



# LAWYERS FOR SOCIAL RESPONSIBILITY THE NEWSLETTER

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## International Criminal Court and Weapons Systems

by Alyn Ware, Executive Director,  
*Lawyers' Committee on Nuclear Policy*

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U.N.

An international diplomatic conference is scheduled to be held in Rome in June 1998 to formally establish an International Criminal Court (ICC). The ICC will have the power to try individuals charged with the commission of serious international crimes including genocide, crimes against humanity and war crimes.

A series of preparatory and intersessional meetings have been held over the past two years to draft the Statute of the ICC, which will be adopted at the June 1998 diplomatic conference. Key issues for drafters are trigger mechanisms (how a case is brought to the court), complementarity (relationship between national courts and the ICC), and scope (which crimes will be covered). The Preparatory Committee (PrepCom) session held December 1-12 included a discussion of definitions of war crimes.

There is a large body of international law which greatly restricts behavior permissible during wartime. The Nuremberg Principles, which were used to convict German war criminals, affirm that individuals cannot escape responsibility for such actions even if they are condoned by their respective governments. The Rwanda and Yugoslavia Tribunals are using this law in the trials of individuals who committed, ordered or condoned atrocities in these countries. The ICC Draft Statute thus includes a section which would provide for the prosecution of individuals for war crimes.

The first draft of this section, which was prepared at the February 11-21, 1997 session of the ICC Prep Com, contained many unresolved issues, the most

controversial being which weapons systems would be prohibited and whether war crimes could apply to internal conflicts.

In February, the U.S. had proposed that the use of expanding bullets, chemical weapons and biological weapons be prohibited. Syria, with very little support, proposed that the threat or use of nuclear weapons also be listed as a war crime.

Aotearoa-New Zealand and Switzerland proposed that no weapons as such be listed, but that the ICC Statute include a prohibition on "employing weapons, projectiles and material and methods of warfare of such a nature as to cause superfluous injury or unnecessary suffering or being inherently indiscriminate." This has the advantage of allowing the court flexibility to prosecute individuals for the use of a wide range of weapons which currently exist or which may be developed in the future, but has the disadvantage of not specifying clearly which weapons already are prohibited to use.

At the December Prep Com, Germany submitted a consolidated version of the February draft on war crimes but kept only the U.S. formulation for weapons systems. Aotearoa-New Zealand and Switzerland successfully pushed for the inclusion of their formulation as a second option. Non-Governmental Organizations, which were present in much larger numbers than in February, pushed for a third option of having both the Aotearoa-New Zealand/Switzerland formulation and the inclusion of a list of prohibited weapons including nuclear weapons and landmines. This proposal, formally submitted by the Philippines, was forcefully opposed by the powerful NATO states, but successfully remained as an option (along with the addition of blinding laser weapons) due to support by most other states.

Samoa noted that it would be ludicrous if the killing of one person with a poison arrow or expand-

ing bullet could be tried by the court, but not the killing of hundreds of thousands of people with a nuclear weapon. Samoa asked whether "the Law is like a spider's web which catches the little flies but lets the big ones break through"?

Canada proposed a fourth option, calling for the prohibition of expanding bullets, chemical weapons and biological weapons and "such other weapons or weapons systems as become the subject of a comprehensive prohibition pursuant to customary or conventional international law."

All four options will now go to the diplomatic conference in June for the final decision.

The efforts of anti-nuclear states and NGOs have ensured that the criminality of the threat or use of nuclear weapons and the employment of landmines will at least be an issue at the diplomatic conference in 1998 which will establish an International Criminal Court. The International Court of Justice advisory opinion on the legality of the threat or use of nuclear weapons was a key factor in providing legal justification and political strength for the inclusion of the threat or use of nuclear weapons as a war crime in one of the options. The recently signed Landmines Convention was a key factor in ensuring the inclusion of landmines.

However NATO states will be lobbying very hard for the final ICC Statute to retain only the very restrictive list of prohibited weapons systems. NGOs and supportive governments will need to work hard to ensure the inclusion of nuclear weapons and landmines in the final list, or at the very least including the general formulation proposed by Aotearoa-New Zealand and Switzerland.

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## IN BRIEF

### **Nobel Declaration for Nuclear Weapon-Free Zone**

BERLIN, OCTOBER 23RD 1997 – Nine Nobel Peace Laureates issued a declaration today to mark UN Disarmament Day (October 24th), calling for a nuclear weapon-free zone in Central and Eastern Europe. The declaration is motivated by the discussion to expand NATO eastwards and NATO's policy of nuclear deterrence.

