards a sustainable society is already on the way. The Greens are gaining political momentum, and climate and energy concerns feature high on the agenda of governments, organizations and companies worldwide. However, the change is taking place too slowly, and no significant energy change has actually occurred yet. Why is that? There appears to be a vicious circle between the public and governments, where politicians do not act since the public does not seem concerned and voters do not act out of complacency and lack of information.

Factors that come into play here are human egoism and conformity; this notion of normality where the way things are is accepted as status quo, and any change to the current state of affairs is an effort and a potential risk. Politicians do not want to be voted out of office for implementing tough new climate policies and constraints, and voters are hesitant to change their behavior. The result is an inevitable back and forth between policy and society, and which one should or will start the other.

What would a better climate and energy policy look like? Mr. Ekardt suggests to change the basis of EU climate policy to use the current ETS (emissions trading system) transforming it into an abstract ETS on primary energy with serious goals. In addition to that, he suggests conventional energy plants be given no more subsidies.

**12:30: Support schemes in the electricity feed-in law of 1990 and the renewable energy laws of 2000**

**Dr. Martin Altrock, lawyer, Becker Büttner Held**

Development of renewable energy in Germany is progressing quickly, and legislation on the matter goes into great detail regarding regulation, production and consumption. The relevant legal basis for renewable energy took shape around 1997. Energy production from biomass, wind and solar has increased significantly since then. In 1990 only 3 % of all electricity was renewable, now this figure has risen to 17%. The system of feed-in tariffs used in Germany greatly contributed to the successful expansion of renewables. The certificate system used in the UK and in Poland is also showing promising results. Under the latter scheme, a *producer* must include a certain amount of renewable energy in his portfolio. The feed-in tariffs (or FITs) oblige *grid operators* to give grid access to renewable energy producers who want to feed their electricity into the grid, and to pay them a set amount of money. Practice has shown that countries with a certificate system spend more per kWh of wind energy (for instance) than countries with a FIT system. The certificate system is designed for large quantities of energy production, which is a significant up-front financial investment and responsibility for many who are interested in producing renewable energy. FITs are designed to support small-scale production of renewable energy as well, which makes the tariffs a more accessible, widespread and decentralized option. Moreover under the FIT system, grid operators are also obliged to optimize, boost and expand their grid systems to allow for the regular feed-in of renewables. This results in an overall improvement of energy infrastructure. Finally there is a long-term tariff for renewable energy producers, which provides investors with security on investment.

As mentioned before, the legal framework of this development started in the 90s but lacked a differentiation between the different types of sources of renewable energy for a long time. The EU directive on the energy market liberalization led to a major amendment in 1998, in which the target group was defined more precisely. It allowed for the first legal claim on grid operators, obliging them to provide grid connection to renewable energy producers. The EEG (Renewable Energy Law or Erneuerbare Energien Gesetz) of 2000 went to a very high degree of regulation, enforcing a minimum price, FITs and a distinction between the different renewable sources. The

Biomass ordinance which was implemented in 2001 directly led to a sharp increase in energy generation from biomass, clearly indicating the fundamental make-or-break role legislation play in renewable energy development and in sustainable development in general.

However sophisticated the legislation is, there remains room for improvement. For instance, the current framework lacks an equalization scheme especially targeting the industry, right now each user (normal end consumers) is now paying more for electricity out of the EEG.

### III) The Conditions for Energy Change in Poland

#### 14:00 The legislative nuclear package in Poland

**Maciej Szambelancyk, lawyer WKB, Warsaw and Poznon, Polish partner firm to the AEEC (Associated European Energy Consultants)**

Coal and lignite are the cornerstones of Polish energy supply. Poland is therefore strongly affected by the CO<sub>2</sub> reduction legislation and schemes imposed by the EU. In Poland, energy demand is forecasted to grow by at least 25% over the coming decades; at the same time old energy plants and installations are approaching their expiration date. Bridging the gap between demand and supply will require huge investments, and renewable energy can not fill the gap in its current state of development. Renewable energy could be part of the solution though, and its potential in Poland needs to be examined in more detail.

Against the background of rising demand and decreasing supply, the Polish government is now considering an increased use of nuclear in their energy matrix with the construction of their first nuclear plant. The Polish Nuclear Power Program is now being formed, but since it is subject to multiple EU laws and rules it is a very slow process and far from being completed. The nuclear program lays out a detailed plan and time-table for the construction and subsequent running of a nuclear power plant in Poland. By 2030, about 15% of Polish energy will be coming from nuclear. Prospective sites for the reactor are currently being reviewed. The possible interaction between the nuclear plants and the environment are being considered here. The legislative package (on

which Maciej's law firm WKB worked) consists of 2 major legal acts:

- 1) The Act on preparing and accomplishing investments within nuclear power facilities.
- 2) The Atomic Law (amending act which implements the 2009/71/Euratom Directive).

The Key Decision or Master Decision is the final piece of the application that is needed to legally construct and run a nuclear power plant. It sets forth the conditions the investor must comply with to obtain a permit for the construction of a plant. This Key Decision is issued to the investor under very strict circumstances, and the granting process can be very long. Not many investors are keen on keeping millions of Euros on their account without a date or an insurance that the plant will be granted permission to operate. Polish public opinion is split in two. Recent polls show about 40% of Poles against, about 40% in favor and 20% undecided. Generally, the population is integrated into the debate through questionnaires and environmental studies.

### **15:00 Position of the greens on nuclear and renewables in Poland**

**Ewa, Green Party**

Ewa is a member of Polish parliament (joined in fall 2010) from the Green Party. The entry of the Greens into local administration was an exceptional development. She worked in the energy sector (masters in electrical engineering from the technical university). With the change of the political climate in Poland in 1989, Ewa started a private insurance company as a job on the side, while remaining focused on the social movement and ecological and energy issues.

The renewable energy sector faces several problems in Poland. Though the overall view may look promising, a close look at the figures reveals a more negative development, especially when the country's future nuclear energy plants are taken into consideration. Building or expanding nuclear facilities is a rather controversial idea these days, however in Poland the topic did not yield a big public discussion at all. These matters lack transparency and tend to stay internal to the energy sector and the relevant authori-

ties, resulting in public misinformation (or no information at all) and an overall lack of awareness.

West Pomerania produces 30% percent of all the energy of Poland. Of this 30% share, only 10% is renewable. The current monopolies on the electricity and automotive markets constitute a major constraint to the development of renewable energy. Legal support for renewable development exists, but lacks effectiveness, coordination and depth. There are EU funds available especially for the development of renewables in a context such as Poland's, but the application process is very heavy in terms of administration and complexity. Naturally, this holds back development even more. As a result the projects that successfully went through the procedure and were implemented were well-prepared and large. The smaller decentralized structure in Germany is quite on the other side of the spectrum. Municipal, local or regional development plans often do not address the question of energy in general and tend to overlook renewables entirely. This lack of planning affects the execution of renewable projects; from planning a wind park to actually starting to build one, 5 years can easily pass. This is the result of the monopoly of big players on the energy market. Their rigidity and dominance caused the government to neglect the potential and promotion of renewable energy and clean technologies.

The Green Party in Poland now faces the challenge of proposing solutions to the energy question under very limiting, sometimes almost impossible circumstances. Both in legal and financial terms, the country is not entirely capable of moving away from coal. The option gas would involve an increase dependence on Russia. History and recent trade disputes indicate that the Polish public probably prefers nuclear energy over Russian gas.

Discussion platform

Next steps - The knowledge-based society

Prof. Michael Rodi

Prof. Pasquele Policastro

Dr. Peter Becker

Mr. Policastro explains that the Polish industrial and societal system was a complex one, since all sectors (energy, industry etc.) were governed by different

rules principles. One could say that national principles tended to become mere guidelines, and were generally overruled by sectoral principles. This legislative segregation could have a negative effect on European integration.

Either way, we are standing at the crossroads of energy productions. Coal must be replaced. We should see this inevitable imminent shift as an opportunity to create jobs and a sustainable energy system at the same time.

Prof. Rodi argues that a bottom-up approach is more effective and could help ease the transition. However, the structure of our society has complicated an effective bottom-up approach. Through legal and political order as well as the democratic nature of our society, the approval and participation of many different stakeholders is required for any new process to be accepted, ranging from business and academic to governmental and societal. Briefly reminiscing about

his reform projects in Vietnam, Mr Rodi mentions that this type of problem rarely arises in authoritarian states.

Since the treaty of Lisbon, the EU has an energy competence (though it is more of a relocation of competence than the creation of new ones), indicating a movement in the right direction on that level too. Another bottom up approach might help to identify new ways of fostering this development through projects and research in the field of energy and the environment.

All participants and speakers agreed that regular international briefings such as this conference make a valuable contribution to the global debate on nuclear energy. The expertise and information that was exchanged should be made available to a wider audience to raise awareness and foster the discussion. The meeting was concluded with a brief round of audience participation, and ended at 17:30.

