

Filling the Legal Gap on Nuclear Weapons

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Last year was the 70th anniversary of the atomic bombing of Hiroshima and Nagasaki. For just over seventy years the international community has struggled with this awesome new weapon and its potential to extinguish all life on this planet. Numerous legal approaches have been taken to seek the prohibition and eventual elimination of nuclear weapons. Since 1945 progress has been made addressing the threat of weapons of mass destruction in international law. However, there is still a significant legal gap in regard to nuclear weapons when compared with other weapons of mass destruction such as chemical and biological weapons. Since 2011 there has been a renewed international campaign, the Humanitarian Impact initiative, to fill the legal gap that exists in regard to nuclear weapons. This article seeks to follow the various approaches taken over the last 70 years to fill the legal gap on nuclear weapons.

The first UN resolutions

The atomic bomb has impacted on the United Nations from its origin. The ink was barely dry on the Charter of the United Nations, which was signed by 50 nations on 26 June 1945, before the first successful atomic bomb test occurred in the desert of New Mexico on 16 July in Alamogordo, New Mexico, and then on 6 August an atomic bomb was dropped on the city of Hiroshima. President Truman called this 'the greatest thing in history.'¹ In many quarters there was outrage and revulsion along with a feeling that the new United Nations would not be able to deal with this horrible new weapon. Overnight, there was a flowering of world federation movements, many people echoing Albert Einstein's statement that it's either 'one world or none.' Many people felt that the United Nations would be too weak to deal with the threat posed by this awesome weapon and that only a world government would be capable of such a task. The world federalists' fears were well-founded. As far as many were concerned it was a case of 'one world or none' that is, only a global government would be able control this awesome new weapon. Hiroshima gave an enormous impetus to the world federalist movement. In the words of one proponent, 'the survival of mankind demands a world community, a world government and a world state.'² In the following years after Hiroshima world federalist organisations blossomed in the United States with a total membership of the United World Federalists being about 40,000 people and boasting 659 chapters.³ Yet this earliest and most ambitious legal response to nuclear weapons withered with the onset of the Cold War.

The first resolution unanimously adopted by the United Nations in 1946 was concerning nuclear weapons. The United Nations General Assembly called for, among other things, 'the elimination from national armaments of atomic weapons and all other major weapons of mass destruction.'⁴ The United Nations had placed nuclear weapons in its sights from its inception. During 1946 the General Assembly debated the Baruch Plan that was to establish an international authority to for the international control of atomic energy and requiring that no new atomic bombs be built and existing ones destroyed.⁵ Despite being debated for six months at the United Nations the plan failed to achieve an outcome due to the growing atmosphere of mutual suspicion between the United States and the Soviet Union as the Cold War set in. In 1961, there was another attempt by the UN General Assembly to make progress with Resolution 1653 which declared the use of nuclear weapons to be 'contrary to the spirit, letter and aims of the United nations and, as such, a direct violation of the Charter of the United Nations.' Futhermore, the use of these weapons is 'a war directed not against an enemy or

enemies alone but also against mankind in general.' Also, such a use in was 'contrary to the rules of international law and to the laws of humanity.' Though it passed with a majority of only one vote it did serve to push the issue forward at the United Nations.⁶

The Cold War

After the sidelining of the United Nations on the issue of nuclear weapons the United States and the Soviet Union embarked on an all-out nuclear arms race. The Soviet Union developed an atomic bomb on the 23 September 1949. The United States raised the stakes again with the detonation of the first hydrogen bomb in the Marshall Islands on 1 November 1952 and Soviets responded on 22 November 1955 with explosion of their first hydrogen bomb. By this time both the United States and Soviet Union rapidly began to build their stockpiles of nuclear weapons. In an atmosphere of rising fear around the world about the possibility of a nuclear war, President Eisenhower launched his 'Atoms for Peace' proposal at the United Nations General Assembly. This proposal entailed disseminating the peace use of nuclear technology while guarding against other nations acquiring nuclear weapons. The US President's proposal saw the creation of the International Atomic Energy Agency (IAEA) in 1957. From this point on non-proliferation became a focus of discussions in the United Nations. However, this UN focus did not stop Britain acquiring the atomic bomb in 1952 and exploding nuclear bombs on Australian soil between 1952 and 1963.⁷ Meanwhile, France exploded a nuclear bomb in Algeria in 1960 and then moved to Moruroa in the South Pacific to continue nuclear tests.⁸ Finally, China joined the nuclear club in October 1964 by detonating a nuclear bomb in the Gobi desert. This was followed swiftly by a hydrogen bomb test in 1967.⁹