Although NATO has declared its intention not to base nuclear weapons on the territory of its new members, it retains the right to do so in the future. The Declaration of Peace Laureates states: "We believe that the transfer of nuclear weapons to Central and Eastern European States, which are presently free of nuclear weapons, pose grave consequences for security and stability in Europe."

### **British Poll on Nuclear Weapons**

MANCHESTER, UK: A new survey released on Thursday shows an overwhelming 87% of the British public want the Government to negotiate a global treaty to prohibit and eliminate nuclear weapons. Further, a large majority (59% against 37%) now say it would be best for Britain's security if we do not have nuclear weapons. An even larger majority (63% against 36%) disagree with spending 1,500 million pounds per year of public money to maintain a nuclear deterrent. Finally, a clear majority (54% against 42%) would support immediate steps to withdraw Trident nuclear warheads from deployment at sea and place them in storage.

The Gallup survey was conducted between 5-10 September 1997 and tested the opinion of a representative sample (by age, social class and geographic location) of 1008 people to five questions about UK nuclear weapons policy and practice. The research was commissioned by the UK Steering Committee for Nuclear Free Local Authorities to find out current attitudes of local citizens.

### **Landmind Related Papers**

I have two short and informal papers I am happy to share with others for comments: "The Ottawa Process and Nuclear Weapons" and "Enforcement of the Landmines Treaty by Global Citizens." Please contact me at the LSR address or email at [delong@nucleus.com](mailto:delong@nucleus.com) if you are interested.

# UPDATE:

## Nuclear Abolition

I represent Lawyers for Social Responsibility on the Steering Committee of the Canadian Network to Abolish Nuclear Weapons (CNANW). This group is much reinvigorated by the success the peace movement has achieved with the signing of the "Ottawa Treaty" or the new Convention on Landmines. Much has been learned from the landmines campaign concerning organization and strategies for collective work. (Should you wish my informal paper on the Ottawa Process and Nuclear Weapons, please contact me.)

CNANW are planning to move the peace movement and the government on by holding a full day forum to consider de-alerting of nuclear weapons and policies of no-first-use as first steps that could be taken immediately to move the nuclear powers more quickly along the road to full nuclear disarmament. There is rising concern about the instability of the Russian nuclear system and about the reliability of their forces. This forum will be accompanied by a one day meeting of the Network to consider means of encouraging the more rapid achievement of a Nuclear Weapons Convention. A report of these meetings will follow in subsequent newsletters.

– Bev Delong

## The Middle Power Initiative

**D**ouglas Roche, the former Ambassador for Disarmament for Canada, has agreed to serve as Chairperson of the Canadian Network to Abolish Nuclear Weapons. The Steering Committee of that group have agreed to support a Middle Power Initiative to build international support for a Nuclear Weapons Convention. This proposal has been sent out to leaders of a number of international peace groups and a core group that will compose the International Steering Committee is being assembled. They will meet in Geneva in May to establish their strategy for organization, meeting with governments from the various middle powers and determining methods of building support for immediate steps for disarmament within the nuclear weapons states.

The goal of the Initiative is to urge the governments of a number of key Middle-Power States to form a new coalition to press the Nuclear Weapons States for an unequivocal commitment to commence

negotiations leading to the elimination of nuclear weapons, starting with De-alerting and a No-First-Use pledge.

Doug Roche explains further:

"There is an urgency to this proposal: Negotiations for nuclear disarmament are paralyzed. The risks of nuclear terrorism are growing. The U.S. is leading the way in a new arms technology race. The Non-Proliferation Treaty (NPT) is jeopardized. The International Court of Justice call for nuclear negotiations is rejected by the Western Nuclear Weapons States and NATO. The "Ottawa Process" on landmines showed the power and possibilities when civil society and a friendly government combine efforts. The eve of the new Millennium provides the momentum, and the 2000 Review of the NPT indicates the urgency, for a new NGO-led campaign."

# BOOK ANNOUNCEMENT

## THE LEGALITY OF THREAT OR USE OF NUCLEAR WEAPONS:

A Guide to the Historic Opinion of the International Court of Justice

By John Burroughs

Foreword by Phon van den Biesen

INTERNATIONAL  
ASSOCIATION OF LAWYERS  
AGAINST NUCLEAR ARMS  
Lit Verlag, Muenster, 1997