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## Energy Change in Poland - A Conference Report

**By Peter Becker**

On May 13 and on June 29, 2011 Poland has adopted a „nuclear package“: A law in addition to the nuclear law and a law on preparation and guidance of investments in nuclear power plants – a few weeks after Fukushima; Occasion for a conference, which shall examine the possibilities of a change of the energy policy based on the German model. This conference took place on September 23/24 in the Faculty of Law on the University of Stettin. The organizer was Prof. Pasquale Policastro, an Italian scientist who lives and teaches in Stettin since many years. The Institute for Climate Change, Energy and Mobility (IKEM) with its very active chief Prof. Michael Rodi, the German section of the International Association of Lawyers Against Nuclear Arms (IALANA) and the lawyers office Becker Büttner Held, BBH were also involved.

The conference had set itself the task to make an appraisal on the one hand of the stations of the change of the energy policy in Germany culminating in the big law package from June 30, 2011 and on the

other hand of the interpretation of the polish energy supply and the conditions for the new introduction (!) of nuclear energy production and the prospects for renewable energy. According to this, experts from both countries presented the different conditions.

Reiner Braun the long term chief executive officer of the Federation of German Scientists (FGS/VDW), current chief executive officer of the German and the international IALANA, as well as peace activist since many years, presented illustrative the development of the German protest movement based on its stations (development of the anti-nuclear-plant-movement, founding of the party “The Greens” in the 1980’s, Gorleben, Brokdorf etc.).

The conference rapporteur clarified the development of the nuclear energy production in the USA after the dropping of the atomic bomb on Hiroshima and Nagasaki, Eisenhowers legendary speech to the General Assembly of the United Nations in 1953 with the programmatic announcement „atoms for peace“ and the enforcement of the nuclear energy production by

the American government right up to the threat to deny the energy companies the reliability if they should not be willing to produce nuclear energy. And that was necessary, because assessments had pointed to, that nuclear power plants were much more expensive than its fossil competition. In Germany the situation was similar. The RWE-Company had calculated the costs of the nuclear energy production and had come to a disastrous result: the German government had to launch a subsidy programme that made especially the nuclear research to a state task and assigned the risks of serious accidents and the unsolved problem of the final disposal to the state. Optimistically assessments from the USA (Rasmussen-Report), that revealed a probability of occurrence of 1:1.000.000 for the bursting of the reactor pressure vessel, facilitated the enforcement of the construction of power plants because serious accidents appeared at most as a “residual risk”. Although in the past there had already been several serious accidents with core melt-down that mostly had been concealed.

It is thanks to the rise of the green party and the take-over of the nuclear watch, first in Hessen and then in the German federation, that nuclear critical positions dominated the supervisory activity – right up to the „ausstiegsorientierten Gesetzesvollzug“ - phase-out orientated law enforcement - (Sandler), through safety oriented restrictions. This motivated the companies to look for an arrangement with the state. The consideration that the state secretary, Rainer Baake demanded was the nuclear phase out. The result was the so-called nuclear consensus 2000 and then the law to phase out nuclear power 2002. The rest is known: The lifetime extension in autumn 2010 and the phase out after the Fukushima-disaster that only took a few weeks.

According to Reiner Braun every country has to find its own way of resistance against nuclear energy. But there are “lessons learned”, such as: the necessity of patience and persistence and the local, national and international connection. The movement has to retain its independency from parties and big organizations. Furthermore the variety, colorfulness but also radicalism of protest forms that indispensable have to be non-violent. Also important is the struggle for societal majorities that is expressed in Gramscis term of hegemony. In this regard it is necessary to win scien-

tific and the legal sphere in order to isolate the proponents of nuclear energy in society. Likewise it is important to politicize large parts of the people, mass actions are indispensable.

The BBH-Lawyer Roman Ringwald, who likewise represented the interests of the federal states that were against the lifetime extension in the federal constitutional court, had prosaically asked the „questions of Fukushima“ in a massive applauded article: how was it possible that a democratic state with high developed technology had to suffer such an accident? This leads to the question who bears the risks for these kind of accidents, because there is no private insurance that covers the possible damages. Thereto Nobel prize laureate Josef Stiglitz: „When others bear the costs of mistakes, it leads to self-service. A system that socializes losses and privatizes profits leads inevitably to mismanagement of risks“. As known the reactions differ: Germany and Switzerland phase out, Austria and Italy did not admit nuclear power plants from the outset. Whereas France recently decided a lifetime extension. Great Britain discusses feed-in compensations and Poland decides to phase in the civil use....

How should society deal with the risks of the production of nuclear energy? You can approach the topic in categorically terms but you can also argue gradualistically. But the problem of any approach is, that only big monopolistic companies can take on the management of power plants. The consequence has always been the weakening of the competition. Not a single power plant could get along without subsidies. And now, nuclear energy and the energy from the renewables fight against each other.

A nuclear-free world faces us with challenges. Because one must prevent the climate change and protect the environment at the same time. The security of supply has to be guaranteed. Competition and economic efficiency are essential. And the social aspect of the undertaking: who pays the bill? After revealing new approaches therefor, Ringwald again reflected the change that occurred through Fukushima. According to him, a nuclear free world is possible. Energy policies need market design. If this would be accepted a great chance is offered. Professor Felix

Ekardt from Rostock, who likewise leads a research group on sustainability and climate policy, faced the topic how societal awareness for the change of energy policy can be raised with critical questions: according to him the nuclear question is basically secondary important for the climate-debate. The use of energy amounts worldwide only to 17 percent of the whole energy consumption. From this, the part of nuclear produced energy amounts only to 3 percent. If one would really want to achieve a change, it is not only a technical question. Crucial for this is the change of lifestyle. That applies also for Germany, which is far from achieving the enormous successes, as often depicted. While the international world climate panel has demanded an 80-percent reduction of greenhouse gas emissions compared to 1990, the emissions have risen by 40 percent. Germany has only achieved a reduction of 25 percent. To reach the intended high reductions, a reduction of the energy consumption is necessary above all.

What means societal awareness? We all stuck in vicious circles that are hallmarked by conformity, emotions, egoism, traditional values such as increase of the gross national product, technical/economic path dependency and the problem of collective goods. And – this shows the history of the communism – you can't entirely change people. This means that we need a meshing of better political and social standards. Necessary is a step-by-step-strategy to escape the vicious circle. Accordingly, it does not only depend on political demands, rather political decisions are necessary. For that reason a worldwide value discussion is needed. The usual "Environment manager" in politics, in companies and in the scientific community are first steps. Rather essential are reliable role models. By reference to the development steps of the legislation on renewable energy (from the law on the sale of electricity to the grid via the EEG 2000, the novel 2004 and finally the EEG 2012), Martin Altrock, experienced EEG-commentator, showed up how the legislature enacts steps in development. An important station was the step towards a cost-covering feed-in compensation. Another step was the biomass ordinance 2001, that resulted in the fact that today biomass and wind contribute circa the same to the 20-percent amount that the renewable energy makes up from the energy production today. With the EEG 2009 a high increase of biomass came

along. According to Altrock, the EEG 2012 has the objective to induce the market maturity of renewable energy, certainly with high complex regulations.

In contrast Poland shows a completely different promotion. Instead of fix feed-in compensations there is a certification system: Only well-capitalized vendors get a chance. Effectively only the two big north- and south energy companies can provide promising – but they are not interested in doing so.

Altrocks hint provoked a discussion on the conditions of the climate change. Prof. Rodi pointed out that societal movements are not enough. Especially in case of the launch of renewable energy legal measures are indispensable. These have to be targeted and effective and have to pay attention to the societal frameworks. In so far the situation in Poland – with a legislation that is not interested in an energy change – is decidedly difficult, according to Altrock. This was a keyword for Pasquale Policastro, who described the depressing seeming situation of energy supply in Poland: During the socialism the variety of energy suppliers had nearly disappeared. There are particularly a big north- and a big south energy supplier, that are responsible for the production of electric energy and heat; anyway a cogeneration of heat and power. Poland has championed the national energy self-sufficiency and therefore relies on hard- and brown coal. In any case Poland does not want to depend on Russian natural gas; therefore the "North stream-Pipeline" was fought. The "nuclear-package" should be viewed as attempt to protect the national independence. The lawyer Maciej Szambelańczyk from the office Wierciński Kwieciński Baehr, Warsaw and Posen, polish partner of the Associated European Energy Consultants (AEEC), introduced the recently resolved „nuclear package“. For the energy production brown coal (35.6%) and hard coal (55.6%) are crucially important. The industrial own generation amounts to 5.2%. The share of gas is only 2.6% and the share of the renewables is only 2%.

This situation needs to be fundamentally changed. A strong driver is the demand for electric energy, that will rise from 141TWh in 2010 to 217.4 TWh in 2030 and the wattage from 35MW in 2008 to 52 MW. Intended is a reduction of the coal share to 57% by then. The amount of gas, including the domestic Shelf-Gas, should be 18.8%, the amount of nuclear

energy 15.7% and the amount of the renewables 8.6%

The “nuclear package” was decided with a resolution of the government in the beginning of 2009. At least two nuclear power plants should be built, from which one should be connected to the power grid till 2020. For this purpose a step-by-step plan was prepared. 28 potential locations should be examined, spread over the whole country. On May 13 and on June 29, 2011 the important legal decisions were made. The government had not preassigned special investors and producers. The decision-making process on site should get involved in the decision. This Voivods defined the technical requirements for the investment. Afterwards a tender followed. After the acceptance of a bid, licenses for the construction, that covered the nuclear safety, the radiation protection, the protection of the object and the preparations for the decommissioning, should be issued. This decision should be contestable within 30 days. But a referendum on the admission of a power plant on site on national or local level should be illegitimate. Anyway the people on site should have the right to get informed. Furthermore the Profit should be shared with the councils. But from this profit an accrual for the decommissioning costs should be deducted in advance.

