

STRATEGY CONSULTATION

THE WAY FORWARD

developing

legal and political

strategies to abolish

nuclear weapons

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CONVENED BY

The Simons Foundation

IN PARTNERSHIP WITH

The Nuclear Age Peace Foundation

Project Ploughshares

Simon Fraser University

*An Educational Project of
The Simons Foundation*



The Way Forward: Developing Legal and Political Strategies to Abolish Nuclear Weapons, the Strategy Consultation convened by The Simons Foundation in partnership with The Nuclear Age Peace Foundation, Project Ploughshares and Simon Fraser University, in Vancouver, B.C. on October 28–29th, 1999, emerged from my concern about the nuclear dangers to the world and its people.

Although it is one of the stated objectives of the United Nations, and although people have been working since the end of World War II to rid the world of nuclear weapons, no progress has been made. In fact, the reverse has occurred—the killing power of a nuclear weapon, since the US bombing of Hiroshima and Nagasaki, has magnified to mass proportions, and nuclear arsenals have multiplied to levels that have become a horrific nightmare. The radioactivity of Earth, its groundsoil, water and atmosphere, even without a nuclear war, is proving to be dangerous to the health of the people. Even though atmospheric nuclear testing has been banned, the levels of strontium 90 in the teeth of babies of America is at the same level as during the height of the testing in the 1950s.

The end of the Cold War provided an opportunity to eliminate these weapons of mass destruction and to halt the mining of uranium, the research, development and manufacture of nuclear weapons, but the opportunity has been lost and research and development and subcritical testing of weapons continues. Proliferation is on the rise, the Conference on Disarmament is at a stalemate, the nuclear weapons states are ignoring Article VI of the NPT, and lack of progress in the NPT Regime is a cause for gloom. Moreover, the US Senate has refused to ratify the CTBT, the United States is placing the ABM Treaty in jeopardy and there has been a recent change for the worse in Russia's nuclear weapons policy.

With these concerns in mind, I invited David Krieger of The Nuclear Age Peace Foundation, Ernie Regehr of Project Ploughshares, and Simon Fraser University to partner with The Simons Foundation in this consultation and I want to thank them for their invaluable contributions. We, at The Simons Foundation, could not have accomplished this without their ideas and expertise. I also want to thank Penelope Simons for her work in preparing for the Consultation and for writing the report, and Mary-Wynne Ashford, Nola-Kate Seymoar and Bev Delong for their arduous tasks as recorders. Elaine Hynes of The Simons Foundation and Vaune Adams of Simon Fraser University deserve thanks also for their painstaking work and attention to detail which ensured the quality of the event.

The consultation brought together distinguished experts in disarmament from many parts of the world—international lawyers, government policy makers and advisors, political scientists, medical doctors, former ambassadors, naval commanders, Senators and activists. The names of the participants are listed at the end of this report.

The purpose of the consultation was to identify and develop legal and political strategies, approaches and policies in an endeavour aimed at transforming the international disarmament agenda from one of strategic stability to an agenda that pursues the speedy elimination and prohibition of nuclear weapons.

The consultation took the form of two concurrent working groups: a legal and a political. The legal stream was composed of a group of legal experts—the key lawyers, those who thought through the problem of bringing the question of the illegality of nuclear weapons to the International Court of Justice—as well as individuals skilled in lobbying and in developing political and advocacy strategies. The political stream was composed of the key activists in the

World Court Project and the Ottawa Process as well as experts in disarmament and individuals skilled in lobbying and political strategy.

Though we recognized that the legal and political are integrally related, we believed that by focussing in this way, we could define and develop strategic approaches in ways that could, first of all in the legal stream, provide concrete steps sanctified by rule of law for policy developers and negotiators in the official realm, and also consider potential legal actions both in international law and nation state jurisdictions which would move forward the abolition agenda. And, secondly, in the political realm, we would look at past effective disarmament strategies, in particular the World Court Project and the Ottawa Process for the Landmines Treaty, with a view to developing from these a way to move forward speedily and mobilize the public to support the abolition of nuclear weapons. We believe this was a successful approach.

The status of the nuclear disarmament efforts was the focus of discussion by both groups in the first session. Both groups, in the second session, considered the question of how to move forward from a Model Nuclear Weapons Convention to a Nuclear Weapons Convention.

In the following session, the legal working group discussed potential legal actions which could move the abolition agenda forward and came up with specific recommendations which are presented in the report. The political working group surveyed the effective disarmament strategies from past actions and developed strategies building on the past successes. The groups came together to share their discussions and conclusions several times during the Consultation.

In my view, the Strategy Consultation was a success and the following report, we believe, will provide useful information and tools for moving the nuclear weapons elimination agenda forward and I want to express my appreciation and thanks for the contributions of the participants, for their creative and energetic thought and strategy development.

It is our hope to convene a follow-up conference in the future.

I encourage you to utilize the report, to disseminate its recommendations and to distribute it as widely as possible.



Jennifer Allen Simons
President, The Simons Foundation

Almost a decade after the end of the Cold War we find ourselves in a more perilous situation with respect to the likelihood of accidental or intentional use of nuclear weapons than at any time in the last ten years. The nuclear disarmament regime is collapsing despite certain positive initiatives, such as the formation and actions of the New Agenda Coalition (the “NAC”) and the recent groundbreaking decision by a Scottish magistrate in the Trident case¹.

The Treaty on the Non-Proliferation of Nuclear Weapons (1968) (the “NPT”) which is the cornerstone of the nuclear disarmament regime is in political and legal crisis. The 1995 indefinite extension of the NPT was conditioned on a programme of action,² which included, among other things, the conclusion and ratification of a Comprehensive Nuclear-Test-Ban Treaty (the “CTBT”), conclusion of negotiations on a Fissile Material Cut-Off Treaty and “systematic and progressive efforts by the nuclear weapon states to reduce nuclear weapons globally”.

While the July 8, 1996 Advisory Opinion³ (the “ICJ Opinion”) of the International Court of Justice is a strong legal statement of the general illegality of the threat or use of nuclear weapons in international law⁴ and a reaffirmation of the obligations under Article VI of the NPT⁵, the Court did not go so far as to declare the possession or stockpiling of such weapons to be illegal.

The nuclear weapon states have been careful to pay lip service to their obligations under Article VI and under the programme of action but they consistently resist any concrete steps towards, or mechanisms for, the actual elimination of nuclear weapons. Indeed the U.S., France and Britain are investing billions of dollars in technology which will allow “virtual” testing of nuclear weapons and in facilities for nuclear warhead production.

In addition, the U.S. Senate has voted against ratifying the CTBT. The negotiations on a Fissile Material Cut-Off Treaty are deadlocked in the Conference on Disarmament over the issues of existing uranium stockpiles and U.S.

national missile defence plans.

The NPT regime has been further destabilised by India’s and Pakistan’s nuclear tests and by Israel’s nuclear programme and U.S. protection of that programme. These three states adamantly remaining outside of the treaty regime has prevented the provisions of the NPT, for better or for worse, from becoming customary international law.

The review process of the NPT is also in crisis. The non-nuclear weapon states are frustrated and disappointed with the lack of clarity on the powers and limits of the review process. They are conscious and fearful of the creeping re-rationalization of nuclear weapons by the nuclear weapon states.

Bilateral disarmament initiatives are waning. START II has not been ratified. The negotiations on START III are being conditioned on modification of 1972 Treaty on the Limitation of Anti-Ballistic Missile Systems and are stalled. The United States’ plan to build an national missile defence system is a cause of great unease and concern for Russia and China and other nuclear capable and threshold states.

The U.S. Senate’s vote against the ratification of the CTBT is only a symptom of the real problem: that the nuclear weapon states are unwilling to give up reliance on nuclear weapons. The Clinton Administration has declared its intention to rely on nuclear arms as the cornerstone of U.S. national security for the “indefinite future”⁶ and is moving away from the notion of collective security to one of unilateral security. The U.K. will continue to retain Trident or a similar defence system for the “foreseeable future”⁷.

The U.S., Britain and France have been resisting efforts to review NATO’s nuclear weapons policy and a large number of the non-nuclear weapon states in NATO are reticent to push for a change of this policy. While, the continuing refusal of the latter to vote against the recent NAC resolution calling for nuclear disarmament, abstaining despite strong pressure from the nuclear weapon states to vote “No”, signals an important crack in NATO’s nuclear consensus, these states are still unwilling to

outwardly support these resolutions. Thus, while Germany and Canada have pushed for, and NATO has agreed to, a review of its nuclear policy and to report on that review by December, 2000, both of these states abstained on the recent NAC resolution.

It is clear that the current situation demands urgent action and it has been the task of the participants in this consultation to begin to develop strategies not simply to respond to the current crisis but to move forward the goal of abolition of nuclear weapons. But if we are to be effective in our quest to eliminate nuclear weapons we must first recognise the complexity and depth of the challenges we face.