The 20th century has been defined in large part by the unleashing of the terrible destructive power of the atom, and the subsequent struggle to overcome the threat of nuclear annihilation. If humankind survives, the 8 July 1996 Advisory Opinion of the International Court of Justice, and the extraordinary process that led up to it, will have played an essential role. The Legality of Threat or Use of Nuclear Weapons is a concise yet thorough guide to the case. In straightforward language, it describes the history of this unprecedented initiative and summarizes and explains the Court's findings and the separate statements of the judges. Also included are excerpts of states' arguments to the Court, including the moving testimony of the mayors of Hiroshima and Nagasaki. The author provides cogent expert analysis and, most importantly, reveals how the opinion imparts hope and points the way to the future: "The Court has authoritatively interpreted law which states acknowledge they must follow, including humanitarian law protecting civilians from indiscriminate effects of warfare, the United Nations Chart-

er, and the Nuclear Non-Proliferation Treaty. The implications are profound: abandonment of reliance on the threatened use of nuclear weapons as an instrument of national policy, and expeditious elimination of nuclear arsenals. The opinion can be cited as an authoritative statement of the law in any political or legal setting – including the United Nations and national courts and parliaments – in which nuclear weapon policies are challenged." John Burroughs, an attorney with the non-profit Western States Legal Foundation in California, served as legal coordinator for the World Court Project/International Association of Lawyers Against Nuclear Arms at the November 1995 hearings before the International Court of Justice.

"This book shows how courageous states from the developing world, working in concert with visionary lawyers, physicians and other sectors of international civil society, boldly obtained astonishing results from the highest court in the world. The World Court clearly ruled that the threat or use of nuclear weapons is illegal in almost all conceivable circumstances. The Court further underlined the unconditional obligation of the nuclear weapon states to begin and conclude negotiations on nuclear disarmament in all its aspects. It is now up to all of us to determine the follow-up, whatever

the opposition. We cannot end this century without clear commitments and steps to eliminate nuclear weapons." – Razali Ismail, Permanent Representative of Malaysia to the United Nations, President of the United Nations General Assembly, 1996-1997

### ORDER FORM

#### **THE LEGALITY OF THREAT OR USE OF NUCLEAR WEAPONS**

Available in North America from Western States Legal Foundation (WSLF) or the Lawyers' Committee on Nuclear Policy (LCNP)

North America, \$12 per copy including shipping from WSLF or LCNP

Discounts available for bulk orders. Please make check payable to WSLF. Mail to:

Western States Legal  
Foundation  
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Oakland, California USA  
94612  
Phone: (510) 839-5877  
Fax: (510) 839-5397  
E-mail: WSLF@igc.apc.org

# Model Nuclear Weapons Convention Submitted to the United Nations

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On November 14, 1997, H.E. Melvin Saenz-Biolley, the Deputy Permanent Representative of Costa Rica to the United Nations, submitted a model Nuclear Weapons Convention (mNWC) to H.E. Mr Kofi Annan, Secretary-General of the United Nations, along with a request that the mNWC be circulated to all member States of the United Nations as an official document of the UN. Ambassador Saenz noted in his letter to Mr Annan, dated October 31, 1997, that the mNWC had been drafted by an international consortium of lawyers, scientists and disarmament experts led by the Lawyers' Committee on Nuclear Policy, and was being submitted as "a work in progress setting forth the legal, technical and political issues that should be considered in order to obtain an

actual nuclear weapons convention."

Ambassador Saenz also noted that the mNWC was "an effective and helpful instrument in the deliberative process for the implementation of UNGA resolution 51/45 M [Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons]."

It is expected that it will take some time for the UN to translate and copy the document in preparation for circulation.

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## Committee on Nuclear Policy Public Support High for Reducing Nuclear Arsenals, Nuclear Legacy

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(NOVEMBER 10, 1997) A NEW POLL shows that Americans believe that reducing the danger of nuclear war would be one of the most important legacies the President could leave this country. While the greatest numbers (34%) identify reforming and improving the education system as one of the most important legacies, one quarter (24%) say the same of reducing the danger of nuclear war. Voters view such an accomplishment as significant as writing and passing a balanced budget (23%) and even more signifi-

cant than improving race relations, to both of which President Clinton has dedicated considerable time and political capital.

The survey shows there is consistent support for political leaders to undertake bold initiatives to reduce the dangers posed by nuclear weapons. The President, in particular, would garner broad public approval with more dramatic and assertive action. The public gives overwhelming support to several specific proposals, such as increasing security at nuclear sites around the world

(85%), assisting with the dismantling of nuclear weapons in Russia (81%), taking nuclear forces off their current high-alert status (66%), and even reducing all nations' arsenals down to a few hundred each (66%).

The poll also reveals that more than two-thirds (69%) believe that the goal of the United States should be either to eliminate nuclear weapons worldwide (36%) or reduce the number of nuclear weapons in the world to lower levels (33%).