In the discussion, it appeared that yet there had been no determination on the type of reactor, the investor, the designer and the operator. The responsibility for the waste should lie at the state. Neighbor lawsuits should be undue. For the liability and its limits one would orientate towards European standards. Open was the question if the legal protection should be extended to the constitutional law.

The representative of the Greens in the regional parliament Ewa Kós, former electronic engineer, then lecturer on the technical university and thus indeed expert, lamented „many lies“ in the societal dispute

and a lot of problems in the sector of legislation. Even if wind has a great importance in the coast region of Stettin - the amount on the total production is already 10% - the situation elsewhere is completely different: The big problem are the monopolies in the production, in transport and in the trade sector. Moreover there are legal, financial and organizational problems. According to Ewa Kós, the big companies are given preference.

Basically there are only two societal movements in favor of the renewables: these are the Greens on the one hand and the associations of the renewables on the other. For the Greens it is extremely difficult: they are a young political movement. They are not represented in the national Sejm yet. The financial situation of the party activists is wretched; they depend almost exclusively on private funding. In order to achieve anything, activities on all societal and political levels that fight against nuclear energy production on the one hand and for renewable energy on the other, are necessary. However, the media are very interested in the topic. The author of this report can confirm this. He had the opportunity to give an interview at the conference (in English).

The discussion was insightful: The passive conference participant's emphasized consistent that they had never before heard about the topics discussed in the conference, that were new and interesting for all of them. Conclusion: The topic has to be propagated in another way. Furthermore all speakers agreed that the crucial effect of the conference is the exchange between Polish and German experiences. The organizers decided: there has to be a following conference, where the few municipal utilities have to be involved. Besides, a following conference in Moscow, which will be hosted by Prof. Mark Entin in the Moscow State Institute for European studies, is under way.

## Climate Change, Economy, Law and Society – interactions in the Baltic Sea Region (CCELSI BSR) 2012

By Pasquale PolICASTRO

On **may 17th to 20th** will take place in Szczecin an interdisciplinary conference on "**Climate Change, Economy, Law and Society - interactions in the Baltic Sea Region (CCELSI BSR), 2012**."

The conference will be organized by Szczecin University, as a common endeavor of the Faculty of Economic Sciences and Management, of the Faculty of Law and Administration, of the Faculty of Management and Economics of Services, of the Faculty of Earth Sciences.

The conference aims to continue the cycle of conferences "Climate Change and we?", as well as "Ethical Economy" started in Szczecin, in September 2011. In particular the legal section will be a continuation of the conference which took place in Szczecin on September 2011 on "The New Paradigm of Law and Energy Policy", which was organized in co-operation between IALANA and the Faculty of Law and Administration of Szczecin University. The May event will be followed by a conference in Russia, to be held on November 8-11, and which will be also developed through a co-operation between MGIMO University of Moscow, Szczecin University and IALANA.

At the beginning of the conference there will be a round table where we aim to gather exponents of the moral, political, economic and social world, including churches and NGO's, for a common reflection and an appeal for a sustainable energy policy.

The legal section aims to gather specialists of different legal branches who will try to consider the issues of climate changes from different perspective. The issues of renewable energy are expected to play a major role. They will be approached from the point of view of the international relation, of peace and nuclear disarmament issues, from the point of view of European Union law, and more in general from the perspective of constitutional law, environmental law, administrative law, private and company law. Furthermore, we aim to develop a dialogue with the Stadtwerke companies and with the companies sup-

porting ethical business. Last but not least we aim to develop, also within the legal section a dialogue with the civil society, especially of the regions in the Baltic area.

### Avant-Propos of the conference and for its follow-up

A very important problem for contemporary societies is the reduction of the dependence for the global economic factors, without in the same time hindering the development of balanced economic relations between the world regions. This requires the global economic flows of goods, of investments, of services and of capitals to take place within societies, which are capable to a significant extent to self-sustain their development.

Economic, social and political development are strictly related. A self-sustained development permits to generate a significative quantity of the added value needed to local development by the local actors. Therefore a self-sustained development, already prima facie, appears to have a key role for the development of the civil society

The choice of a self-sustained development depends on the evidence of the impact of such a model on environment on economics, on climate and resources, on society and on politics. For this reason renewable energies, university and the legal profession are to be seen as three main pillars of the sustainable and self-sustained economy. We would like to show indeed is that the impact of the renewable energies on the economic process may permit:

I) Strengthening local economies and local producers.

The development of renewable energy may:

- a) transfer the benefits developed within the wide energy production sector and from the economy at large to the local economies, with a permanent and growing benefit;
- b) increase the degree of research and innovation and broaden the number of research and technological institutions dealing with theoretical and practical research;

- c) increase both the number of companies dealing with production in the region and the purpose, stemming from household sustainability to advanced communication services providers;
- d) increasing the role and the function of the municipal providers;
- e) improving the self-sustainable characteristics of the economy and its environmental impact.

II) Improving the social structure and the social connections. The development of renewable energies will require:

- a) more skilled labour force for civil building, which will carry by itself the need of further schooling, with positive effect on the training and the employment of teachers;
- b) the development of communal enterprises will have a significant impact on the employment and on the needs of training of the civil servants;
- c) the development of the energy on the territory will stimulate the development of equipment companies, and, mediately, local research and innovation;

- d) the development of energy on a local base will influence in general the diminishment of the degree of concentration of the enterprises with much benefit for the development of local services;
- e) in particular management and legal services may become the thread for the reconstruction of a balanced and active civil society.

III) A new potential for the political and social dialogue at national and supranational level. As a consequence of the self-sustained and sustainable development supported by the transformation of energy structure, there will develop an intellectual and civil potential in the local societies. The development of such potential, may be supported by:

- a) an active involvement of the intellectual professions, starting from the legal professions, which may be supported by national and supranational networking;
- b) the development of university programs, of university research, at national and supranational level.

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## Final Declaration - Afghanistan Conference in Bonn 2011

We - members of the peace movement and anti-war activists from 17 countries - demand in a »Bonn Declaration« the complete withdrawal of troops from Afghanistan.

After more than 30 years of war in long-suffering Afghanistan, an immediate, if necessary even unilateral ceasefire, and withdrawal of all deployed troops from Afghanistan is a vital requirement for peace and a self-determined, proper, independent path to development. Freedom, democracy and self-determination in Afghanistan are only possible without occupation by foreign troops and their support of warlords and authoritarian structures. The Afghan people must be empowered to decide independently and without interference on the development path that they wish to take. Help people help themselves is of fundamental importance - in accordance with the requirements for and goals of a democratically elected government - and must be initiated at grassroots level. As billions of Euros were squandered thanks to the war, appro-

priately large sums have to be provided by the intervening countries to rebuild Afghanistan and foster sustainable peace.

The 90 governments meeting at the conference in Petersburg on December 5, 2011 effectively negotiate prolonging the war. Instead of bringing peace, it serves to legitimize the continued war in Afghanistan. Troop withdrawal is not on the agenda of NATO; the stationed forces will be slightly reduced only. 25,000 combat troops will remain deployed to least five bases in Afghanistan until the year 2024.

The leaders talk about peace,

- and intensify the war with drones and its regional expansion;
- and continue the war with intervention forces for at least another three years;
- and arm Afghan mercenaries against their own people;

- and mean the exploitation of Afghanistan's natural resources and the protection of their respective transport routes;

because the war-weary public at home needs to be pacified and economic constraints restrict them.

History teaches us that global economic and financial crises spark wars. We oppose war on principle. War exacerbates problems; war does not solve them. Discussions and negotiations, as well as peaceful conflict resolution are indispensable. Therefore, we also strongly oppose and condemn any military action against Iran.

Human rights cannot be achieved through and in war. War is the permanent violation of the basic human right to life, liberty and security of person. Human

rights require democracy and development, both is only possible in peace, be it in Afghanistan, Libya or Iran.

Wars are waged by people, thus people can end them and obviate them. Peace is not everything, but everything is nothing without peace.

The peace and anti-war movement has sent out a strong message in Bonn against the war in Afghanistan: Peace must be fought for, everywhere.

Peace needs movement and staying power—rest assured that we have both.

Bonn, December 3, 2011

[www.afghanistanprotest.de](http://www.afghanistanprotest.de)



## Struggle against the Accident of the Fukushima Nuclear Power Plant —Nuclear Weapons and Nuclear Energy: Distant and close Relation—

By Kenichi Ohkubo (Yaeka Inoue Trans.)