First, as Professor Richard Falk⁸ stated, what underlies the perpetuation of deterrence policy and deterrence mindset in the post-Cold War era where strategic enemies no longer exist, are the deep and conflicting social and psychological problems of fear of, and dependence on, violence and the institution of war. Nuclear weapons epitomize that problem. Thus, it is not merely a matter of changing political doctrine but of changing the consciousness of human society.

Second, it is necessary to understand why the current nuclear disarmament regime is failing. Jonathan Schell⁹ observed that the current arms control and disarmament system was conceived and developed within the framework of the doctrine of deterrence through “mutually assured destruction” which underpinned the nuclear arms race and possession of nuclear weapons. Thus, the current arms control and disarmament regime never envisioned the ultimate elimination of nuclear weapons. In today’s world, the modest disarmament goal of a former superpower can now be a realistic armament goal for those states which now have nuclear weapons capacity, this type of arms control is no longer viable. The international nuclear disarmament effort can no longer be focussed on strategic stability instead of specifically on the elimination of nuclear weapons.

The question is no longer one of proliferation or non-proliferation. Rather, as Rebecca Johnson¹⁰ stated, the only

choice that remains is between the assured dangers of proliferation and the challenges of nuclear disarmament. In the words of Jonathan Schell, we cannot even begin to move forward on non-proliferation until we embrace abolition of nuclear weapons as our concrete goal. Arms control without the goal of abolition lacks moral, legal and political credibility and coherence. We cannot, therefore focus all our efforts on stabilizing the NPT regime. Instead, we must reconceive our approach so that nuclear disarmament discussion is conducted within the framework of abolition.

Dr. Elisabeth Mann Borgese¹¹ noted that the abolition of nuclear weapons will not be achieved through an incremental approach. We must have a clear vision of the whole goal we wish to accomplish. At the same time we cannot dismiss the importance of those incremental steps which are fundamental to the achievement of abolition. Thus, in order to address the critical aspects of these issues, we will require a carefully thought out, clear and multifaceted approach.

Felicity Hill¹² stated that it is possible to see these events as a turning point for the creation of the political climate necessary to move forward on this issue. Richard Falk refers to this as a defining moment and says that we cannot underestimate the importance of moral, political and legal clarity. If we believe that nuclear weapons are immoral and illegal at the highest level because of their potential destructive capacity then we cannot live with them. We, therefore, must have the courage to act as if we are right in order to continue to pursue our goal of abolition of nuclear weapons. We must act from outside of mainstream social and political consciousness until the mainstream itself changes.

To move forward effectively toward the elimination of nuclear weapons, then, the international community including civil society must establish a clear political priority for abolition. Only once we have created a political environment in which nuclear weapons are seen as morally abhorrent, and which defines an unequivocal objective of eliminating or prohibiting nuclear weapons, will laws with respect to those weapons be effective.

I. The Legal Workshop

A. Action to Develop International Law

1. MODEL NUCLEAR WEAPONS CONVENTION

It is critical that the states with nuclear weapons are brought into a process of discussion on a Nuclear Weapons Convention. The Model Nuclear Weapons Convention was developed as an advocacy tool and a method of focusing debate in the process of developing and negotiating a binding international convention to prohibit the building, possession and use of nuclear weapons. It outlines the legal, technical and political measures necessary to prohibit nuclear weapons. The Model Nuclear Weapons Convention can be discussed as a non-discriminatory next step beyond the NPT and such discussions could build momentum toward changing the political climate.

a) Strategy—Conference for discussion of the Model Nuclear Weapons Convention

In the course of developing the legal text a number of critical and complicated questions have arisen¹³ which need to be addressed. To that end, the Canadian government could be encouraged to host a seminar of legal and technical nuclear weapons experts to review the model convention. Hosting a low-key technical and legal meeting rather than calling a diplomatic meeting might allow government officials and technical experts to contemplate the issues involved in a non-threatening atmosphere. Working on the details of the many complex issues may also encourage a change in the mindset of government officials.

b) Considerations

The political climate in Canada may not yet be ripe for the Canadian government to associate itself with discussions on the Model Nuclear Weapons Convention because of its membership in NATO. It may be necessary to develop a more supportive political climate so that Canada does not lose its influence in NATO.

c) Strategy—Speaking Tour

Merav Datan¹⁴ and Alyn Ware¹⁵, two of the drafters of the Model Nuclear Weapons Convention gave a series of talks in New Zealand and Australia to raise awareness about the model convention. A similar tour is being planned for Canada in the Fall of 2000.

2. AMENDMENT OF NPT

While Article VI of the NPT requires the parties to negotiate in good faith to end the arms race and on nuclear disarmament, and to conclude a treaty on general and complete disarmament,¹⁶ it does not set out a specific time

frame in which such negotiations are to take place. Nor does the NPT, unlike the Chemical Weapons Convention set out the express obligation of nuclear weapon states to eliminate their nuclear arsenal.

However, an amendment of certain provisions of the NPT could transform it into a nuclear weapons convention.

a) Strategy—Amendment Conference

Article VIII(1)¹⁷ of the NPT allows an amendment conference to be called by one third of the parties to the Treaty.

Four proposed amendments currently circulating are as follows:

- i. The addition of two protocols and an amendment to Article IX(3). The first protocol would be an obligation not to use or threaten to use nuclear weapons. The second would require each party to eliminate all nuclear weapons in its possession or jurisdiction. Article IX(3) and the rest of the treaty would be amended to eliminate the distinction between nuclear weapon states and non-nuclear weapon states.¹⁸
- ii. The addition of a second paragraph to Article VI which sets out a time-bound framework for the fulfillment of obligations of nuclear disarmament currently set out in that Article.¹⁹
- iii. The addition of a second paragraph to Article VI which obliges the parties to call a Special Conference on Nuclear Disarmament in order to negotiate a Protocol to the Treaty which would provide for complete nuclear disarmament.²⁰
- iv. The addition of a new Article recognising the obligations of the parties under Article VI and setting out a comprehensive obligation never to develop, produce, stockpile or otherwise acquire or retain nuclear weapons, fissile materials and delivery systems and setting out verification procedures in a protocol.²¹

b) Considerations

It is unlikely that any of the above proposed amendments would be approved since paragraph 2 of Article VIII requires that any amendment

“be approved by a majority of the votes of all the Parties to the Treaty, including the votes of all nuclear-weapon States Party to the Treaty and all other parties which, on the date the amendment is circulated, are members of the Board of Governors of the international Atomic Energy Agency”

However, the purpose of calling an amendment conference would not be to achieve the amendment per se but rather to:

- open another forum for discussion of a nuclear weapons convention;

- build evidence for another case before the International Court of Justice of the breach by nuclear weapon states of their obligations of good faith;
- build political pressure for progress toward the negotiations of a nuclear weapons convention;

Any proposed amendment must be sufficiently progressive and aimed at abolition. The incorporation of a binding negative security assurance, for example would alone not meet these criteria.

This strategy will require building a high level of consensus among key states on the wording of the amendment and the timing of the conference.

c) Contact for Action

Lawyers' Committee on Nuclear Policy, New York has organised a first consultation to discuss these issues.

3. SHAREHOLDERS ACTIONS

The possibility of shareholders of corporations involved in the nuclear weapons industry using their voting rights at annual general meetings to protest the involvement of those corporations was raised but not discussed.

4. RAISING AWARENESS IN THE LEGAL COMMUNITY

a) Strategy—Building Support in Bar Associations

Lawyers for Social Responsibility is working to build support for a national resolution from the Canadian Bar Association endorsing the international law obligation to negotiate and conclude a nuclear weapons convention.

b) Strategy—Building Support in Law Faculties and Law Schools

Lawyers for Social Responsibility is planning a speaking tour of Canadian Law Schools to:

- raise awareness of the abolition campaign;
- encourage students to work with LSR;
- encourage professors to raise the issue of nuclear weapons in the classroom; and
- to encourage professors of law to sign a "Statement of International Law on Nuclear Weapons".

Similar strategies in the U.S. and the U.K. might prove a powerful tool for building political will.

B. Legal Actions

1. INTERNATIONAL COURTS

a) Strategy—Bring an Article VI Case in the International Court of Justice²²

The International Association of Lawyers Against Nuclear Arms ("IALANA") is currently developing a brief for bringing another action in the International Court of

Justice under Article VI of the NPT and the Opinion. The action would be based on the breach of the obligation of the defendant state(s) under Article VI to negotiate in "good faith" on effective measures that would lead to nuclear disarmament. The applicants would be asking the Court to outline a definitive timetable for negotiation.

The case would be justiciable because there are at least six international law cases which deal with the meaning of the term "good faith"²³.