Nuclear disarmament groups impact on government policy

Concern over nuclear testing in the 1950s grew and led to a resurgence of the peace movement. In the United States, the National Committee for a Sane Nuclear Policy (known simply as SANE), was formed by peace activist Norman Cousins. SANE called for a halt to nuclear testing to prevent the global spread of radioactive contamination. Similar anti-nuclear organisations sprang up around the world. This growing public concern led to a US-British-Soviet agreement on a moratorium on nuclear testing. However, this collapsed with the resumption of nuclear testing, firstly by the Soviet Union and then by the United States. Then the world stood on the edge of the abyss for 13 days during the Cuban Missile Crisis of October 1962. Both President Kennedy and Soviet leader Nikita Khrushchev realised how close they had come to losing control of events even after they both reached the point in the crisis when they both wanted to resolve the crisis diplomatically.

Peace activist Norman Cousins returned to play a crucial role in bringing both Kennedy and Khrushchev to the point of agreeing to a treaty banning nuclear testing.¹⁰ The thawing of relations between the two leaders was dramatically signaled by the President Kennedy's American University speech on 10 June 1963 in which he uttered those famous words: 'For in the final analysis, our most basic common link is that we all inhabit this small planet. We all breathe the same air. We all cherish our children's futures. And we are all mortal.' Kennedy then announced that the United States, Britain and the Soviet Union were negotiating a treaty to ban the testing of nuclear weapons.¹¹ The Partial Test Ban Treaty, otherwise known as the Limited Test Ban Treaty, was signed on 5 August 1963 and entered into force on 10 October 1963.¹² The treaty prohibited nuclear explosions in the atmosphere, in outer space and under water, or in any manner

to cause radioactive debris to drift out of the borders of the nation that carries out the nuclear test.

The Nuclear Non-Proliferations Treaty

In the United Nations, the pursuit over the years of a mechanism to stop the proliferation of nuclear weapons finally bore fruit in 1965 with General Assembly Resolution 2028 (XX). This resolution called on the Committee on Disarmament (consisting of 18-member nations) to take the necessary steps to create a treaty to prevent nuclear proliferation. This treaty was to be based on five principles, one of which was that 'the treaty should be a step towards the achievement of general and complete disarmament and, more particularly, nuclear disarmament.'¹³

The Nuclear Non-Proliferation Treaty (NPT) was adopted by the General Assembly on 1 July 1968 and came into force on 5 March 1970.¹⁴ The text of the treaty stated that 'the proliferation of nuclear weapons would seriously enhance the danger of nuclear war.' The ultimate aim of the NPT was to 'to facilitate the cessation of the manufacture of nuclear weapons, the liquidation of all their existing stockpiles, and the elimination from national arsenals of nuclear weapons and the means of their delivery pursuant to a Treaty on general and complete disarmament under strict and effective international control,' that is universal and complete nuclear disarmament. This was made abundantly clear in Article VI of the NPT.¹⁵

The NPT has since been signed by 190 countries, with the exceptions being India, Pakistan and Israel. Each of these nations has acquired nuclear weapons since the treaty was in force. In brief, the Nuclear Non-Proliferation Treaty (1968) was a bargain between the five nations which had nuclear weapons at the time, the USA, the UK, France, the USSR and China, with all other nations which promised not to acquire nuclear weapons. However, the advent of this treaty did not stop the five nuclear powers who signed the NPT in nearly doubling their collective nuclear stockpiles from 38,153 nuclear weapons in 1970 to 65,056 nuclear weapons, clearly going against Article VI of the treaty. On the other hand, the only non-nuclear signatory to the NPT to develop nuclear weapons was North Korea. North Korea signed the NPT in 1985 but then withdrew from the NPT in 2003 citing a history of aggressive policy of the United States towards it.¹⁶