### *Essence of the problem*

On August 6, 1945, the former US President Truman made a statement soon after the first atomic bomb was dropped on Hiroshima. In the statement he described the nuclear energy as “the basic power of the universe.” In other words he described it as “the force from which the sun draws its power.” He understood accurately the feature of the nuclear energy. The United States used the nuclear energy for a massacre and indiscriminate destruction. Truman ended the speech as follows: it is not intended to divulge the technical processes of production or all military applications; ... I shall give further consideration as to how atomic power can become a powerful and forceful influence toward the maintenance of world peace.

65 years have passed since then. The accident of the Fukushima Nuclear Power Plant transformed as many as 140,000 residents in the “no-entry zones,” “planned evacuation zones,” or “emergency evacuation preparation zones” into “nuclear refugees,” and caused “new Hibakusha”: workers, civil servants, and local residents. The environmental pollution such as the air, soil, and ocean, is spreading beyond prediction. The extensity, eternity and unpredictability of this damage are very “abnormal” compared with other natural disasters.

Of course I should avoid mentioning the damage of the nuclear accident and that of the atomic bombing in parallel as a person who knows the overwhelming misery of the latter. When we witness the extensity, eternity and unpredictability of the damage of the accident of the nuclear power plant, however, I believe that we need to be aware of the common inhumanity and injustice of both damages. Both of them resemble each other because they bring about uncontrollable disasters.

On the other hand, in the field of current law, nuclear weapons and nuclear power generation are supposed to be completely different and placed far from each other as you see below. We need to take measures after understanding this “distant and close relation” between nuclear weapons and nuclear power plants.

### *Legal status of nuclear weapons*

The Nuclear Non-Proliferation Treaty (NPT) prohibits non-nuclear-weapon states from possessing nuclear weapons. The 1996 Advisory Opinion of the International Court of Justice concluded that the threat or use of nuclear weapons would “generally be illegal” apart from an extreme circumstance of self-defense, in which the very survival of a State would be at stake, although there is an opinion that it would be “absolutely illegal” under any circumstances. Additionally the Court declared that nuclear-weapon-states have an obligation to pursue in good faith and bring to a conclusion negotiation leading to nuclear disarmament.

At the 2010 NPT Review Conference, the State Parties agreed to establish a “legal framework” such as a “Nuclear Weapons Convention” toward a “world free of nuclear weapons” based on a political will to pursue it.

In the international community nuclear weapons are losing their “legality” despite the strong resistance of “nuclear deterrence” on the premise that it has political and military effectiveness.

The Japanese government is also against the proliferation of nuclear weapons although they depend on the nuclear deterrence of the United States.

### *Legal status of nuclear power generation*

On the other hand, the “peaceful use of nuclear energy” (of course including the nuclear power generation) is the inalienable right of the State Parties to the NPT (Art.□). The “Convention on Nuclear Safety” also assumes that it is possible to assure safety of use of nuclear energy as the contracting parties are “aware of the importance to the international community of ensuring that the use of nuclear energy is safe, well regulated and environmentally sound” (Preamble). Nuclear power plants are “different” from nuclear weapons, and their possession and use are “inalienable rights” and they are actually proliferating.

Our Government has not only promoted the “peaceful use of nuclear energy” as a national policy

but still hesitates to abandon the policy even though they witnessed the fact of this nuclear accident. You will easily understand that there is a shady relationship between the strength supporting the “rule of power” that depends on nuclear weapons and the electric power capitals whose mission is profit seeking on the background.

### ***Objection to the logics to promote nuclear power generation***

In such a situation, more and more nuclear power plants have been constructed with catch-phrases such as “stable provision of electricity,” “environmental protection,” and “economic efficiency,” ignoring their danger. Moreover, they are still operating. In order to stop the nuclear power generation, we must not only reveal the falseness of such catch-phrases but also bring its danger to light and deprive it of its “legal status.”

Regarding the “stable provision of electricity,” we need to develop non-nuclear energy and consider some ways of use of electric energy. Concerning the environment of the earth, an advance of renewable energy will be requisite. When it comes to “economic efficiency,” you need to take into account the “cost” for accident recovery.

Concerning the danger, we should consider not only its own danger of nuclear energy including waste disposal but also geological and geopolitical problems. Although Japanese Government may have been eager in preventing proliferation of nuclear weapons to terrorists, they had quite poor consciousness on these kinds of danger.

The accident of the nuclear power plant illustrated the fact that human beings have not yet acquired adequate knowledge or technology to control nuclear energy. Sincere technologists of nuclear energy cannot help admitting their “defeat.” No one could say that the Japanese Archipelago is free from earthquake or tsunami. Of course there is no reason to challenge such impossibility.

In the end, we are required to abandon the dependence on nuclear power generation.

### ***Deprivation of the “legal status”***

The problem is the “legal status” of nuclear power generation. As the peaceful use of nuclear energy is the “inalienable right” of each State under the international law, one cannot ask another to abandon it. Nevertheless, our country can determine with our national will if we abandon the right. A national will would be created by a will of the citizens, who are sovereigns. The matter is how to enlighten the sovereigns.

First, we need to watch the plain truth, what is happening now by this accident. We must not forget the existence of displaced people, who lost their hometowns, and their local communities were destroyed. They are anxious for their health for many years, and may be put out of the framework of the “Review Panel on Conflicts over Compensation for Damages by Nuclear Power” We must keep our eyes on the health and environmental pollution of the future generation. The use of nuclear energy influences not only the present generation but also the survival, the very base of human rights of the future generation.

When it comes to raising a matter of rule, it would be extremely poor legal theory to pay compensation just for the current damage according to the conventional legal theory. Outside the range of compensation we should watch seriously what this nuclear accident is bringing about to human society and what it is alerting.

This nuclear accident is bringing about in humane, unfair, and unjust damage beyond any doubt. There are humanity, fairness, and justice on the foundation of law. Because a nuclear accident invades these values, we should not force resignation on the victims but deprive nuclear power generation of its “legal status.”

Nuclear weapons are becoming “outlaws” because they are incompatible with “humanity and justice.” A call for the abolition of nuclear weapons and that for the discontinuance of nuclear power plants share the common value and rule of human beings on the bottom.

June 22, 2011

## NUCLEAR ABOLISHEN FORUM

### Dialogue on the Process to Achieve and Sustain a Nuclear Weapons Free World

New York, 21 October 2011

The *Nuclear Abolition Forum: Dialogue on the Process to Achieve and Sustain a Nuclear Weapons Free World* was launched at the Baha'i UN Office today, alongside the release of the inaugural edition of the Forum's periodic magazine.

The Forum is a joint project of eight leading organizations, Albert Schweitzer Institute, Global Security Institute (GSI), International Association of Lawyers Against Nuclear Arms (IALANA), International Network of Engineers and Scientists Against Proliferation (INESAP), International Physicians for the Prevention of Nuclear War (IPPNW), Middle Powers Initiative (MPI), Pugwash (Canada and Denmark branches) and the World Future Council (WFC). An additional sixty-four disarmament experts serve as consultants. It is hosted by the WFC's London Office.

The Forum consists of a dedicated website for posting articles and discussing key nuclear abolition aspects and initiatives, and a periodical (available in hardcopy and as online PDF), which will focus on specific issues and elements (technical, legal, institutional and political) for achieving and sustaining a world free of nuclear weapons. The inaugural issue of the magazine has as its theme the **application of International Humanitarian Law to nuclear weapons** and comprises articles from a range of experts. Please click [www.abolitionforum.org](http://www.abolitionforum.org) to download the pdf. Hard-copies are available from the UN Office of the Lawyers Committee on Nuclear Arms and the London Office of the World Future Council. Donations to cover postage and packaging are appreciated.

In his opening remarks at the launch event, the United Nations High Representative for Disarmament Affairs, Sergio Duarte, highlighted the appropriateness of the Forum's first issue to focus on the application of international humanitarian law to nuclear weapons. "Victor Hugo once wrote that „You can resist an invading army; you cannot resist an idea whose time has come"—and IHL surely represents one of those ideas," Ambassador Duarte remarked.

He went on to "welcome the emphasis placed by the architects of the Nuclear Abolition Forum in rekindling and sustaining a dialogue over fundamental questions relating to the achievement of nuclear disarmament," and "commend it not just to all who already support abolition, but to all who still have an open mind to learning about what it has to offer, which is considerable."

Founder of the Nuclear Abolition Forum, Alyn Ware, gave some insight into the rationale behind its establishment. "The vision for a nuclear-weapons-free world has recently been advanced by leaders and high-level officials of key countries, including those possessing nuclear weapons. However, there are many challenges that need to be overcome and questions still to be addressed in order for governments to agree to abolish nuclear weapons. This independent forum provides a space to discuss, explore and find solutions to these issues."

Director of the Forum, Rob van Riet, explained what the Forum entails and how some of its interactive features work. "The Forum essentially does three things: first, it offers information on nuclear abolition-related issues; second, it provides a platform for users to share their thoughts on such issues; and third, it facilitates and fosters debate on some of these issues." Mr. van Riet explained how next to the website, each edition of the Forum's periodical will focus on a specific issue, the rationale behind this approach being that "edition-by-edition such key nuclear abolition aspects will be examined and critiqued, thereby paving the way for building the framework for achieving and sustaining a nuclear weapon-free world."