Evidence of the breach will have to be collected. It may include:

- the NATO-Russia Founding Act where it is agreed NATO will continue to deploy nuclear weapons;
- U.S. National Defence documentation which sets out the details of why U.S. nuclear policy should be maintained;
- Presidential Decision Directive 60;
- the Stockpile Stewardship programme and budget;
- the 1999 NATO Strategic Alliance Concept;
- the 1994 Defence Posture;
- NATO policy of "first use" which contradicts the Negative Security Assurances made by the nuclear weapon states pursuant to the 1995 indefinite extension of the NPT;
- evidence of non-nuclear weapon states aiding the nuclear weapon states in their breach of international law by, for example, nuclear sharing contrary to Article II of the NPT;
- any evidence of breach by the nuclear weapon states of their obligation to negotiate in good faith arising at an NPT amendment conference; and
- evidence showing that the deployment of nuclear weapons due to their destructive power is illegal in international law.²⁴

b) Considerations

There are two types of cases which could be brought:

(1) Contentious Case

A contentious case would be the quickest way to bring this issue before the International Court of Justice and would allow for a legally binding judgment between the parties. It could be brought by any state which has accepted the jurisdiction of the International Court of Justice.

However, of the nuclear weapon states, the only possible respondent at present would be U.K. The U.S., Russia and China have not attorned to the jurisdiction of the Court and India and Pakistan are not parties to the NPT. This would mean that the only state that has been a relatively good "legal citizen" would be "punished" for accepting compulsory jurisdiction. In addition, even if the U.S. attorned to the jurisdiction of the International Court of Justice it could afterward reject the judgment. All of

these issues could have a detrimental effect on the reputation of the International Court of Justice and the administration of justice at the international level.

NATO states who have accepted the compulsory jurisdiction of the Court could be brought as respondents.

(2) Advisory Opinion

This would be a slower process than a contentious case. It would require building support in the General Assembly for a resolution requesting the International Court of Justice to consider the issue.

This form of action would not target specific states and would enhance the reputation of the Court rather than putting it at risk. It would be a non-binding judgment but as a declaration of international law it would serve to build up the law on this issue. This type of case could build on the political momentum of the Canberra Commission and the Tokyo Forum.

The resolution of the General Assembly would have to be carefully worded so as not to be interpreted as a contentious case disguised as an advisory opinion.

The composition of the Court has changed since ICJ Opinion and therefore there is the possibility that another advisory opinion could water down the ICJ Opinion.

Any request for an advisory opinion needs to address all of the obligations under Article VI of the NPT including the obligation to negotiate for “general and complete disarmament”.

c) Contact for Action

IALANA is discussing these issues and will be encouraged by any recommendations.

d) Strategy—Using the International Criminal Court

The treaty establishing the International Criminal Court (the “ICC”) has not yet come into force hence the ICC does not yet exist as a body. The Statute of the ICC does not apply specifically to the threat or use of nuclear weapons. The threat or use of nuclear weapons does not expressly fall into the definition of “war crimes” set out in Article 8. However, it is arguable that the use (but not the threat of use) of nuclear weapons does fall within the definition of war crimes.²⁵ Article 8(2) provides that for the purpose of this Statute, “war crimes” means:

...

(b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:

...

(iv) Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or

widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated ...

In addition, the ICJ Opinion could be interpreted to mean that the use or the threat of use of nuclear weapons is a war crime, if not a crime against humanity, and that the Nuremberg Principles would apply to any such use or threat of use.²⁶

The Statute of the ICC contains wording which may allow the threat or use of nuclear weapons to be expressly included in the definition of a war crime at a later date. To fall under this definition nuclear weapons must be the subject of a comprehensive prohibition and be included in an annex to the Statute.²⁷

2. HUMAN RIGHTS MECHANISMS

a) Strategy—Consulting with the United Nations Human Rights Committee

The Human Rights Committee has a reporting procedure and a petition procedure. Under the reporting procedure, the Human Rights Committee receives reports on compliance of all states parties to the International Covenant of Civil and Political Rights. The Human Rights Committee then interviews representatives of the reporting states and drafts commentaries on these reports. These commentaries express concern rather than find violations.

Non-governmental organisations (“NGOs”) have no right to appear before the Human Rights Committee. However, representatives of certain peace groups could meet with Human Rights Committee members and brief them on the nuclear weapons situation and on appropriate questions to ask the state representatives of the nuclear weapon states, India, Pakistan and Israel during the investigatory sessions. Representatives of the media could attend these meetings.

b) Considerations

This strategy would require the development of a format for reporting on each state. Informed lobbyists would have to be found from each of the states in question who could brief a designated contact in New York or Geneva who could then meet with the panel handling the report for a particular state and provide that panel with an oral presentation and written materials on the issue.

The results may not, without media intervention, generate much attention. However, such a strategy might help to pressure the nuclear weapon states to comply with their international obligations.

Using the petition mechanism would be more problematic since the U.S. and Russia have not ratified the Optional Protocol and cannot therefore be the subject of a petition. China has not ratified the International Covenant on Civil and Political Rights.

c) Strategy—Bringing a case to European Court of Human Rights

This strategy was raised but not discussed. On examination of the procedure and the law it may prove to be a useful tool for organisations whose states are parties to the European Convention of Human Rights.

d) Strategy—Bringing a Petition before the Inter-American Commission on Human Rights

The procedure to bring a petition before the Inter-American Commission on Human Rights is not as stringent as that of the European Convention on Human Rights. Under Article 44 of the American Convention on Human Rights, “Any person or group of persons, or any non-governmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.” A case could potentially be brought against the U.S. since, although it has not ratified the American Convention on Human Rights, it is a member of the Organization of American States and is thus automatically a member of the Inter-American Commission on Human Rights.

e) Considerations

It would be necessary to examine the law and procedure of the Commission carefully in order to build a case. A case based generally on the threat to the “right to life” from the nuclear weapons industry may be stronger than pursuing specific instances of individuals harmed by the effects of uranium mining, for example.

3. DOMESTIC ACTIONS

a) Strategy—Criminal Prosecution based on Universal Jurisdiction

States have universal jurisdiction to prosecute war crimes and crimes against humanity. In the ICJ Opinion, the Court confirmed that the Nuremberg Principles form part of International Humanitarian Law.²⁸

It may be possible to identify an individual and bring him or her to trial for war crimes and or crimes against humanity with respect to nuclear weapons.

b) Considerations

This sort of action would require a prosecutor and a state willing to hand over the particular individual. The Pinochet Case is instructive on this issue.

Seeking individual responsibility for the nuclear weapons issue is important but it may run into many road blocks and it may be better in these instances to focus on state responsibility.

c) Strategy—Civil (Dis)Obedience and using the Court as a Theatre

There are 24 domestic civil obedience cases where the ICJ Opinion has been pleaded.²⁹ These cases can be a powerful tool for raising awareness among the judiciary and the media of international law related to nuclear weapons.

d) Considerations

It is important to pick the jurisdiction of such actions carefully. In civil law jurisdictions international law is automatically part of the law of the land but in common law jurisdiction it must be specifically incorporated into domestic law by statute. Therefore a judge in a common law jurisdiction may be more reticent to apply and even constrained in applying international law.

A manual of the international legal arguments and how international law can be applied in a domestic court is needed to assist local counsel who are arguing these cases.

e) Strategy—Bringing Actions against Manufacturers of Nuclear Weapons

It may be possible to bring actions against corporations involved in the nuclear weapons industry on behalf of those suffering from the effects of nuclear weapons production and use. The cases being brought against corporations in the tobacco industry and in the small arms industry might be instructive.

4. NON-LEGAL TRIBUNALS

a) Strategy—Create a non-legal Citizens’ Tribunal/Forum to raise public awareness

A citizen’s tribunal in the vein of a truth and reconciliation commission (or truth and transformation) could be set up to raise public awareness of international law and nuclear weapons.

b) Considerations

It would be important not to make this sort of procedure into a witch hunt of individuals involved in research, development, building deployment and use of nuclear weapons.

It may be better to “try” the states themselves and use the converted individuals such as General Lee Butler, USAF (Ret)³⁰ and Robert McNamara³¹ to give evidence against the states.

However, individuals who participate in the system need to be accountable.