These results are consistent across all demographic groups. Even a considerable majority of self-identified Republicans (65%) favor these goals, compared to 76% of Democrats and 77% of Independent voters. Geographically, voters living in the South, traditionally the region most supportive of robust military policy, favor reduction or elimination by a sizable 61% majority. The highest support is found in the Northeast, where 46% favor elimination and 31% favor reducing the arsenals, for a combined total of 77%.

The survey found that Americans' attitudes about nuclear weapons are complex and often inconsistent. For example, while three quarters of the electorate believe that the world would be a safer place without nuclear weapons, a majority (56%) also believe that these weapons improve our national security.

Similarly, 80% of the respondents expressed support for "a verifiable and enforceable international agreement to eliminate nuclear weapons," while at the same time expressing suspicion that other countries might violate the terms of the agreement. Eighty-two percent (82%) of voters think it is unlikely that other countries would abide by such a treaty.

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## Committee on Nuclear Policy

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These results are part of the most extensive single survey of American public attitudes on nuclear weapons conducted in over a decade. Comprised of over fifty questions, the survey assessed voter attitudes on wide range of issues relating to nuclear weapons and American security.

The Mellman Group, Inc. designed and administered the nationwide telephone survey between September 10-15, 1997. The survey interviewed 800 registered voters nationally. The margin of error of this survey is +/- 3.5 percentage points at the 95% confidence level.

The poll, complete with dozens of charts and a 6-page summary memo, is now available at the Committee web site: <http://www.stimson.org/policy>

For further information or copies, please call Melinda Lamont-Havers at (202) 223-5956 or e-mail at [policy@stimson.org](mailto:policy@stimson.org).

The Committee on Nuclear Policy is a collaborative effort by the directors of 18 major research projects on nuclear weapons policy. Based at the Henry L. Stimson Center in Washington, DC, the Committee has extensive resources on all the latest reports and studies on nuclear weapons policy.

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## A Nobel Follow-Up Account

*The following is excerpted from the Press Release put out from the International Campaign to Ban Landmines the day before the Nobel Peace Prize was awarded.*

**T**he International Campaign to Ban Landmines described in a Press Release their gratitude to the Nobel Committee for the honour of receiving the Nobel Peace Prize. Tun Channareth, a tireless ban campaign activist and landmine survivor from Cambodia, accepted the Nobel medal on behalf of the ICBL. The co-recipient of the Peace Prize, Jody Williams, accepted the medal given in recognition of her leadership of the Campaign. The Nobel lectures were given by Williams and Rae McGrath, a representative of the demining community, both speaking on behalf of the ICBL.

The Press Release notes that "the prestige, moral authority, and highly visible international platform accompanying the prize have already had a tremendously positive impact on the ban movement. It is in no small measure due to the Peace Prize that, instead of losing ground after the Oslo Treaty negotiations, in just two months fewer than 90 negotiating states climbed up to 122 signatories to the ban treaty in Ottawa last week .... It is in no small measure due to the Nobel Peace Prize that governments last week in Ottawa pledged hundreds of millions of dollars for humanitarian demining and victim assistance programs."

After noting the shift in politics from superpower control to progress being effected by middle powers and NGO's, the Release commented: "The award to the ICBL emphasizes that in the post-Cold War era, civil society can set the agenda, can educate and make demands of governments that must be listened to, and then work cooperatively with those

governments to accomplish the shared objective. This year's Peace Prize should encourage and embolden citizens' groups - we can make a difference."

The Campaign has set out their new action plan as follows:

- We are launching a major effort to achieve by the end of 1998 the 40 ratifications necessary for the treaty to become binding international law.
- We are exploring with governments an unprecedented role for NGOs in monitoring implementation and compliance with the treaty.
- We will strive to bring recalcitrant governments on board the treaty.
- We will advocate for vastly expanded programs for humanitarian demining and victim assistance, and for NGO participation in the decision-making process regarding those programs.

The Press Release concludes: "In the words of another Nobel Laureate, Elie Wiesel, "In the face of human tragedy, silence is complicity and neutrality a crime."

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# “ Quotables from the Signing Ceremony ”

## **Secretary General Kofi Annan:**

..... The global alliance that created this Convention is an alliance made up of individuals and governments, of grassroots movements and global humanitarian organizations. It is an alliance that has shamed the world and enlightened it, unmasked its excuses and revealed its potential. It has held up a mirror to us all, revealing the wickedness of human folly and the wisdom of human courage.....