John Burroughs of the Lawyers Committee on Nuclear Policy, who was Expert Editor for the inaugural issue, took the audience through the edition and noted how a focus on international humanitarian law can help move the debate "from national security to human and environmental security, from military re-

quirements and doctrines to effects on human beings, their societies, and their environments, and from controlling the weapons to abolishing them.” In addition, he underlined the political opening for making progress on advancing such humanitarian approaches to nuclear disarmament, noting the Final Document of the 2010 Nuclear Non-Proliferation Treaty Review Conference, which declared that the Conference “*expresses its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons, and reaffirms the need for all states at all times to comply with applicable international law, including*

*international humanitarian law.*”

Finally, Reto Wollenmann, Counsellor at the Swiss Mission to the UN in Geneva, talked about how governments could benefit from having an independent forum devoted to fleshing out key aspects to nuclear abolition. He highlighted the importance of governments and civil society working together on advancing nuclear disarmament and expressed the hope that the Forum could facilitate such cooperation. Mr. Wollenmann noted to the readiness of the Swiss government to partake in the Forum.

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## **IALANA Quadrennial Report, 2007-2010, to ECOSOC**

**By John Burroughs, September 13, 2011**

### **Introduction**

The International Association of Lawyers Against Nuclear Arms (IALANA) was granted Special Consultative Status in 1995. IALANA has affiliates in New Zealand, Canada, Germany, Italy, Japan, Netherlands, Norway, Poland, Sri Lanka, Sweden and United States of America. IALANA has individual members in Costa Rica, India, Russian Federation, South Africa, Spain and the United Kingdom, as well as contacts with individuals in countries worldwide.

### **Aims and purposes of the organization**

IALANA works for global elimination of nuclear arms, strengthening of international law, and development of effective mechanisms for the peaceful settlement of international disputes.

### **Significant changes in the organization**

None

### **Yours contribution on the work of the United Nations**

In 2007, IALANA and other organizations released a revised Model Nuclear Weapons Convention (A/62/650), updating the original document released in 1997 (A/C.1/52/7). At the request of Costa Rica and Malaysia (A/62/650), the Secretary General circulated the revised model to Member States. It is contained, and explained in the book *Securing Our Survival* (2007). IALANA has also advised regard-

ing, and supported, the annual General Assembly resolution calling for commencement of negotiations leading to the early conclusion of a convention (A/RES/65/76). Additionally, on 7 May 2009, at a Non-Proliferation Treaty (NPT) side-event, IALANA and the International Human Rights Clinic at Harvard Law School released the publication “Good Faith Negotiations Leading to the Total Elimination of Nuclear Weapons”.

### **Your participation in the fora of the United Nations**

1) IALANA has monitored, reported, and advocated regarding every session of the First Committee of the United Nations General Assembly held from 2007 to 2010, including through contributions to a weekly publication, Reaching Critical Will’s First Committee Monitor, and the organization of side-events.

2) IALANA has advocated, reported, and made comments to the media regarding Security Council meetings and actions in the field of nuclear non-proliferation and disarmament, notably regarding resolution 1887 adopted at the September 2009 Security Council Summit. IALANA subsequently prepared a briefing paper for the Middle Powers Initiative (an international civil society coalition) analyzing the Summit.

3) IALANA has monitored, reported and advocated regarding every NPT review proceeding held from 2007 to 2010, organized numerous side events, and was a planner for and participant in Middle Powers Initiative consultations regarding the NPT review process, for example the January 2010 meeting held at the Carter Center in Atlanta at which the High Representative for Disarmament Affairs was a speaker.

4) IALANA has organized or participated in events held at the Conference on Disarmament in Geneva and by the United Nations Regional Centre for Peace and Disarmament for Asia and The Pacific.

5) IALANA has monitored and organized non-governmental participation with regard to joint meetings of the regional nuclear-weapon-free zones, including the one held just prior to the 2010 NPT Review Conference, on 30 April 2010.

6) Through Global Action to Prevent War, IALANA has monitored, advocated, and reported regarding meetings of the Commission on the Status of Women and the Committee on the Elimination of Discrimination Against Women, and also meetings and negotiations regarding the Arms Trade Treaty and the Small Arms Programme of Action. IALANA is a member of Global Action to Prevent War, and the IALANA UN Office serves as its fiscal sponsor.

### **Your cooperation with United Nations Bodies**

IALANA frequently consults on an informal basis with the United Nations Office for Disarmament Affairs, has representatives of the office speak at events it organizes or co-sponsors, and receives sponsorship by the office for events held at United Nations Headquarters, for example, one held 5 March 2010 entitled “The Non-Proliferation Treaty 40 Years On.” The director of the UN Office spoke to the Secretary-General’s Advisory Board on Disarmament Matters on 26 February 2010.

### **Initiatives taken by the organization in support the millennium development goals**

IALANA has promoted the concept of disarmament for development. For example, the director of its UN office advised regarding the program for the 62nd Annual DPI/NGO Conference, “For Peace and Development: Disarm Now,” held 9-11 September 9-11, 2009 in Mexico City. He also organized a panel, and helped draft the declaration, which recognizes that progress in disarmament and human security “is essential for attaining the Millennium Development Goals.” Global Action to Prevent War, has analyzed the relationship of security, participation of and equity for women, and the achievement of development goals, in “Women’s Participation as a Development Priority,” Monday Developments Magazine, March 2011, and in a statement with other groups submitted to the Commission on the Status of Women, E/CN.6/2011/NGO/49, 6 December 2010.

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## **The Criminality of Nuclear Weapons and Nuclear Energy: From Hiroshima to Fukushima**

**By Kenji Urata**

Key Terms: International Association of Lawyers Against Nuclear Arms (IALANA), public health, crimes against humanity, nuclear energy, weapons of mass destruction, International Atomic Energy Agency, abolition, phase-out, International Law, peace, security.

### **The Two Sides of a Damoclean Sword**

Szczecin, Poland is one hour by car from Berlin’s Tegel Airport, and it is also a stone’s throw from the

Baltic. This June, the General Assembly of the International Association of Lawyers Against Nuclear Arms (IALANA) was held at the University of Szczecin. The current IALANA president is Justice C. G. Weeramantry, who is also the former vice-president of the International Court of Justice (ICJ). In the advisory opinion on the use of nuclear weapons, Weeramantry wrote a dissenting opinion that “the use or threat of use of nuclear weapons is illegal

in any circumstances whatsoever.” He is already world-famous for this.

In his keynote speech at the General Assembly on June 19, Weeramantry said: “Nuclear weapons and nuclear energy are the two sides of a Damoclean sword... The fibers of the threat by which the sword is suspended are being cut one by one through the increasing number of nuclear states, the availability on the internet of knowledge regarding nuclear weapons construction, the availability of materials from the waste of nuclear reactors, and the activities of terrorist organizations who would love to acquire a bomb. The sword of Damocles is being made more dangerous every day.”<sup>[1]</sup>

Weeramantry’s argument firmly pushes aside the prevailing dichotomy that nuclear arms are different from the energy of nuclear reactors. Weeramantry perceives nuclear weapons and nuclear energy — the two pillars of the nuclear age — as being connected, and calls upon people to squarely face the grave problems common to both.

What should form the nucleus of our thinking in our approach to this situation called “from Hiroshima to Fukushima”? After considering this I concluded that it is the concept of the criminality of nuclear weapons and nuclear energy. But one cannot find the concept of nuclear energy criminality in Japan. For example, even the Japan Confederation of A- & H-Bomb Sufferers (Hidankyo) has appealed only to the criminality of nuclear weapons.

### **The Criminality of Possessing and Deploying Nuclear Weapons**

Just after the Berlin Wall fell, the IALANA German office held a convention of experts in Berlin. I too was invited and attended. Francis A. Boyle, a US professor of international law, delivered an address at this meeting, where he advocated his theory that, under the Nuremberg Charter, the atomic bombings of Hiroshima and Nagasaki are war crimes and crimes against humanity.<sup>[2]</sup>

In fact, prior to that time Boyle had already asserted the criminality of not only nuclear weapons use, but also possession. In 1986 he had published his paper “The Relevance of International Law to the ‘Paradox’ of Nuclear Deterrence.”<sup>[3]</sup> The controversy had always been presented in terms of whether it is legal for states to possess nuclear weapons, but we must

note here that nuclear states do not possess nuclear weapons alone. Boyle reframed the issue in the following way. These states “have actively deployed nuclear weapons in enormous numbers and varieties by attaching them to delivery vehicles that are interconnected with sophisticated command, control, communications, and intelligence (C3I) networks. Such nuclear weapons systems are ready for almost instantaneous launch upon immediate notice. Hence the only meaningful question concerns the legality of modern nuclear weapons system as they are currently deployed and programmed for use.”<sup>[4]</sup>

He responded to this question as follows: “The nuclear weapons systems maintained by all the world’s nuclear weapons states, and especially by the two superpowers, are far beyond this stage of mere possession, and have been at the point of deployment and preparation for immediate use in a thermonuclear war for quite some time. As pointed out earlier in this chapter, under the Nuremberg Principles, such planning, preparation and conspiracy to commit crimes against peace, crimes against humanity, war crimes, and genocide, inter alia, constitute international crimes in their own right.”<sup>[5]</sup>

He continued: “Indeed, any international agreement purporting to legalize the possession and deployment of nuclear weapons and their related systems would violate a peremptory norm of international law and thus be void in accordance with article 53 of the 1969 Vienna Convention on the Law of Treaties. If piracy, slavery, armed aggression, crimes against peace, crimes against humanity, war crimes, and genocide are universally considered to violate jus cogens, then a fortiori the threat by the two nuclear superpowers to exterminate the entire human race, coupled with their imminent capacity to do so, must likewise do the same.”<sup>[6]</sup>

His serious doubt is also directed at those who back the abstract proposition that nuclear deterrence is legal. He argues that the US doctrine of nuclear deterrence is illegal, and that its illegality has the effect of encouraging military antagonism by other countries.