II. The Political Workshop

A. General Concepts

In the political workshop, the participants grappled with the changed context of nuclear disarmament in the post Cold War period. In the 1970s and 1980s, public involvement drew upon both fear of a nuclear holocaust and a sense of high morality in calling for peace, building bridges with the Soviets, and refusing to accept enemy stereotypes and propaganda from either side. With the collapse of the Soviet Union, many people have the impression that the nuclear threat has disappeared. At the same time, the questions surrounding nuclear disarmament have become extremely complex. Issues such as the U.S. Senate's rejection of the CTBT, the crumbling of the NPT regime, U.S. plans to build and deploy a ballistic missile defence system, sub-critical testing of nuclear weapons and links with nuclear power, cannot be captured in sound bites or compelling images that attract contemporary media. The large number of issues, the research needed to respond to legal, environmental, health and human rights dimensions of nuclear weapons policies and the need for public support stretch the capacities of nuclear disarmament organisations. The dilemma we face is that from a public awareness point of view, a single focused campaign would be the most powerful tool for nuclear abolition, but the complexities of the task of abolishing nuclear weapons demand a highly sophisticated, multifaceted approach. The ideal would be to maintain the broad and differentiated NGO expertise and response capability combined with a clear and compelling public message within a common strategy.

B. Past Effective Strategies

The lessons of the World Court Project, The Trident Case (Scotland) and the Ottawa Process provided important insights for strategic planning.

1. WORLD COURT PROJECT

In this campaign "people power" succeeded in getting the International Court of Justice to render its advisory opinion. The fundamental elements of the multifaceted campaign are set out as follows:

a) Key Elements

- Obtaining endorsements from celebrities and leaders
- Obtaining declarations by influential people and groups
- Lobbying delegations and elected officials
- Sending letters to governments and the press
- Media outreach

b) Commentary

All of the elements were active simultaneously at the local and international level through extensive international networks. These networks ensured that when a political leader made a statement in his local area, the delegation at the United Nations ("UN") knew immediately. The delegations were able to use those statements to help in influencing the policies of government representatives at the UN. Strategic decisions of when to push the issue forward in the various international fora such as the European Community were crucial.

A constant stream of press releases kept the issue in the foreground for media in local constituencies as well as at the UN. Briefing books, papers for ordinary citizens, and action ideas for building coalitions were widely distributed. The NGO expertise involved in the campaign was formidable. Women and indigenous peoples, victims of the effects of radiation exposure caused by the testing in the South Pacific, served as spokespeople, bringing passion and a sense of urgency with their personal stories.

2. THE OTTAWA PROCESS

Similarly, the landmines campaign built upon NGO strengths and networks to develop a public campaign that attracted the support of key government leaders, and influential people such as Princess Diana.

a) Key Elements

- The campaign was based on humanitarian motives rather than fear
- A coalition between NGOs and governments was established and Mines Action Canada participated in official delegations
- A good relationship with the press was cultivated
- Action alerts were timely
- Clear relationships were established between the actions called for and the outcomes (for example, "stopping this means stopping that")
- Press releases were prepared in advance
- Officials who were under pressure were given public support.
- Governments were kept honest by giving credit where due and exposing hypocrisies even if this caused public embarrassment

b) Commentary

Every opportunity was used to bring the issue forward, and new opportunities were created. Personal stories, collaboration with government bureaucrats and ministers, participation of large Canadian NGOs including churches, Oxfam, Care helped to build strength. The strategy of producing vivid images of the effects of anti-personnel land

mines was very effective. For example, many governments were very embarrassed by the simulated minefield which was created, and the huge shoe pile which was left, outside of the UN in Geneva at the 1996 Review Conference on Convention of Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or Have Indiscriminate Effects.

3. TRIDENT CASE (SCOTLAND)³²

The case was discussed as illustrative of:

- the importance of having a strong and clear legal position/defence
- the logical use of the ICJ Opinion (that the use or threat of use of nuclear weapons is generally illegal) that a threat of the use of nuclear weapons is “use” and deployment constitutes a “threat”
- the legal defence of necessity was used on the basis that the U.K. deployment of Trident constitutes a real and imminent danger and a crime

a) Commentary

The acquittal of these women has caused a constitutional crisis in Scotland and is bringing a lot of media attention to the issue.

C. Strategies

In the process of conceptualising a global campaign for nuclear disarmament, the participants discussed the target audiences to be addressed, key issues with respect to some of the audiences, crucial upcoming multilateral meetings and UN General Assembly votes, and strategic actions that could be taken.

1. TARGET AUDIENCES

a) Governments

(1) Canadian government

The key decision makers in the Canadian government were identified as:

- ministers/cabinet, specifically the Ministries and Departments of Defence and Foreign Affairs
- parliament, in particular, members of parliament on the relevant standing committees
- political parties and in particular, the key policy writers in each of the parties,
- officials

(2) U. S. Government

The United States was singled out as the most important government because nuclear disarmament will not advance unless the United States changes its position on the issue. It is likely that if the United States changes, the other nuclear weapon states would fall in line. The U.S. Congress, Administration, political parties and local states were identified as targets of interventions. It was also noted that U.S. congressmen and senators generally do not take heed of international opinion. As in other countries, owning nuclear weapons is a matter of national pride. Thus, to stigmatize nuclear weapons especially in the United States is essential.

(3) Governments of other Nuclear Weapon States

Any strategy to build support among nuclear weapon states should include India, Pakistan and Israel with particular attention being focussed on the United States. However, the rejection of the CTBT by the U.S. Senate may mean that the time is ripe to focus lobbying efforts on the U.K. and France who may now see the United States as a state who will not play by the rules.

(4) Governments of Non-Nuclear Weapon States

The Middle Powers Initiative has an advanced network of governments and NGOs and is continuing to build support for the abolition of nuclear weapons with like-minded governments and lobbying for support for each of the General Assembly resolutions on the issue.

b) The Public

It is essential to re-mobilise the general public to both support the government and spur it into action. However, in order to re-mobilise the public the campaign to abolish nuclear weapons needs to become more interesting. There is a particular need to reposition the issue so that it is fresh and important to old hands and previous allies in the peace movement and to appeal to a much younger generation (for example, those under 30 years of age) for whom the issue is not salient. Many young people know very little about nuclear weapons and the dimensions of the threat they pose to life on earth.

c) Other Important Target Audiences

- UN
- UN Agencies
- International Committee of the Red Cross
- NATO
- Organization of American States
- Commonwealth Heads of State
- La Francophonie
- Intergovernmental groups, such as NAC and the Non-Aligned Movement
- Cities and Municipalities
- Asia-Pacific Economic Cooperation (“APEC”)
- World Trade Organization (“WTO”)
- International Monetary Fund (“IMF”)
- The World Bank Group
- Decision makers in corporations
- Media

2. KEY UPCOMING EVENTS AND ISSUES

a) Events

- the NPT Conference in April, 2000

b) Issues

- the CTBT
- the NPT
- the NATO review of its nuclear weapons policy
- Ballistic Missile Defence

3. STRATEGIC ACTION

The following were discussed as components in building an effective political strategy:

- Making a workable plan
- Identifying appropriate approaches to disarmament, for example step by step and/or comprehensive
- Answering the key concerns such as breakout
- Building a public movement
- Translating public support into policy
- Using the law
- Using international and regional fora
- Pulling it all together

a) Target Canadian Government -Strategy: Lobbying the Policy Writers in Canada on Ballistic Missile Defence

It will be important to engage people on the issue who are working at the policy level and mobilise public support for an acceptable policy. The deadline for the U.S. presidential decision on deployment of ballistic missile defence system is June, 2000.

b) Considerations

From a Canadian perspective the issue of the U.S. plans to build and deploy a ballistic missile defence system provides

an opportunity to do some innovative rethinking about deterrence, and it will be very important to oppose ballistic missile defence, not on the grounds that it undermines deterrence, but rather on the grounds that it will undermine disarmament.

It would be helpful to build on the concept of human security as a way of connecting abolition with a current interest of Canada and the UN.

c) Target: U.K. Government—Strategy: Work with Prime Minister of the U.K.

Giving public support to Prime Minister Blair for nuclear disarmament may be a way to begin to move the nuclear weapon states forward. Mr. Blair is seen as a powerful leader, his popularity is high, he has a lot of credibility in the United States and he has a long history of active support for nuclear disarmament.

d) Considerations

Although the Blair government has stated in its defence policy that it will continue to retain Trident or a similar defence system for the foreseeable future, the public statements made by Mr. Blair, M. Chirac and Mr. Schröder with respect to the U.S. Senate rejection of the CTBT show that the Blair government may be moving more towards a sympathetic position with respect to nuclear disarmament.

e) Strategy—Using multilateral governmental meetings to raise awareness or influence policy

Intergovernmental meetings such as the 2000 NPT Review, APEC, G8, the Commonwealth Heads of Government, WTO and NATO could be used in an effective manner.

There are several possible strategies which are not exclusive:

- convene a meeting of NGOs before the event in order to develop ideas to pass on to the participating governments and as such influence the deliberations
- convene a parallel meeting to the NATO ministerial meeting to raise public awareness of the issue
- individual lobbying of individual diplomats

f) Strategy—Lobbying NATO for NGO participation

The Canadian Network to Abolish Nuclear Weapons is continuing to lobby NATO for transparency of NATO ministerial meetings and the right of NGOs to participate.

g) Target: Public—Strategy: Developing an effective PR Campaign

Consultations with sympathetic public relations firms are essential in order to develop effective campaigns. It is necessary to build a campaign based on positive messages rather than fear.

h) Considerations

Psychological research on how people perceive risks would be useful in developing any campaign. Several slogans were suggested:

- “The bomb is back and so are we!”
- “Criminal insanity on a scale dwarfing Hitler”
- “No Nukes!”

