

INTERNATIONAL ASSOCIATION OF LAWYER AGAINST NUCLEAR ARMS (IALANA)
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The seminar was attended mainly by German lawyers but there were also representatives from other parts of Europe. The main speakers were IALANA Vice-Presidents Peter Weiss and Phon van den Biesen, Peter Becker, Chair of German IALANA, Ursel Reich (a young member of IALANA) and myself, representing World Court Project UK. This report is impressionistic rather than detailed.

The main issue revolved around the Return to the ICJ on the issue of compliance in Good Faith with NPT and ICJ nuclear disarmament obligations. The current context is a new, but qualified, optimism about the prospects for a nuclear weapons-free world and the crucial NPT Review Conference in 2010. The optimism derives from President Obama's commitment to nuclear abolition in, for example, his recent Prague speech (but not in my lifetime) and increasing calls from senior public figures for progress in this direction. The PrepCom in New York last month was notable for a much more positive approach by the US. Furthermore, an agenda for next year was agreed. Recommendations, including discussion on a nuclear weapons convention, were discussed, although not agreed. In some ways this is a good thing because it may well have been counter-productive to set anything in stone at this stage - much may happen during the next twelve months. In addition, developments involving Korea and Iran could be counterveiling factors. We shall also need to look carefully at the progress of negotiations of arms reduction between the US and Russia, bearing in mind Russia's anxieties about Missile Defence and America's conventional weapons superiority.

The 1996 ICJ Advisory Opinion demands Good Faith negotiations to start at an early date, and to be brought to a conclusion. President Obama's enthusiasm for a Comprehensive Test Ban Treaty and the Fissile Materials-Cut-Off Treaty are compatible with this and could be seen as steps along the way. However, there is no discussion of negotiations starting, nor has a special body for nuclear disarmament been set up within the Conference on Disarmament - the body tasked with nuclear abolition. Furthermore, the nuclear-armed states are still projecting a policy of nuclear deterrence into the long-term future by modernising, or at least refurbishing, their nuclear arsenals. We can conclude that we are still a long way from serious commitment to the unanimous verdict of the ICJ about achieving a nuclear-free world.

A good example which I brought up is recent correspondence between activists and the UK Government about continuous deterrent patrols. This is not a cosmetic issue. It goes to the very heart of deterrence. *Continuous at Sea Deterrence* (CASD) has been maintained for over 40 years and it is essential to have this if deterrence is to be maintained. That is why Trident Replacement is essential - submarines are more or less invulnerable, but only when they are on patrol, armed and invisible. Four of them, or, at least three, are needed to ensure CASD.

However, in signing up to the Final Document of the Year 2000 NPT Review Conference, the UK committed itself to "a diminishing role for nuclear weapons in security policies to minimise the risk that these weapons ever be used and to facilitate the process of their total elimination." Essentially, that means moving away from nuclear deterrence; and that calls into question the compatibility of CASD with a diminishing role for nuclear weapons. Dropping CASD would show British commitment to promoting global non-proliferation.

So the basic question is: What is the trade-off between maintaining full deterrence, as understood during the Cold War, and carrying out the obligation to "a diminishing role for nuclear weapons in security policies".

It is the need for honest dialogue between activists and the Government about issues such as this which has prompted the UK's September conference on accountability in law and peace issues. Similar opacity applies, probably in an even greater degree, to the other Nuclear States.

Progress in attracting support from states for a UN resolution requesting a new ICJ Opinion, is slow. In the Bush era it was argued that the idea was hopeless. Now states are waiting to see how far Obama's promises will be realised. The Lawyers' Committee on Nuclear Policy and the International Human Rights

Clinic at the Harvard Law School have produced an excellent *Legal Memorandum* for diplomats. This was launched at the May PrepCom and attracted considerable interest. However, it is vital that this is promoted by visits to capitals. Our approach to Commonwealth High Commissions in London, asking them to forward the booklet to their Ministries of Foreign Affairs is therefore a useful, but limited, project.

We hope to follow up Return to the ICJ in UN General Assembly Committee 1 at the end of this year. However much depends on the outcome of the 2010 Review Conference. Recently, the UN General Secretary has outlined the urgency of negotiations on nuclear weapons and if this is followed up with a strong commitment to the start of Good Faith negotiations in 2010, then we would have to reconsider the relevance of ICJ Return. If, as is probable, the Review conference achieves less than this, the way could be open for states to look more positively on our project. We could point out that there is still foot-dragging about starting negotiations - which is the heart of the matter - and considerable disagreement about what full compliance with the 1996 ICJ opinion actually entails. Most states believe that fast progress in disarmament obligation is of the essence. This is shown in repeated UN Resolutions to that effect. The Nuclear-armed states, on the other hand, claim that progress in the Test Ban and Fissile materials Treaties, together with continuing reductions in warhead numbers, are good enough to show compliance. A new Opinion on this issue could provide authoritative guidance on how to resolve these disagreements and set a benchmark for states to judge progress.

We could also emphasise the important link between ICJ Return and the strong Civil Society movement for a Nuclear Weapons Convention. The two are complementary and reciprocal. Compliance with the ICJ Opinion means an outcome - a Convention, or at least a series of interlocking instruments.

Part of my own contribution was to stress the value of certain concepts for support for ICJ Return from Civil Society and members of the public. These include the Public Conscience and Good Faith. We have developed good tools for this, including basic explanations, the Affirmations of Freedom for Nuclear Weapons and the Statements of Support from organisations. We have also built up a strong global coalition around. However, this will not really gain momentum until we have a UN Resolution requesting the Court to develop its 1996 conclusion on the urgency of Good Faith negotiation by stating what practical steps are needed and which policies by states are incompatible with it.