### **The Criminality of the Continued Existence and Proliferation of Nuclear Power**

It was Weeramantry who wasted no time in discussing the Fukushima issue from the perspective of

criminality. On March 14, three days after the Fukushima Daiichi accident on March 11, he sent an open letter to the environmental ministers of various countries, stating that the continuance and proliferation of nuclear power not only violate all principles of international law, but also are crimes against future generations.<sup>[7]</sup>

Weeramantry says that each citizen holds the environment in trust. In this respect, those in charge of nuclear power for governments have a special responsibility. The frightening consequences of nuclear power will bring catastrophic damage to future generations. But that's not all. Even though photovoltaic power and other renewables can supply all the energy the world needs, these are to be ignored. Nuclear reactors are terrorist targets. Although the total amount of waste produced by nuclear reactors is immeasurable, there is no way to treat it safely. To continue and expand nuclear power while knowing these things is to continue violating the environmental trust, and to abandon our responsibility to our children and grandchildren. This cannot be justified in the light of any standards of morality or the law. Nuclear power violates all principles of humanitarian law, international law, environmental law, and also international law related to sustainable development. This means that unless government authorities take immediate action to stop the construction of new nuclear power plants, they are committing crimes against future generations while being aware of the danger.

Weeramantry appealed to environmental ministers of all countries to take immediate action.

I was deeply impressed by his view, and moved by his wisdom and courage. I myself advanced the argument that the continued existence and proliferation of nuclear power is also a crime against the current generation.<sup>[8]</sup> I submit that the Japanese government and Tokyo Electric have committed a grave attack against the human dignity of the general public living in the Fukushima area, thereby reducing their quality of life in the extreme and otherwise committing inhumane acts against them. Although they may try to exonerate themselves by claiming they had no such intent, intent is not a constitutive requisite to establish a crime against humanity.

In that human dignity has been attacked, the suffering of those exposed to radiation in a nuclear accident

qualitatively holds something in common with this hibakusha of Hiroshima and Nagasaki. Moreover, the number of nuclear accident victims is far higher — so high that even now it is uncertain. At Fukushima, low-dose exposure including internal exposure in reality threatens the lives, health, and safety of on-site workers, children, and regional residents. What is more, it is recognized that the harmful impacts of the radioactive substances emitted extend to the global environment including the atmosphere and oceans, lead to ecosystem damage, and impinge on the survival of humanity.

Meanwhile, Boyle too was quick to point out the criminality of the nuclear power industry. His March 20 letter can be summed up as follows. Japan's nuclear energy (nuclear power) industry continues crimes against humanity as defined by Article 7 of the Rome Statute of the International Criminal Court, of which Japan too is a party. The same can be said also for the nuclear energy (nuclear power) industries throughout the world, not just that of Japan. The people of Japan should use this legal conclusion to get Japan's nuclear energy industry to stop its crimes against humanity. The same should be done for the nuclear energy (nuclear power) industries all over the world, not just that of Japan. MOX in particular contains plutonium, the deadliest substance known to humanity. Furthermore, Fukushima Daiichi's unit 3 uses MOX/plutonium, and an explosion has already occurred there. Japan's government should continue hitting the nuclear energy industry with demands for information disclosure.<sup>[9]</sup> This opinion gave me some ideas.

### **Nuclear Disarmament, Nuclear Power Phaseout, Quest for Peace**

IALANA's June 19 Szczecin Declaration includes the following two elements: Bring about a start of preparatory work for the conclusion of a nuclear disarmament convention, and call for the worldwide abolition of nuclear energy. In relation to the second, IALANA took a resolution by the May 26 directors meeting of the Japan Association of Lawyers Against Nuclear Arms (JALANA) as a call to abolish nuclear energy, and supported it. The declaration also stated that what is needed is a complete switch to renewable energy and to democratizing energy production.

Let's take a retrospective look at the background and characteristics of this year's General Assembly. The main point of the IALANA resolution adopted in June 2009 was the outlook on the Non-Proliferation Treaty (NPT) conference to follow in May 2010. It says that to make a reality of the future vision of a world without nuclear weapons, it is necessary to have a convention which would attain total and permanent nuclear disarmament.

IALANA stated that it had expectations for demands from the NPT Review Conference to quickly start negotiations aimed at concluding such a convention. But IALANA saw this expectation as having ended in failure, and therefore decided that instead of gradualism, it would itself work toward a means to "make a leap" toward a world without nuclear weapons. At this point the dichotomy that "nuclear weapons are different from the nuclear energy that drives reactors" was still pervasive.

But in response to the March 11 Fukushima Daiichi accident, IALANA was suddenly faced with the question of whether to conduct activities to bring about a world without nuclear energy. Also, April of this year was the 25th anniversary of the Chernobyl accident. I should mention in passing that the International Physicians for the Prevention of Nuclear War have issued a new critical opinion stating that the perception held the International Atomic Energy Agency and other parties underestimates accident damage.<sup>[10]</sup> IALANA also questions whether claims can be made for a clean energy revolution through the global proliferation of nuclear power.

This brings the new achievements of this General Assembly into clear view: Twenty-three years from its founding, IALANA has advanced to the quest for peace from the abolition of nuclear arms, and has decided to position a worldwide nuclear power phaseout under these two objectives, and to tackle this challenge in its capacity as legal specialists. Seen from a different vantage point, one could say that IALANA has decided to see nuclear disarmament, nuclear power phaseout, and the quest for peace as a trinity, and to work toward achieving it.

When we become aware of this stance and tackle the challenge of phasing out nuclear power in our capacity as legal specialists, there are any number of exam-

ples. There is the legal system under nuclear power treaties, with the Statute of the International Atomic Energy Agency at its pinnacle. In Japan there is the legal system under the Atomic Energy Basic Law. So what approach should be taken? For example, how do we deal with the "inalienable right" granted under Article IV of the NPT? The current treaty text establishes "the inalienable right of all the Parties to the Treaty to develop research, production and use of nuclear energy for peaceful purposes." Therefore we should address the situation by assuming this can be changed. Even if nearly all UN members are parties to the NPT, action is taken in line with the procedures for international legislation. If these efforts conform to the advance of the renewable energy revolution, a solid outlook will present itself.

[1] IALANA, Schützenstr. 6a, 10117, Berlin, Final Declaration of the General Assembly of IALANA, Szczecin, 19th of June 2011

([http://ialana.net/uploads/media/Szczecin\\_Final\\_DeclarationVers.4\\_01.pdf](http://ialana.net/uploads/media/Szczecin_Final_DeclarationVers.4_01.pdf)).

[2] Francis A. Boyle, "The Criminality of Nuclear Deterrence." This article is the record of an address delivered on September 4, 2010 at a conference in Feldkirch, Austria. The conference was the XVIIIth Conference "Mut Zur Ethic": Direct Democracy.

[3] Francis A. Boyle, "The Relevance of International Law to the 'Paradox' of Nuclear Deterrence," *Northwestern University Law Review*, Vol. 80, No. 6, pp. 1407ff, Summer 1986.

[4] *Ibid.*, p. 1444.

[5] *Ibid.*, p. 1444.

[6] *Ibid.*, p. 1446.

[7] "Nuclear Reactor Catastrophe in Japan" (Translated by Kenji Urata), *Nihon no Kagakusha*, July 2011 (in Japanese).

[8] Kenji Urata, "Nuclear Power Accidents: Nuclear Power and Nuclear Weapons Present the Same Threat," a "Word from the Wise" column distributed by Kyodo News in newspapers including the *Akita Sakigake* (June 10) and *Shinano Mainichi Shimbun* (June 22) (in Japanese).

[9] Nuclear Power Industry Is a Crime Against Humanity! <<http://mwcnews.net/focus/letters-to-editors/9423-nuclear-power-industry-is-a-crime-against-humanity.html>> Sunday, 20 March 2011, 09:11.

[10] The surprising difference between the IPPNW's new report "Health effects of Chernobyl" and the document "A Comparison with the Chernobyl Accident" from the Japan Prime Minister's Office. Peace Philosophy Centre (<http://peacephilosophy.blogspot.com/>), April 18, 2011.