The fact the NPT has stopped many nations from developing nuclear weapons means that the commitment of so many nations to the NPT has been successful in limiting nuclear weapons proliferation and maintaining a remarkable degree of global stability. Many nations, such as Australia, discarded their nuclear ambitions with the advent of the NPT. As a result from pressure for the United States and other countries, Australia eventually signed the NPT on 27 February 1970, though it delayed ratification until 23 January 1973.¹⁷ The NPT has undoubtedly fostered a certain degree of global stability but with the failure the nuclear weapons states to move to abolition of their nuclear arsenals the NPT is now criticized by many for serving the interests of the nuclear weapons states to the detriment of the all the other nations who are signatories to the NPT. After much debate, on 11 May 1995 it was decided to continue the treaty indefinitely.

Nuclear Weapons Free Zones

Working in tandem with the NPT has been the gradual creation of Nuclear Weapons Free Zones (NWFZ). Article VII of the NPT supports the establishment of the NWFZs as they support the non-proliferation at the regional level. There

are now five NWFZs, the first being the 1967 Treaty of Tlatelolco that established and a NWFZ in Latin America. The other NWFZs are in the South Pacific (Treaty of Rarotoga, 1985), South-East Asia, Africa and Central Asia. Each of these treaties has entered into force. The states that have ratified these treaties have committed themselves to not accepting nuclear weapons on their territory. NWFZs have provided a complementary legal regime for non-proliferation and disarmament. However, one major sticking point in the NWFZ regime has been the failure of attempts to create an NWFZ for the Middle East. The first proposals were put forward in 1962. At the NPT Review Conference called for a NWFZ in the Middle East but nothing has come of this.¹⁸ Other treaties have been signed over the years which prohibit nuclear weapons being placed or used in the Antarctic (Antarctic Treaty 1959), (Outer Space Treaty 1967), and in the oceans (Seabed Treaty 1971). However, 'whilst these instruments make an important contribution to the stigmatisation of nuclear weapons, and to nuclear disarmament, non-proliferation, regional security and environmental protection, they are limited in their territorial scope, and states of the nuclear weapon-free world remain vulnerable to the direct and indirect effects of nuclear weapons in the hands of nuclear-armed states.'¹⁹

Bilateral treaties

Around the same time as the creation of the multilateral NPT the USA and USSR began negotiating a series of treaties during and after the Cold War. The Strategic Arms Limitation Talks (SALT) that began in 1968, led to the Anti-Ballistic Missile Treaty (ABM) and an agreement capping ICBM and SLBM forces in 1972. SALT II followed in 1979 but the process stalled later that year with the Soviet invasion of Afghanistan.

The most dramatic reductions to nuclear weapons were made from the second half of the 1980s and two men responsible for initiating these reductions were US President Ronald Reagan and Soviet leader Mikhail Gorbachev. Yet these two men did not take their dramatic steps in regard to nuclear weapons in a vacuum. Nuclear historian Lawrence Wittner has reminded us of the impact of the nuclear disarmament movement in the 1980s. Wittner stated that 'with nuclear weapons enthusiasts controlling major governments and talking glibly of nuclear war, a nuclear conflagration was becoming more likely. In response, millions of people around the world mobilized against the policies of their rulers. Peace and disarmament groups burgeoned into mass movements of unprecedented size and intensity.'²⁰ Both Reagan and Gorbachev were profoundly influenced by the global nuclear disarmament movement. This movement that began in 1980 with the 'Nuclear Freeze' movement in the United States and the END (European Nuclear Disarmament) movement in Europe.