There are new aspects of the nuclear weapons issue and other ideas which could be used to help develop a new “image” for the movement:

- the 1996 ICJ Opinion which provides a new moral argument
- the 1998 nuclear tests by India and Pakistan
- the U.S. Senate’s rejection of the CTBT
- the decision in the Trident Case (Scotland)
- the United States’ plans for a ballistic missile defence system
- linking nuclear power, nuclear testing and nuclear arms as a threat human and environmental health beyond state boundaries
- linking images of effects with action
- use The International Year for the Culture of Peace and the International Decade for the Culture of Peace and Non-Violence for the Children of the World (2001-2010) for building the campaign

i) Strategy—Developing Evidence of Public Support

Declarations of public conscience and lists of endorsements of the issue were very effective in garnering the support of politicians and diplomats for the World Court Project. These strategies would be very useful for pushing for negotiations on a Nuclear Weapons Convention or with respect to another ICJ Opinion.

j) Strategy—Gaining Endorsements of Celebrities

The “No Nukes” campaign is using celebrities to create interest in the issue of nuclear abolition. Discussions are currently underway with a well-known director who is interested in developing, in collaboration with certain actors, either a short film or public service announcements based on the “No Nukes” campaign.

In the United States, Martin Sheen has filmed a thirty-second commercial on the issue.

k) Strategy—Building support of local communities, municipalities and cities

Senator Alan Cranston is currently gathering the signatures of the mayors of major cities of the world on a statement entitled “Nuclear Weapons: Threat to Cities—A Statement by Mayors”.

l) Considerations

This level of government could potentially be very powerful in raising public awareness of the issue and in influencing officials at the provincial and federal levels. Municipal governments were strong allies of the Oceans Movement.

m) Strategy—Using Citizen inspection teams

Citizen Weapons Inspection Teams have visited the Livermore National Laboratory, the Los Alamos National Laboratory and the Sandia National Laboratory. In Europe, activists have sent citizens teams to NATO bases. This strategy attracts a lot of media attention.

n) Strategy—Building an effective NGO network and movement

There is a great need to build an effective international NGO network in the nuclear weapons movement. At present the international network functions at the level of information sharing and develops some collaborative strategies. However, it is not yet capable of presenting common policy positions to government.

o) Considerations

There is a lot of institutional competition for funding especially in the U.S.

It would be useful to have a international database of NGOs with information on which group is doing what and where. The Nuclear Age Peace Foundation is doing some basic work on this for Abolition 2000, however funding is needed.

p) Strategy—Bringing in Environmental, Human Rights, Health and Women’s groups

It is also critical that we engage or re-engage NGOs who are traditionally outside the peace movement or are no longer involve with the issue of nuclear weapons. These should include but not be limited to:

- Environmental groups
- Human rights organisations
- Health groups
- Women’s groups

q) Considerations

Having these groups within the movement and raising the issue of the dangers of nuclear weapons from the perspective of the environment or human rights would help to make it more tangible to the general public. In addition, some of these groups have the ear of the grass roots public.

The issue of the environmental consequences of militarism have not been central to the official

environmental movement since 1992 when it was excluded from discussion at the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil.

Women's groups provided enormous strength and organisational support to the peace movement in the 1980s. One way to re-mobilise the women may be to focus on health and reproductive issues.

4. OTHER IDEAS

- Build government and civil society alliances
- Recognise that the U.S. arms control interests supports U.S. hegemony and the retention of weapons. Although they favour control of weapons, they are not necessarily allies in nuclear abolition
- Build support for international law and the International Court of Justice
- Use the IMF and the World Bank to bring pressure to bear where appropriate
- Take members of parliament, senators, congressmen to international events so as to sensitize them
- U.S. citizens lobby to support resolutions of nuclear abolition and no stockpile stewardship

5. QUESTIONS ARISING FROM DISCUSSIONS:

- Is it appropriate to use the argument that the overwhelming power of conventional weapons makes nuclear deterrence no longer necessary? In favor of this argument is the fact that reliance on conventional weapons for deterrence against attack at least removes the threat of nuclear weapons. Only nuclear weapons could bring about the end of life on earth in a matter of days. Against this argument is the continued reliance on the concept of deterrence, and implied support for the new conventional weapons which approach weapons of mass destruction.
- What should be the international response to genocide? There is a need for graduated responses from the first signs that genocide is being planned to action including ground forces to stop killing. This question was not discussed further for lack of time.
- Why are public perceptions of chemical and biological weapons much stronger and more negative than perceptions of nuclear weapons? Should we reposition radiation as a poison? This question requires further study.

III. Conclusion

The current crisis of the nuclear disarmament regime demands that we take action now. As stated above, the complexity of the task of eliminating nuclear weapons requires a comprehensive, multifaceted response. If we are to respond in an effective way, and indeed we must do so, we will have to develop a strategic plan which addresses, or a variety of strategic plans which together address, all facets of nuclear abolition and we must seek common ground for our actions and policies.

The strategies developed in this consultation and the ideas set out in this report should be regarded only as a first step of many. Further work is required in order to set priorities and develop those strategies which will be most effective. In the meantime, it is our hope that this report will be widely circulated and that it will provide useful information, as well as the initial tools for developing and moving forward an agenda for nuclear abolition. We, at The Simons Foundation, intend to monitor and promote development of and action with respect to, these strategies within appropriate organisations.

Endnotes

- 1 In this recent decision by a Scottish magistrate, three women who had admitted to cutting a fence, entering a “Protected Area” at the Faslane naval base in Scotland, boarding a support barge for the U.K. Trident submarines and willfully destroying equipment aboard the barge causing £80,000 of damage, were acquitted of criminal charges. The defence was based on the argument that the U.K. Trident nuclear programme was illegal under international law. The defence argued that the three women were acting to prevent a crime.
- 2 See Principles and Objectives for Nuclear Non-Proliferation and Disarmament, Declaration of May 9, 1995, Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, New York, April 17-May 12, 1995, <http://www.acronym.org.uk/a11app3.htm>.
- 3 Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion (the “ICJ Opinion”), UN Document A/51/218 (1996), reprinted in 35 I.L.M. 809 and 1343 (1996) para. 81.
- 4 The Nuclear Weapon States often rely on the statement by the Court that:

“the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.” (Dispositif para 105(2)(f)).

However, although there were three dissenting and several separate opinions, the majority of the Court found that for all practical purposes, the use or the threat of use of all nuclear weapons is illegal. In addition, the Court unanimously held that: A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful;”(Dispositif para. 105(2)(C))

And further that: “A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law....” (Dispositif para 105(2)(D))

The Court also noted that the Nuclear Weapon States
- 5 Article VI states that:

“Each of the Parties to the Treaty undertakes “to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control”.

In the ICJ Opinion, the Court noted the obligation of the states parties to the NPT to negotiate in good faith and stated that: “The legal import of that obligation goes beyond that of a mere obligation of conduct; the obligation involved here is an obligation to achieve a precise result—nuclear disarmament in all its aspects—by adopting a particular course of conduct, namely, the pursuit of negotiations on the matter in good faith” (para. 99).
- 6 U.S. Presidential Decision Directive 60, R. Jeffrey Smith, “Clinton Directive Changes Strategy on Nuclear Weapons”, Washington Post, December 7, 1997.
- 7 See the United Kingdom Strategic Defence Review, “Modern Forces for a Modern World”, U.K. Ministry of Defence, 8 July, 1998, and in particular para. 70.
- 8 Professor of international law at the Center of International Studies, Princeton University.
- 9 Author of *The Fate of the Earth* (1982), *The Abolition* (1984) and *The Gift of Time: The Case for Abolishing Nuclear Weapons Now* (1998).
- 10 Executive Director of The Acronym Institute, London.
- 11 Chairperson of the International Oceans Institute, Dalhousie University and Professor of international law at Dalhousie Law School.
- 12 Director of the Women’s International League for Peace and Freedom, New York.
- 13 For the full text of the model Nuclear Weapons