## Australia/ New Zealand

### MEDIA RELEAS - 28 November 2011

#### Global Red Cross movement champions international action on nuclear weapons

Australian Red Cross has spearheaded a decision taken on the weekend in Geneva by the supreme governing body of the International Red Cross and Red Crescent Movement to work towards a legally binding international agreement to ensure nuclear weapons are never used again and are ultimately eliminated. The decision to support the initiative was taken by the Council of Delegates of the Movement which is comprised of representatives of the International Committee of the Red Cross, the 187 Red Cross and Red Crescent National Societies and the International Federation.

The decision is of critical importance as it challenges the legitimacy of nuclear weapons ever being used as a weapon of war because of the catastrophic humanitarian consequences, in particular on civilian populations, and the threat to world food production over wide areas of the world.

‘Australian Red Cross is proud to have played a leading role in the decision which is the first time the supreme decision making body of the International Red Cross has taken such a definitive stand on this critical issue of International Humanitarian Law,’ said the President of Australian Red Cross, Greg Vickery AM speaking from Geneva.

‘Australian Red Cross worked with Japanese Red Cross and the Norwegian Red Cross to drive the campaign on this issue by convening a meeting in Oslo, Norway earlier this year to draft the resolution which was ultimately passed on the weekend,’ Mr. Vickery said.

Australian Red Cross CEO, Mr. Robert Tickner said ‘within Australia we have already gained huge public support for this initiative through our Facebook tab and campaign website promoting a referendum on the use of nuclear weapons and building public awareness of the massive destructive capacity of nuclear weapons through a simulated nuclear bomb explosion.’

The ‘Target Nuclear Weapons’ campaign has already received over 23,000 votes with 86% of people voting YES to ban the use of nuclear weapons. Our campaign has reached more than 565,000 people through a social explosion of Facebook posts and tweets calling for a ban on the use of nuclear weapons, and this number is still growing.

‘We are also delighted that we have received strong support for our initiative from the Opposition, from the Australian Greens, and from prominent members of the Government side of the Parliament,’ Mr. Tickner said.

‘How wonderful it would be if Australia could be a global champion in support of this Red Cross initiative,’ Mr. Tickner said.

Australian Red Cross Head of International Law Dr. Helen Durham said ‘the weekend decision makes it abundantly clear that the use of nuclear weapons can never again be considered as legitimate weapons of war.’

‘The proliferation of these weapons in an increasing number of countries and the threat of other groups gaining capacity to use nuclear weapons should be a wake up call to the world and Red Cross will be carrying the message to the Government and to the wider Australian community.’

‘Nuclear weapons are an increasing threat to all civilian populations in the event of conflict. If we can achieve treaties to control the use of land mines and cluster munitions as we successfully have, then we cannot turn our backs on the need to get agreement on a global convention to outlaw this evil weapon forever,’ Mr. Tickner said.

[www.redcross.org.au](http://www.redcross.org.au)

You can find the resolution on our website:  
[www.ialana.net](http://www.ialana.net)

## Report from Canada

By **Bev T. Delong**

Lawyers for Social Responsibility have not been meeting recently, but my work has continued through actions organized in the Canadian Network to Abolish Nuclear Weapons, of which I serve as the Chairperson. Here is a summary of our recent work:

### 1. The Legal Call for Abolition

The Legal Call for Abolition was circulated among the lawyers and law professors of Lawyers for Social Responsibility in 2010 and was signed by 27 individuals (including 17 law professors) prior to submission to the Prime Minister on May 6, 2010. It called on the Government of Canada to publicly reaffirm Canada's commitment to a world without nuclear weapons; to encourage a new NATO Strategic Concept that conforms with the NPT commitments and to encourage states at the NPT Review Conference to commit to preparatory work on a Nuclear Weapons Convention.

### 2. 2011 Expert Seminar: "Toward a Nuclear Weapons Convention: A Role for Canada"

Both the Canadian Senate and House of Commons unanimously passed motions in 2010 that encouraging "the Government of Canada to engage in negotiations for a nuclear weapons convention" and "to deploy a major world-wide Canadian diplomatic initiative in support of preventing nuclear proliferation and increasing the rate of nuclear disarmament." These motions were a product of work done by a group consisting of over 570 members of the Order of Canada who have joined together to promote the call for a NWC.

To encourage an exploration of how Canada might implement these motions, and to respond to the UN Secretary General's Five Point Proposal for Nuclear Disarmament, we organized an expert seminar in Ottawa. The evening of April 11, 2011, H.E. Sergio Duarte, the U.N. High Representative for Disarmament, opened our seminar and representatives from Austria, Mexico, Switzerland and the UK responded to Amb. Duarte. Diplomatic representatives from 10 other embassies attended.

On April 12, 2011 our full day expert seminar engaged about 55 participants from government and civil society to consider legal, technical and political

challenges that must be overcome to enable the start of negotiations on a Nuclear Weapons Convention. I was particularly happy with the panel on "Legal Aspects of a NWC" that involved a presentation by Dr. John Burroughs, Executive Director of Lawyers Committee on Nuclear Policy and a presentation by Prof. Michael Byers, the Canada Research Chair in Global Politics and International Law, University of British Columbia. They considered the options with respect to the legal architecture of a NWC, and strategies for considering key legal questions now that might hasten the start of negotiations. We also discussed the implications of the inclusion of international humanitarian law language in the Final Document of the 2010 NPT Review Conference. John Burroughs provided excellent assistance in organizing the Legal Panel.

From these discussions, the seminar sponsors (Canadian Pugwash, Physicians for Global Survival, Project Ploughshares, World Federalist Movement - Canada and the Canadian Network to Abolish Nuclear Weapons) developed recommendations. The Report of the Expert Seminar has been finalized and sent to key parliamentarians, officials, embassies in Ottawa, experts in civil society organizations in Canada and abroad.

### 3. Building support for negotiations on a NWC in Parliament and Government

Over the fall of 2011, representatives from the Canadian Network to Abolish Nuclear Weapons met with government officials and Members of Parliament, including almost all members of the Standing Committee on Foreign Affairs, asking for both hearings in that Committee on the implementation of the 2010 motion and for Canada to host a preparatory meeting to plan for the negotiation of a Nuclear Weapons Convention. We are also anticipating the tabling in Parliament of petitions from the public calling for this meeting.

We have now organized a CNANW Round Table for March 26, 2012 and are seeking a briefing from officials prior to the NPT PrepCom and an exchange with Canadian Red Cross on the implications of the recent ICRC resolution on nuclear weapons.

## Germany

### Press Release: Kunduz air attack

Legal consideration of the Kunduz airstrike, which killed a large number of Afghan civilians, has now moved into the civil courts with the filing of a claim for compensation at the State Court in Bonn on December 2, 2011.

After the Federal Attorney General dropped criminal proceedings against Colonel Georg Klein stating there was no intention to kill, the civil lawsuit is seeking to establish state liability due to gross negligence. The German commander is accused of paying no heed to the warnings from the pilots of the US fighter jets. The lawsuit claims that his assumption that the scenario represented part of an attack on the distant German military base was an arbitrary and unlikely speculation made in spite of the evidence provided by audio and video recordings of the activity surrounding two fuel tankers hijacked by Taliban forces and stuck in the mud on the banks of the Kunduz river. This assumption has already been the

subject of persistent criticism from the responsible NATO commander from the ISAF (International Security Assistance Force).

The claim asserts that the German commander's can be judged as negligent because he ignored many signs of civilians being present at the scene and ordered an indiscriminate and excessive airstrike without any warning and without first consulting a higher NATO authority. This airstrike then proved to be the worst bloodbath inflicted on a civilian population since 1945 that was carried out on German orders. Accordingly, the German civil law courts are faced for the first time with a case where government liability of the Federal Republic of Germany arises out of severe violations of international humanitarian law.

Karim Popal (Attorney)

Prof. Dr. Peter Derleder (Attorney)

### "Vergüenza para España": Abogados alemanes apoyan a Garzón

*Miembros de las asociaciones para la recuperación de la Memoria Histórica, citados como testigos en el juicio a Baltasar Garzón por declararse competente para investigar los crímenes del franquismo participan en el acto "Derecho a recordar. Derecho a hablar", organizado por la plataforma Solidarios con Garzón. En la imagen, sujetando la pancarta, aparece (segundo por la derecha), el escritor Ian Gibson. EFE/kOTE RODRIGO*

Berlín, 3 feb (dpa) - Un grupo de abogados alemanes transmitió hoy su apoyo al juez Baltasar Garzón y criticó duramente el juicio que se sigue en Madrid al juez español por investigar los crímenes del franquismo.

"En Madrid está en juego la independencia judicial", alerta un comunicado enviado a la agencia dpa por Otto Jäckel, presidente de la asociación de abogados IALANA.

"Decidirán los jueces del Tribunal Supremo con independencia de las fuerzas aún intensas del viejo

régimen y protegerán la independencia judicial del juez Garzón", se pregunta Jäckel.

La nota defiende que Garzón se declarara en 2008 competente para investigar los crímenes durante la Guerra Civil Española (1936-1939) y la posterior dictadura de Francisco Franco (1939-1975).