The main target of these peace movements was the proposed deployment of a new generation of deadly intermediate range missiles in Europe by both the United States and Soviet Union. Over the first half of the 1980s the nuclear disarmament went viral resulting in a huge increase anti-nuclear sentiment in public opinion globally. Lawrence Wittner outlined the various ways in which President Reagan was forced to change his hawkish policies on nuclear weapons, leading to his extraordinary public address on 16 January 1984 calling for peace with the Soviet Union and a nuclear-free world. This was before Gorbachev came to power! Gorbachev had been profoundly influenced by the western nuclear disarmament movement, and particularly Einstein's antinuclear statement of 1956 and the Russell-Einstein appeal of 1955. In the 1980s Gorbachev frequently met with leaders of the nuclear disarmament movement. When Gorbachev

became Soviet leader in March 1985 nuclear disarmament was on the top of his agenda.²¹

Meanwhile, the early 1980s were the high point of the Cold War with the combined US and Soviet nuclear arsenals reaching a peak of over 65,000 warheads. On 12 June 1982, two days before the United Nations Special Session Disarmament (SSOD-II) one million people marched in New York City from the UN building to Central Park.²² The theme of the rally was 'Freeze the Arms Race – Fund Human Needs.' It was the largest political rally in American history.²³ The upsurge in popular protest was repeated in mass rallies around the world. Despite all the popular protest, in 1983 the world came the closest to an all-out nuclear war since the Cuban Missile Crisis of 1962, not once, but twice! On 26 November 1983 Stanislav Petrov refused to give the go-ahead for massive Soviet retaliation against a perceived US missile attack.²⁴ Then during NATO's 'Able Archer' military exercise Soviet forces were placed on high alert as the Soviet leadership was convinced that this exercise was a cover to launch a pre-emptive nuclear strike on the Soviet Union.²⁵ Though the world could have ended at the time, on two separate occasions, no-one actually realised it until later.

Gorbachev

The rise of Mikhail Gorbachev to the Soviet leadership became a game changer for nuclear disarmament. The Reagan-Gorbachev Reykjavik Summit held between 11-12 October 1986 led to deep reductions in US and Soviet nuclear forces commencing with the Intermediate Nuclear Forces (INF) Treaty in 1987 followed by the Strategic Offensive Arms reductions (START I) in 1991. Despite the enormous breakthrough made by these two leaders, there was a great missed opportunity as both the Gorbachev and the Americans (Secretary of Defense Caspar Weinberger) put forward separate proposals for the elimination of all nuclear weapons. The sticking point for going further was the Americans' unwillingness to agree not to withdraw from the 1972 ABM Treaty because it interfered with Reagan's plans for his Strategic Defense Initiative (SDI), otherwise known as 'Star Wars.'²⁶ Nevertheless in 1986, the two leaders, Reagan and Gorbachev, had put their nations on a path to deep reductions in nuclear weapons that continued for the next twenty years. The collapse of the Soviet Union in 1991 signaled the end of the Cold War and saw further significant treaties between the USA and the new democratic Russia with START II in 1992, and then SORT with Vladimir Putin in 2002, and finally New START in 2010, which entered into force in 2011. These bilateral treaties have significantly reduced the total numbers of nuclear weapons in the world from the Cold War high of 65,000 to over 15,000 today.²⁷

Nuclear weapons violate human rights

Meanwhile, back at the UN the popular upsurge in anti-nuclear sentiment was due in part to nuclear weapons being increasingly regarded as a human rights issue. On 12 November 1984 the United Nations General Assembly passed the 'Declaration on the Right of Peoples to Peace' which proclaimed that 'the maintenance of a peaceful life for peoples is the sacred duty of each State' and demanded that 'the policies of States be directed towards the elimination of the threat of war, particularly nuclear war, the renunciation of the use of force in international relations and the settlement of international disputes by peaceful means on the basis of the Charter of the United Nations.'²⁸

1990s Optimism

The end of the Cold War led to an upsurge in optimism regarding nuclear disarmament. 'The US and the Soviet Union, now Russia, made significant cuts in their nuclear weapons. The general public, confident that reduced numbers meant freedom from the threat of Armageddon, relaxed: and the nuclear issue disappeared from sight.'²⁹ This sense of optimism led to the NPT Review Conference of 1995 agreeing to an indefinite extension of the NPT, though not without strenuous arguments on many aspects of the treaty.³⁰ Another positive development in the 1990s was that Gorbachev announced a unilateral moratorium on nuclear testing, followed by President Bill Clinton reciprocating for the US in 1993. Over the following few years many nations began negotiating a Comprehensive Test Ban Treaty (CTBT), which was designed to prohibit all nuclear weapons testing. The USA was the first nation to sign the CTBT on 24 September 1996 but the US Senate refused to ratify the treaty in 1999.