..... When the Nobel Peace Prize was awarded to this historic coalition of conscience, as well as to its coordinator Jody Williams, the world rejoiced. The promise of individual action against a global evil has been recognized and justly rewarded. The International Campaign to Ban Landmines was not content with mobilizing public opinion. Its many members also put pressure on governments, who in turn were moved by the groundswell of public opinion.

Ultimately, they became partners with those very governments in a remarkable expression of the “new diplomacy”...

..... The Ottawa Convention is a landmark step in the history of disarmament. About this, there can be no doubt. I am confident that it will provide the final impetus for a universal ban, encompassing all mine producing and mine-affected countries....

With the signing of the Ottawa Convention today, a great advance will have been made not

only in global disarmament, but in expanding the promise of human security. I congratulate you, and salute you for the achievement of this most noble and righteous of causes. The world is a better and safer place for it.

## **Cornelio Sommaruga, President, International Committee of the Red Cross**

..... This extraordinary coalition of civil society, international institutions and governments has proven that humanity is not powerless in the face of its worst

Excerpts of the statement made in Ottawa at the Plenary session immediately prior to the first signing of the Convention on Landmines by Canada, South Africa and Norway.

instincts or the destructive uses of modern technology.

..... The Ottawa Treaty is historic not only due to the process through which it was created but also because of its content. For the first time, a weapon which has been in widespread use by armed forces throughout the world is being withdrawn from arsenals due to its appalling human, economic, and social costs. And for the first time the use, development, production, stockpiling, and transfer of a weapon are being prohibited in one decisive step. This reflects an important insight with implications for the

future development of international humanitarian law. The Ottawa Treaty recognizes that outlawing the use of a weapon while permitting its continued production, possession, and transfer is not enough.

..... This week the Ottawa Treaty becomes the common heritage of those who have given it birth and those who will put their signature to it. Together we assume the responsibility for the long-term task of assuring its early entry into force, universalization, and implementation.

## **Jody Williams, ICBL Coordinator:**

..... The voice of civil society raised such a high degree, that governments began to listen....

..... Today there is praise for the leadership of Canada. It is deserved. They provided the stepping stone for governments of Belgium, Norway, Austria in the firm belief that they could change the world....

..... We are committed to the implementation of this treaty, to mine clearance, and to victim assistance and we will not fail....

The tide of history has changed. The definition of superpower has changed. Together we are the new superpower .... and we should be proud we made it so.

This treaty is a gift to the world and to those who live with mines, such as Tun Chunnareth and Song Kosal....

..... This treaty is in honor of those who live in minefields and those who have cleared them.

# Court to Decide if Warships at Nanoose Bay Are Exempt From Environmental Regulations

VANCOUVER – On Thurs., Nov. 06, 1997, a Federal Court of Canada Judge reserved judgment on the question of whether US nuclear warships are exempt from Canadian Environmental Protection Act (CEPA) regulations on dumping toxic materials into fish habitat off the Nanoose Bay weapons test range. The vast majority of weapons tests at Nanoose are conducted by the US Navy.

A 1995 Dept. of National Defence (DND) study disclosed that more than 2,000 tonnes of lead, over 93,000 kms of copper wire and hundreds of lithium sulphate batteries have been dumped without a permit. CEPA lists lead, copper and lithium sulphate as toxic substances.

The Nanoose Conversion Cam-

paign (NCC) brought this issue to then federal Environment Minister Sheila Copps. Minister Copps decided that dumping by US warships at Nanoose is "incidental to ship operations" and, as such, it isn't dumping. Copps exempted US warships from CEPA dumping regulations. A request for a CEPA investigation resulted in the same decision by Copps' successor Sergio Marchi. With the assistance of the Sierra Legal Defence Fund, NCC then took the matter to the Federal Court.

The provincial government owns the sea bed at Nanoose and granted Aquatic Lands Licence 103025 to DND. Article IV (4.01), (h). (iii) obliges DND "to restore the surface of the Land as close as possible to its original condition." BC Premier Glen Clark is aware of

this issue and said "the Province continues to have serious concerns regarding the environment and public health and safety as a result of the weapons-testing at Nanoose Bay."

"We're simply asking DND to obey the same laws as the rest of us," says Norman Abbey of NCC. "Warships should not be dumping toxic metals into Georgia Strait. Whatever the judge decides, NCC wants Ottawa to honour the terms of the provincial seabed licence and \*get the lead out\* of Nanoose!"

*Information from a Press Release and subsequent communications with Nanoose Conversion Campaign.*

*For further legal information, contact Jane Luke, for SLDF: (604) 801-5853*

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*Yes, I would like to support this Newsletter and the valuable ongoing work of*

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