- Convention and the issues raised in the development of the draft convention see: Security and Survival: The Case for a Nuclear Weapons Convention, International Association of Lawyers Against Nuclear Arms, International Network of Engineers and Scientists Against Proliferation, and International Physicians for the Prevention of Nuclear War (Cambridge, MA: 1999).
- 14 Program Director at the International Physicians for the Prevention of Nuclear War, Boston.
 - 15 Lawyers' Committee on Nuclear Policy, New York.
 - 16 See above note 3.
 - 17 Article VIII(1) states:
"Any Party to the Treaty may propose amendments to this Treaty. The text of any proposed amendment shall be submitted to the Depository Governments which shall circulate it to all Parties to the Treaty. Thereupon, if requested to do so by one-third or more of the Parties to the Treaty, the Depository Governments shall convene a conference, to which they shall invite all the parties to the Treaty, to consider such an amendment".
 - 18 This amendment was developed by Merav Datan of IPPNW and Alyn Ware of the Lawyers' Committee on Nuclear Policy ("LNCP"). See Appendix 1.
 - 19 The amendment was developed by John Burroughs, Executive Director of the LNCP. See Appendix 2.
 - 20 Ibid. See Appendix 3.
 - 21 Z. Mian & M.V. Ramana, "Diplomatic Judo: Using the NPT to Make the Nuclear-Weapons States Negotiate the Abolition of Nuclear Weapons", 36 Disarmament Diplomacy (1999). See <http://www.acronym.org.uk/dddesc.htm>). The authors propose this amendment by way of example. They argue that "[t]he precise form of the amendment is not important as long as it is acceptable to at least one-third of the NPT parties".
 - 22 Alyn Ware's paper, "Returning to the World Court: Notes on Possible Avenues for Follow-up Action in the International Court of Justice on Nuclear Disarmament", October 27, 1999 covers several options and is attached as Appendix 4.
 - 23 See Tariq Hassan, "Good Faith in Treaty Formation", 21 Virginia Journal of International Law, p. 443 and J.F. O'Connor, Good Faith in International Law (1991), Chapter 6.
 - 24 This argument is being considered by World Court Project (UK).
 - 25 The Statute of the ICC, though it would likely apply to "use" of nuclear weapons, is equivocal. It uses a proportionality test "clearly excessive in relation to the concrete and direct overall military advantage anticipated". After the bombing of Hiroshima and Nagasaki (the only use of nuclear weapons) the U.S. argued that the use of the nuclear weapons in this case was not excessive in relation to the concrete and direct overall military advantage gained since it ended World War II in the Pacific and led to the unconditional surrender of Japan.
 - 26 The Nuremberg Principles define "war crimes" as "[v]iolations of the laws or customs of war which include, but are not limited to ... wanton destruction of cities, towns, or villages, or devastation not justified by military necessity".
 - 27 Article 8(2) of the Statute of the ICC states: For the purpose of this Statute, "war crimes" means:
 - (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law, namely, any of the following acts:
 - (xx) Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123".
 - 28 ICJ Opinion, para. 81.
 - 29 Saul Mendloviz has agreed to provide a summary of these 24 cases.
 - 30 Commander-in-Chief U.S. Strategic Command in charge of all U.S. nuclear forces 1992-1994.
 - 31 U.S. Secretary of Defense during the 1962 Cuban Missile Crisis.
 - 32 See note 1, supra.

C O N S U L T A T I O N A P P E N D I C E S

Appendix 1**PROPOSED AMENDMENT TO THE TREATY ON THE NON-PROLIFERATION OF NUCLEAR WEAPONS****Protocol 1**

Each of the Parties undertakes never to use or threaten to use nuclear weapons.

Protocol 2

Each of the Parties undertakes to eliminate all nuclear weapons it owns or possesses or that are located in any place under its jurisdiction or control not later than [] years after entry into force of this protocol.

This Protocol shall be open for signature to all States possessing or having control over unsafeguarded fissile material as at January 1, 1999 and shall enter into force [] days after the date on which [] [of the nuclear weapon] states have deposited their instruments of ratification.

Article IX(3)

The sentence “For the purposes of this Treaty, a nuclear-weapon State is one which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967.” shall be deleted.

All other references to “nuclear-weapon States Parties” or to “non-nuclear weapon States Parties” shall read “States Parties”.

Explanation of proposed amendment

The amendment would prohibit the threat or use of nuclear weapons and provide a definite obligation to eliminate existing nuclear weapons. Protocol 2 would apply to all nuclear weapons States and nuclear threshold States and any other States with unsafeguarded fissile material (i.e. nuclear capable States).

The amendment of Article IX(3) would then remove the discriminatory nature of the NPT and would ensure that all remaining unsafeguarded fissile material would be placed under safeguards.

Appendix 2**AMENDMENT PROPOSAL—TIMEBOUND FRAMEWORK FOR ACHIEVEMENT OF NUCLEAR DISARMAMENT**

The Nuclear Non-Proliferation Treaty shall be amended by the addition of a second paragraph to Article VI. As amended, Article VI would provide as follows:

(1) Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.

(2) In fulfillment of the obligation to pursue in good faith and bring to a conclusion negotiations on nuclear disarmament in all its aspects, multilateral negotiations on complete nuclear disarmament shall commence within one year of the date this paragraph becomes effective, and complete nuclear disarmament shall be achieved within 15 years of that date.

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Appendix 3**AMENDMENT PROPOSAL—TIMEBOUND FRAMEWORK FOR ACHIEVEMENT OF NUCLEAR DISARMAMENT**

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(2) In fulfillment of the obligation to pursue in good faith and bring to a conclusion negotiations on nuclear disarmament in all its aspects, there shall be established a Special Conference on Nuclear Disarmament to negotiate a Protocol to the Treaty providing for complete nuclear disarmament. The Protocol shall provide that each Party to the Protocol “undertakes never in any circumstances to develop, produce, stockpile, or otherwise acquire or retain:

(i) nuclear weapons or other nuclear explosive devices or fissile materials, whatever their origin or method of production, that can be used for producing such weapons or devices;

(ii) equipment or means of delivery designed to use such weapons, devices, or materials for hostile purposes or in armed conflict”.

The Protocol shall establish a timebound framework for compliance with this obligation and also establish the institutional and verification framework for ensuring compliance with the obligation. The Protocol shall establish an International Sustainable Energy Agency to assist states in lessening or eliminating reliance on nuclear energy. The Protocol shall enter into force upon its acceptance by each of the nuclear-weapon State Parties to the Treaty and by each of the nuclear-capable States not party to the Treaty. The Special Conference on Nuclear Disarmament shall meet annually or more frequently as necessary.

Appendix 4**RETURNING TO THE WORLD COURT**

Notes on Possible avenues for follow-up action in the International Court of Justice on nuclear disarmament

Alyn Ware
October 27, 1999

INTRODUCTION

On July 8, 1996, the International Court of Justice (ICJ) delivered its advisory opinion on a question asked by the United Nations General Assembly on whether the threat or use of nuclear weapons was permissible under international law. The ICJ concluded that:

- the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law;
- However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake;
- There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.

Since the ICJ decision was rendered, the nuclear weapon states appear to have done little to adhere to the decision. France, Russia, the UK and the US, in particular, maintain policies of first-use of nuclear weapons and refuse to enter into negotiations on a program of nuclear disarmament.¹ These states, plus China, continue to deploy nuclear weapons in manners inconsistent with the ICJ decision.² A number of allies of these states, particularly those in the NATO alliance, support them in these policies and practices.

The nuclear weapon states have been invited to report on any progress they are making to implement the ICJ decision³, but have given no response.

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On the other hand, some of the nuclear weapon states have made statements in other fora arguing that they are in compliance with the ICJ decision both in terms of their deployment policies and their policies on disarmament negotiations.

The difference of opinion over whether the nuclear weapon states policies and practices are inconsistent with the decision of the ICJ has led to suggestions that further action in the ICJ is necessary to clarify the situation, and hopefully place added pressure on the nuclear weapon states to make faster progress toward nuclear disarmament.

Below are some notes on possibilities of approach to the ICJ and relative merits of the differing approaches.

1 ADVISORY OPINION ON DISARMAMENT OBLIGATION

The UN General Assembly could request an advisory opinion on whether the nuclear weapon states are adhering to their obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.

An optimum time to do this would be at the UN Millennium Assembly in 2000. As well as the symbolic significance of the end of the millennium (and a call for the end of the nuclear weapons century), this will follow the 2000 Review of the Non-Proliferation Treaty. The strongest expression of the nuclear disarmament obligation is found in Article VI of the NPT. At the NPT Review Conference, the nuclear weapon states are likely to again fail to commit themselves to a program to implement this obligation. This, backed up by the UN Secretary-General's report on the implementation of the ICJ resolution, would a strong rationale for returning to the Court.

Advantages:

- a) The action would be taken by a large majority of countries voting at the UN. This would be a good signal to the Court that the majority of countries believe that the nuclear weapon states are not implementing their obligation. It would be much easier to get a country to vote in favor of the UN resolution than it would to get a country to join in a contentious case.
- b) The action would be a logical follow-up to the action taken by the UNGA on this so far, including the original request to the Court and the follow-up resolution.