Despite the American attitude, today there is significant international support for the CTBT, with 183 countries having signed it and 164 having ratified it. However, the treaty has not come into force because it requires the signature and ratification by 8 out of the 44 specific nuclear technology nations listed in Annex 2 of the treaty.³¹ These countries are China, Egypt, India, Iran, Israel, North Korea, Pakistan and the USA. Though President Obama said on 5 April 2009 that his administration would pursue a nuclear weapons ban he has not been able to achieve this.³² Despite this, an organisation has been created based on the treaty, called the Preparatory Commission for the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO). The CTBTO has built up a verification regime so that it is operational when the Treaty enters into force. There has been a de facto moratorium on nuclear testing in place for the last 18 years, broken only by North Korea's explosion of nuclear devices in 2006, 2009, 2013 and 2016.³³

ICJ Ruling - 1996

A ray of hope appeared in 1996. It was an historic opinion on the question of the legality of nuclear weapons under international humanitarian law, delivered by the International Court of Justice on 8 July 1996.³⁴ The ICJ ruled that the threat or use of nuclear weapons is generally illegal under international law, and that states have an obligation to conclude negotiations on their elimination. The case had been brought to the ICJ in a formal request from the UN General Assembly, though behind this request was the World Court Project. This was an NGO campaign led by the Lawyers Committee on Nuclear Policy (LCNP), the International Association of Lawyers Against Nuclear Arms (IALANA), the International Peace Bureau (IPB) and the International Physicians for the Prevention of Nuclear War (IPPNW).³⁵

The NPT falters

Though the USA and Russia had made very large cuts in their nuclear weapons arsenals by the late 1990s their cuts slowed particularly as there was now little public pressure. The general public had assumed that the nuclear threat had gone away with the end of the Cold War. When the NPT came up for review in 2000 the New Agenda Coalition, a group of states led by Ireland and Brazil, put pressure on the nuclear weapons states to continue the disarmament process. As a result, 'Thirteen Practical Steps' were agreed to and the review conference ended on a high note.³⁶ However, when George W Bush became US President in January 2001 the euphoria generated by the NPT Review of 2000 disappeared. President Bush repudiated support for the Comprehensive Test Ban Treaty, dispensed with the 1972 Anti-Ballistic Missile Treaty, and totally ignored the

'Thirteen Practical Steps' for the 8 years of his presidency. The next NPT Review Conference in 2005, was described by Canadian anti-nuclear campaigner, Douglas Roche, as a 'ritualistic facade' and a 'fiasco.' 'Not only was no progress made, but the 2005 meeting even took a backward step when the US refused to to acknowledge commitments it had made in 1995 and 2000.'³⁷

In 2009 signs of hope emerged again that there might be real action on nuclear weapons. An historic meeting at the UN Security Council, presided over by President Obama and attended by 13 other heads of state passed Resolution 1887 (2009) which all the members of the Security Council reaffirmed its commitment to the NPT in the lead-up to the next NPT Review Conference scheduled for 2010.³⁸ At the 2010 Review Conference the 125 member states of the Non-Aligned Movement pushed for the nuclear weapons states to re-commit to the '19 Practical Steps' (from the 1995 NPT Review) and to give undertakings to eliminate their nuclear arsenals. The Final Draft came up with a 64-point Action Plan on nuclear disarmament (based on the '19 Practical Steps') and the nuclear weapons states gave their commitment to eliminate nuclear weapons.