Las organizaciones ultraderechistas Manos Limpias y Libertad e Identidad decidieron llevar al banquillo a Garzón por considerar que, al abrir esa investigación, el juez sabía que estaba vulnerando la Ley de Amnistía de 1977.

La defensa alega que las desapariciones forzadas son crímenes de lesa humanidad que no prescriben y cuya investigación no está prohibida en virtud de la Ley de Amnistía. El juicio comenzó el 24 de enero.

"Sería una vergüenza para España y para Europa que Garzón pagara con el exterminio de su existencia profesional y de su buena fama por haber investigado

al dictador y a sus secuaces", advierte Jäckel en el comunicado.

El letrado confía en cambio en que el juicio "sirva para encender un debate público sobre la era franquista, todavía acallado, y para revocar la Ley de Amnistía".

Con sus procesos contra el chileno Augusto Pinochet y el argentino Leopoldo Galtieri, "Garzón demostró que los ex dictadores militares no pueden sentirse a salvo de ser castigados", concluye.

Jäckel preside la rama alemana de IALANA (International Association Of Lawyers Against Nuclear Arm).

La asociación internacional de abogados fundada en 1988 en Estocolmo que defiende "la eliminación de

las armas nucleares, el refuerzo del derecho internacional y el desarrollo de mecanismos para resolver de forma pacífica disputas internacionales".

Además del juicio por los crímenes del franquismo, que continuará el lunes, Garzón está sometido desde el 17 de enero a otro proceso por prevaricación, acusado de haber ordenado la intervención en prisión de las conversaciones entre los cabecillas de una trama de corrupción y sus abogados.

Garzón también corre el riesgo de que se le abra un tercer juicio, esta vez por haber aceptado supuestamente fondos del banco Santander y de algunas empresas para financiar cursos que había impartido en los años 2005 y 2006 en la Universidad de Nueva York.

[http://www.elpais.cr/frontend/noticia\\_detalle/2/61787](http://www.elpais.cr/frontend/noticia_detalle/2/61787)

## Whistleblower-book 2011



Dr. Rainer Moormann has worked for 35 years at the nuclear research facility, today's research center in Jülich.

His scientific focus of work has been for a long term the safety of pebble-bed and high-temperature reactors.

An experimental reactor of this type, with a capacity of 15 megawatts, was in use in Jülich till 1988. It operated with combustible material, locked in graphite pebble and cooled with Helium-gas.

High-temperature-reactors are praised by interested parties in the scientific world, in business and in politics to this day to be "inherently safe". It is argued that with these reactors, there is no risk of a nuclear

meltdown. Thus, nuclear disasters are not to be feared. This reasoning is used for long for the export of this type of reactor in countries with lower safety standards.

However, with his investigation Dr. Moormann come to the conclusion that in contrast to popular argument, the pebble-bed and high-temperature technology has its own, no less threatening incident opportunities and risks with catastrophic consequences for humans and the environment.

His evidence also justifies the suspicion that significant circumstances and consequences of an incident in 1978 in the reactor in Jülich have been obscured. Dr. Moormann's Whistleblowing and his guidance to common welfare are exemplary for responsible scientific activity. Thus, he received the Whistleblower Award 2011.

## United States

### Lawyers Committee on Nuclear Policy

By John Burroughs and Peter Weiss

In the summer and autumn of 2011, Lawyers Committee on Nuclear Policy (LCNP), US affiliate of IALANA and also its UN Office, worked with Reaching Critical Will to urge the UN General Assembly to overcome the 15-year stagnation at the Conference on Disarmament. In a joint paper released in July, we called for the General Assembly to establish an open-ended working group on nuclear disarmament, including a convention or framework agreement, and another on prevention of an arms race in outer space. (See <http://bit.ly/zP1ukb>.) We then met with diplomats and, with the UN Office for Disarmament Affairs, sponsored a side-event at the United Nations, “Revitalizing Multilateral Disarmament: Assessing the Draft Resolutions.” While the General Assembly took no definitive step, there were signs of possible movement in the future.

As John Burroughs reported in a November Inter Press Service op-ed, “Unfreezing Disarmament” (available at [www.lcnp.org](http://www.lcnp.org)), throughout October UN member states meeting in the First Committee of the General Assembly engaged in a heated and substantive debate on how to get multilateral disarmament moving again. They then approved two resolutions, one sponsored by Netherlands, South Africa and Switzerland, the other by Canada. The resolutions signal that if the stalemate in the Conference on Disarmament continues, next year, as the body ultimately responsible for pursuing one of the United Nations' central aims, the General Assembly is prepared to act. In addition, Austria, Mexico, and Norway directly proposed that the General Assembly establish a process not subject to the rule of consensus outside the Conference on Disarmament until the latter can deliver results. The proposal had substantial support in the First Committee, not enough however for the sponsors to judge it worth putting to a vote this time around.

In November, John and Peter Weiss met with Archbishop Frances Chullikatt, Permanent Representative of the Holy See to the UN, to discuss what might be

done to follow up on his powerful anti-nuclear weapons speech in July. We informed him of the suggestion by the archbishop of Szczecin to convoke a meeting of world religious leaders who would issue a call for a nuclear weapons free world. Archbishop Chullikatt expressed his willingness to continue his public opposition to nuclear weapons, but said this should be done on behalf of all major religions and not only Catholicism. This is a challenge to IALANA; any ideas on how to go forward along these lines will be welcome.

Other LCNP activities in 2011 include multiple letters to the US State Department urging that it conduct a non-proliferation review of a planned laser uranium enrichment facility in North Carolina. LCNP also wrote the State and Energy Departments stating our opposition to a possible nuclear cooperation agreement with Saudi Arabia that would green light nuclear fuel production there. On January 11, 2012, the Obama administration sent an unpublicized letter to Congress (see <http://bit.ly/yhu0HN>) advising that in the future agreements for the export of nuclear materials and technology would be drafted on a case-by-case basis, rather than on the past model, which automatically included restrictions on enrichment and reprocessing. This new policy constitutes a dangerous loosening of nonproliferation guidelines. It will be protested by LCNP. It would also be helpful if IALANA chapters brought it to the attention of their respective governments and investigated their own governments' policies in this area.

The Obama administration is also currently engaged in updating policy guidance for the U.S. nuclear force structure and employment policy, including targeting and missions, to culminate in revision of the strategic war plan (OPLAN, formerly SIOP; see <http://bit.ly/wmjQne>). John and board member Guy Quinlan are working on a submission to the administration in this connection. Again, input from IALANA chapters, through their respective govern-

ments, would be useful, particularly when they are in nuclear alliances with the United States.

In speaking engagements, Board member Charles J. Moxley, Jr., spoke in October on an International Law Association panel in New York City, "The Challenge of Nuclear Abolition." In November, John was a guest lecturer in a Harvard Law School class, "The Problems and Challenges of Disarmament" in December he spoke to a Women's International League for Peace and Freedom seminar in Geneva on "Demilitarizing Security" and on February 2, 2012 he spoke on a panel at the UN to accredited civil society representatives in connection with a showing of the

film "The Forgotten Bomb". (To obtain this worthwhile film, see [www.forgottenbomb.com](http://www.forgottenbomb.com) or contact John.)

Finally, Board member Jonathan Granoff, also President of Global Security Institute, published an article in the Nov/Dec *Bulletin of the Atomic Scientists*, "International humanitarian law and nuclear weapons: irreconcilable differences," based upon the article Moxley, Granoff, and John have in the *Fordham International Law Journal* (the latter is available at ([www.lcnp.org](http://www.lcnp.org))).

## Paragraph about the speech of Archbishop Francis Chullikatt

**Archbishop Francis Chullikatt, Permanent Observer of the Holy See to the UN**, delivered a landmark speech (<http://ncronline.org/news/peace/text-archbishop-francis-chullikat%E2%80%99s-speech-nuclear-disarmament>) on July 1 in Kansas City, MO, home to a new facility now under construction for building the non-nuclear components of nuclear warheads. Key points are collected here. Regarding IHL, Archbishop Chullikatt stated, *inter alia*: "International law and the Church's Just War principles have always recognized that limitation and proportionality must be respected in warfare. But the very point of a nuclear weapon is to kill massively; the killing and

*the poisonous radiation cannot be contained (Hiroshima, Nagasaki, Chernobyl are permanent ominous reminders). The social and economic consequences of nuclear war in a world whose life-support systems are intimately interconnected would be catastrophic.*" He also said: "Viewed from a legal, political, security and most of all - moral - perspective, there is no justification today for the continued maintenance of nuclear weapons. This is the moment to begin addressing in a systematic way the legal, political and technical requisites for a nuclear-weapons-free world."

(<http://www.lcnp.org/pubs/enews/no10.htm>)

## Correction to IALANA newsletter no 8 from August 2011

### Kenji Urata

is Professor Emeritus of Constitutional Law, Waseda University, since 2005.

Having involved in the birth of IALANA in Japan, participated the World Court Project, the Hague Appeal for Peace etc. Visiting Professor at Lund University Juridicum, Sweden.

Sole Author: Reflections on Global Constitutionalism: In Search of Democracy and Peace, Waseda University Institute of Comparative Law, 2005.