- c) As in the previous advisory opinion, we would be able to have input from a large number of states in the hearings.
- d) The opinion would relate to the policy and practice of all nuclear weapon states.

Disadvantages:

- a) An advisory opinion is given to the organization requesting, in this case the UNGA, and so is not as strong as a contentious case in terms of political clout against the erring countries.
- b) The process of obtaining a successful UN resolution would likely take some time, as a majority of UN members would need to be convinced to support the proposal.

2 CONTENTIOUS CASE AGAINST THE UK

The UK is the only Nuclear Weapon State, which accepts the compulsory jurisdiction of the ICJ and is a member of the NPT. The case could be taken by any non-nuclear state or states party to the NPT.

Advantages:

- a) Procedurally a relatively simple case to initiate, as technically only one state party to the NPT would be required to lodge the case.⁴
- b) As a contentious case it would have more weight than an advisory opinion

Disadvantages

- a) The UK and China are the only nuclear weapon states to be moving in the right direction regarding nuclear weapons policy and practice (albeit very limited progress and very slowly). The UK has reduced its nuclear weapons forces to only one system (Trident) and is reducing the numbers of that system. The UK has been floating the ideas of de-alerting and no-first-use. To take the UK to Court could give the wrong signal that small progressive steps will not be supported but lead to punishment, while the major nuclear powers are let off the hook, i.e. it could be seen as hypocritical. The fact that UK is making some small steps could also make the case much more difficult to win than one which focuses on the more clearly violative practices of the U.S. and Russia.

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- b) The case would be specific to the UK and thus be more difficult to apply politically to other countries than a case which calls attention to the policies and practices of all nuclear weapon states.

3 CONTENTIOUS CASE AGAINST THE UK, INDIA AND PAKISTAN

Advantages:

- a) The case would more likely be perceived as anti-nuclear rather than anti-UK.
- b) The case would take advantage of current publicity and opposition to India and Pakistan's tests.

Disadvantages

- a) India and Pakistan are not members of the NPT, so it will be difficult to add them to a contentious proceeding based on the NPT.⁵
- b) India has reservations to its acceptance of compulsory jurisdiction which may preclude a contentious case against them on this issue.⁶

4 CONTENTIOUS CASE AGAINST NATO STATES WHICH ACCEPT ICJ JURISDICTION⁷.

This case would be based on NATO states not implementing their obligations under Article VI of the NPT as evidenced by NATO policy and practice. Evidence could include:

- a) The Founding Act on Mutual Relations, Cooperation and Security Between the Russian Federation and the North Atlantic Treaty Organization of May 27, 1997 which states that:
"The member states of NATO reiterate that they have no intention, no plan and no reason to ... nor any need to change any aspect of NATO's nuclear posture or nuclear policy and do not foresee any future need to do so".
- b) NATO states' voting records at the United Nations which confirm this, such as their voting on the ICJ follow-up resolution.
- c) NATO states' reluctance to address nuclear disarmament in the context of the NPT Review process or the Conference on Disarmament.

Advantages:

- a) Case would be directed against more countries than just the UK.
- b) Case could give those "progressive" countries within NATO motivation and legal strength to attempt to move NATO policy.

Disadvantages:

- a) The fact that some of the countries involved (e.g. Canada and Denmark) have taken some efforts to implement their obligations might make the case more difficult.
- b) The only Nuclear Weapon State involved would be the UK.⁸

5 CONTENTIOUS CASE AGAINST NATO NUCLEAR SHARING COUNTRIES⁹

This would involve a case that nuclear sharing arrangements are in violation of Articles I and II of the NPT.

Advantages:

- a) Case relates more directly to US policy and practice than any of the other possibilities because the US is the other partner in the nuclear sharing arrangements.
- b) Case could possibly be easier to win. Proving a violation of a negative obligation (i.e. that which is not permitted) is often easier than proving violation of a positive obligation (i.e. that which is required action), particularly as a required timeframe for implementing the positive obligation (Article VI) has not been established.

Disadvantages:

- a) The case does not take the nuclear states themselves to Court.
- b) The case does not cover the most important action desired, i.e. negotiations for complete nuclear disarmament.

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TO GO TO COURT OR NOT: OTHER CONSIDERATIONS

A decision on whether or not to attempt to return to the ICJ on this issue should consider the following:

- What are the known views or likely positions of the judges on the question asked? As seen in the 1996 decision, this issue is open to a wide perspective of opinion. The outcome of another case could depend as much on the perspectives of the individual judges as on the legal strength of the case.
- The 1996 decision, while somewhat inconclusive with respect to specific policies and practices, affirmed the general illegality of nuclear weapons threat or use and provided a strong reaffirmation of the disarmament obligation, both rulings of which have been helpful to those calling for nuclear disarmament. Returning to the ICJ opens up the possibility of a decision on specifics which might be more permissive to the nuclear weapon states than we would hope and thus degrade the 1996 ICJ opinion. Even if the Court condemned one or two of the policies or practices, e.g. first-use or nuclear sharing arrangements, it could counteract that by allowing for other policies or practices, e.g. retaliatory strikes or extended deterrence. Thus, a win on one question could lead to a setback overall.

These risks must be weighed against the significant legal, moral and political weight that a court case directed against specific policies and practices of the nuclear weapon states would generate.

Appendix 4 Endnotes

- 1 France, Russia, the UK and US, for example, oppose the establishment of an ad hoc committee on nuclear disarmament in the Conference on Disarmament and also oppose a number of UN resolutions calling for nuclear disarmament including UN resolutions calling for the implementation of the ICJ decision through commencing negotiations leading to the conclusion of a nuclear weapons convention.
- 2 The deployment of Trident nuclear weapons by the UK, for example, was recently declared illegal in a Scottish Court.
- 3 United Nations resolutions on follow-up to the ICJ decision in 1997 and 1998 invited all states to report to the UN Secretary-General on efforts and measures they have taken to implement the ICJ decision and on nuclear disarmament. Of the states possessing nuclear weapons, only India has made such a report.
- 4 However, it would be best if a number of states lodged the case in order to avoid the impression that this was a dispute only between the state lodging the case and the UK.
- 5 A stronger case against India could be made with regards to their statement to the International Court of Justice on 20 June 1995, in which they stated that “... their nuclear weapons’ production and manufacture cannot under any circumstances be considered as permitted”. The Court has demonstrated the force of such statements in the Nuclear Tests Case of 1973, when it held France to its public statements regarding the cessation of atmospheric testing, stating that these were grounds for discontinuing the case.
- 6 India excludes from its acceptance of ICJ jurisdiction “(4) disputes relating to or connected with facts or situations of hostilities, armed conflicts, individual or collective actions taken in self defence, resistance to aggression ...”.
- 7 Belgium, Canada, Denmark, Greece, Norway, Portugal, Spain, UK.
- 8 Although the fact that the case would address NATO policy head on would affect the US as a key NATO partner.
- 9 Belgium, Greece, Netherlands.

C O N S U L T A T I O N P A R T I C I P A N T S

Dr. Mary-Wynne Ashford
Co-President, IPPNW
4915 Prospect Lake Road
Victoria, BC V9E 1J5 Canada
Fax: 250-479-9309
mashford@uvic.ca

Dr. Elisabeth Mann Borgese
Chairperson, International Ocean Institute
Dalhousie University
1226 LeMarchant Street
Halifax, NS B3H 3P7 Canada
Fax: 902-494-2034
eborgese@dal.ca

Mr. Simon Carroll
Political Unit Advisor, Greenpeace International
Keizersgracht 176
Amsterdam 1016 DW The Netherlands
Fax: 31-20-523-6200
scarroll@ams.greenpeace.org

Senator Alan Cranston
State of the World Forum
The Presidio, P.O. Box 29434
San Francisco, CA 94129 USA
Fax: 415-561-2323
forum@worldforum.org

Ms. Merav Datan
Program Director
International Physicians for the Prevention of Nuclear War
727 Massachusetts Avenue
Cambridge, MA 02139 USA
Fax: 617-868-2560
mdatan@ippnw.org

Ms. Bev DeLong
President, Lawyers for Social Responsibility
5120 Carney Road N.W.
Calgary, AB T2L 1G2 Canada
Fax: 403-289-4272
delong@nucleus.com

Dr. Kate Dewes, Coordinator, Security Centre
Disarmament & Security Centre
PO Box 8390, Christchurch
Aotearoa/New Zealand
Fax: 64-3-348-1353
kate@chch.planet.org.nz

Professor Richard Falk
Center of International Studies
Princeton University
51 White Pine Lane
Princeton, NJ 08544 USA
Fax: 609-258-3988
rfalk@princeton.edu

Ambassador Thomas Graham Jr.
President, Lawyers Alliance for World Security
Committee for National Security
Suite 201-1901 Pennsylvania Avenue, N.W.
Washington, DC 20006 sUSA
Fax: 202-667-0444

Commander Rob Green R.N. (Ret'd)
Chair, World Court Project UK
PO Box 8390
Christchurch, Aotearoa/New Zealand
Fax: 64-3-348-1353
robwcpuk@chch.planet.org.nz

Ms. Eva Haller
Volunteer, Nuclear Age Peace Foundation
1187 Coast Village Road, Ste. 123
Santa Barbara, CA 93108-2794 USA
Fax: 805-568-0466

Mr. John Harker
Chairman, Harker Associates/Rebuild International
29 Lynhurst Avenue
Ottawa, ON K1V 9W8 Canada
Fax: 613-523-9052
harker@istar.ca

Ms. Felicity Hill, Director
Women's International League for Peace and Freedom
United Nations Office
777 UN Plaza, 6th Floor
New York, NY 10017-3521 USA
Fax: 212-286-8211
flick@igc.org

Mr. Don Hubert
Senior Policy Adviser, Human Security
Foreign Affairs and International Trade
Peacebuilding and Human Security Division
125 Sussex Drive
Ottawa, ON K1A 0G2 Canada
Fax: 613-996-9709

C O N S U L T A T I O N P A R T I C I P A N T S

Ms. Rebecca Johnson
 Executive Director, The Acronym Institute
 24 Colvestone Crescent
 London E 8 2LH United Kingdom
 Fax: 44-0-20-7503-9153
 rej@acronym.org.uk

Dr. David Krieger
 President, Nuclear Age Peace Foundation
 PMB 121, 1187 Coast Village Road, Suite 1
 Santa Barbara, CA 93108-2794 USA
 Fax: (805) 568-0466
 dkrieger@napf.org

Mr. Bob Lawson
 Senior Policy Adviser, Deputy Coordinator
 Ambassador for Mine Action
 Foreign Affairs and International Trade
 125 Sussex Drive
 Ottawa, ON K1A 0G2 Canada
 Fax: 613-996-9709

Mr. Steven Lee
 National Director
 Canadian Centre for Foreign Policy Development
 125 Sussex Drive
 Ottawa, ON K1A 0G2 Canada
 Fax: 613-944-0687
 steven.lee@dfait-maeci.gc.ca

Mr. David B. Matas
 Director, Lawyers for Social Responsibility
 602-225 Vaughan Street
 Winnipeg, MB, R3C 1T7 Canada
 Fax: 204-944-1494
 dmatas@mb.sympatico.ca

Dr. Saul H. Mendlovitz
 Co-Director, World Order Models Project
 Rm. 246-475 Riverside Drive
 New York, NY 10115 USA
 Fax: 973-353-1445
 womp@igc.ca

Mr. Paul Meyer
 Director General
 International Security Bureau (IDD)
 Department of Foreign Affairs and International Trade
 125 Sussex Drive
 Ottawa, ON K1A 0G2 Canada
 Fax: 613-992-2482

Mr. David Mitchell
 Vice President/Chief Development Officer
 Simon Fraser University
 515 West Hastings Street
 Vancouver, BC V6B 5K3 Canada
 Fax: 604-291-5225
 dmitchel@sfu.ca

Ms. Marla Morry
 Lawyer, Human Rights & International Law
 2286 West 6th Avenue
 Vancouver, BC V6K 1V8 Canada
 mmorry@hotmail.com

Admiral L. (Ramu) Ramdas, Indian Navy (Ret.)
 Hague Appeal for Peace
 LARA-Ramu Farm, 61, Bhaimala, P.O. Icamarle
 Alibag 402201 India
 Fax: 0091-2141-48733
 lramdas@vsnl.com

Mrs. Lalita Ramdas
 Co-Director, LARA-Peace Academy
 LARA-Ramu Farm, 61, Bhaimala, P.O. Icamarle
 Alibag-Raigad Dist. 402201 Maharashtra-India
 Fax: 0091-2141-48733
 lramdas@vsnl.com

Mr. Ernie Regehr
 Executive Director, Project Ploughshares
 Institute of Peace and Conflict Studies
 Conrad Grebel College
 Waterloo, ON N2L 3G6 Canada
 Fax: 519-885-0806
 eregehr@ploughshares.ca

Senator Douglas Roche, O.C.
 Chairman, Middle Powers Initiative
 c/o 8923 Strathearn Drive
 Edmonton, AB T6C 4C8 Canada
 Fax: 780-469-4732
 roched@sen.parl.gc.ca

C O N S U L T A T I O N P A R T I C I P A N T S

Professor Douglas Ross
 Department of Political Science
 Simon Fraser University
 8888 University Drive
 Burnaby, BC V5A 1S6 Canada
 Fax: 604-291-4786
 douglasr@sfu.ca

Mr. Jonathan Schell
 The Nation Institute
 33 Irving Place
 New York, NY 10003 USA
 Fax: 212-982-9000

Dr. Nola-Kate Seymoar
 Executive Director
 International Centre for Sustainable Cities
 Suite 901-1090 West Georgia Street
 Vancouver, BC V6E 3V7 Canada
 Fax: 604-666-0009
 nkseymoar@icsc.ca

Dr. Jennifer Allen Simons
 President, The Simons Foundation
 400-111 Dunsmuir Street
 Vancouver, BC V6B 5W3 Canada
 Fax: 604-664-5377
 jennifer.simons@agra.com

Dr. Penelope C. Simons
 Vice President, The Simons Foundation
 400-111 Dunsmuir Street
 Vancouver, BC V6B 5W3 Canada
 Fax: 604-664-5377
 penelope.simons@agra.com

Ms. Alice Slater
 Global Resource Action Center for the Environment
 (GRACE)
 15 East 26 Street, Room 915
 New York, NY 10010 USA
 Fax: 212-726-9160
 aslater@gracelinks.org

Mr. Murray Thomson
 Programme Funding Coordinator
 Peacefund Canada
 145 Spruce Street, Suite 206
 Ottawa, ON K1R 6P1 Canada
 Fax: 613-563-0017

Dr. Michael D. Wallace
 Professor of Political Science
 University of British Columbia
 1866 Main Mall
 Buchanan C472
 Vancouver, BC V6T 1Z1 Canada
 Fax: 604-822-5540
 mdwallac@unixg.ubc.ca

Mr. Alyn Ware
 Lawyers' Committee on Nuclear Policy
 211 East 43rd Street, #1204
 New York, NY 10017 USA
 Fax: 212-818-1857
 alynw@ibm.net

Ms. Valerie Warmington
 Co-Chair, Mines Action Canada
 2118 West 14th Avenue
 Vancouver, BC V6K 2V7 Canada
 Fax: 604-731-9421
 valerie@imag.net

Mr. Peter Weiss
 IALANA, c/o Lawyers Committee on Nuclear Policy
 211 E. 43rd Street, Suite 1204
 New York, NY 10017 USA
 Fax: 718-432-0076
 petweiss@igc.org

Mr. David Wright, Q.C.
 Lawyers for Social Responsibility
 184 Piper Crescent
 Nanaimo, BC V9T 3G3 Canada
 Fax: 250-758-6599
 wright@telus.net

The Way Forward:
Developing Legal and
Political Strategies to
Abolish Nuclear Weapons

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The Simons Foundation was established in 1985 and actively promotes education in peace, disarmament and global co-operation, human rights and social justice issues.

Dr. Jennifer Allen Simons
President

Dr. Penelope Simons
Vice President

The Nuclear Age Peace Foundation

The Nuclear Age Peace Foundation works to abolish nuclear weapons, strengthen international law and institutions, educate and empower youth, and use technology responsibly and sustainably. Founded in 1982, the Foundation is a non-profit, non-partisan, non-governmental organisation working to promote peace and security through education and advocacy. It is on the Roster in consultative status to the Economic and Social Council to the United Nations and is recognized by the UN as a Peace Messenger Organization.

Dr. David Krieger
President

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Project Ploughshares promotes disarmament and demilitarization, the peaceful resolution of political conflict, and the pursuit of security based on equity, justice, and a sustainable environment. Public understanding and support for these goals are encouraged through research, education, and the development of constructive policy alternatives that advance, in Canada and internationally, the reduction of reliance on military force, the abolition of nuclear weapons, the control of the weapons trade, the building peace and the prevention of war. Founded in 1976, Ploughshares is sponsored by the Canadian Council of Churches and is part of the Institute of Peace and Conflict Studies at Conrad Grebel College (affiliated with the University of Waterloo).

Ernie Regehr
Executive Director

Simon Fraser University

Simon Fraser University, one of Canada's leading comprehensive universities, is interested in developing and delivering peace studies programs and is giving consideration to establishing a Peace Academy in Vancouver.

David Mitchell
Vice President and Chief Development Officer