Many regarded the 2010 Conference as a success, yet a significant number of the non-nuclear states and veteran NGO activists were frustrated with the endless process that sees verbal commitments by the nuclear weapons states but no action. There was now a great deal of skepticism that the NPT Review conferences could achieve anything on nuclear disarmament.³⁹ Yet the Final Document of the 2010 NPT did see the inclusion of a statement that for the first time noted 'the catastrophic humanitarian consequences of any use of nuclear weapons and reaffirms the need for all States at all times to comply with applicable international law, including international humanitarian law.'⁴⁰ This left the door open to a return to international humanitarian law in addressing the threat of nuclear weapons. Many non-nuclear weapons states (NNWS) now looked for a new approach outside the NPT system.

The Humanitarian Impact Initiative

In 2011 the International Red Cross and Red Crescent movement signaled a new approach. The Australian delegation of the Red Cross put forward community views about nuclear weapons (which were collected from their recent 'Make nuclear weapons the target' campaign) and from these the conference developed a resolution called 'Working towards the elimination of nuclear weapons.'⁴¹

In 2012 this led to the Red Cross making appeals to nation states to pursue negotiations to develop a treaty aimed at the prohibition and elimination of nuclear weapons.⁴² The role of Australian Red Cross' CEO, Robert Tickner, was important in achieving this. This marks the beginning of the newest phase of anti-nuclear campaigning and has become known as the Humanitarian Impact Initiative. In March 2013 the first of three ground-breaking conferences on the Humanitarian Impact of Nuclear Weapons was held in Oslo, and Robert Tickner, addressed this conference on behalf of the Red Cross. 128 countries attended the conference. This sparked a host of initiatives both in the UN and in regional groupings.

To ensure that the momentum of the Humanitarian Impact Initiative remained strong a second conference on the Humanitarian Impact of Nuclear Weapons was held in Nyarit in Mexico in February 2014. This conference was attended by 146 countries and again had many positive spin offs. But again, the momentum was kept going by yet another conference hosted by the Austrian government in

Vienna in December 2014.⁴³ An important outcome of this conference was the Austrian pledge (which was renamed the Humanitarian Pledge in May 2015) that finished with the words: 'We pledge to cooperate with all relevant stakeholders, States, international organisations, the International Red Cross and Red Crescent Movements, parliamentarians and civil society, in efforts to stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks.'⁴⁴ The Humanitarian Pledge assumed significance in lead up to the NPT Review Conference in May 2015. In the absence of any agreement of a Final Statement for the NPT Review Conference, the Humanitarian Pledge assumed the role of the de facto final statement for the conference. The 2015 NPT Review Conference was regarded by many as disappointing, yet others saw the conference's failure to agree on a final statement as an opportunity. One observer, John Hallam, from the Sydney-based Human Survival Project, saw this as an opportunity because the Humanitarian Pledge has become the de facto outcome document for the conference. In his report, Hallam concluded:

Now signed by 107 governments, the Humanitarian Pledge as it has become, is an impossible-to-ignore call to take action that will forever remove the veneer of legality from the nuclear weapons programs of the P5. And it will grow.

The wish of 90% of the planet for abolition has perhaps never been clearer, and the gap between the nuclear weapons states and everyone else more gaping.

What is now required is concerted action, of a kind that cannot be blocked, to remove that 'legal gap' and forever stigmatize weapons that threaten the end of the world and possible human extinction as utterly illegitimate.⁴⁵

The next step in the Humanitarian Impact Initiative is the Open-Ended Working Group (OEWG) to be held in Geneva in May 2016. The OEWG is effectively moving the humanitarian movement back to the United Nations. Supporters of the Humanitarian Impact Initiative, both NGO groups and 138 nations, are hoping that the OEWG will be an important step towards the drafting of a treaty banning nuclear weapons.⁴⁶

The International Campaign to Abolish Nuclear Weapons (ICAN) has played a pivotal role in the Humanitarian Impact Initiative. Before each of the three recent Humanitarian Impact conferences ICAN put on a Civil Society Forum to mobilise all NGOs that were to be present at the conference to exert maximum pressure on the diplomats representing the countries attending. ICAN was created in Australia by a group of people from the Medical Association for the Prevention of War (MAPW). The creation of ICAN was in response to the bitter disappointment that many felt about the outcome of the 2005 NPT Review Conference. ICAN was adopted by the IPPNW Congress in Helsinki in 2006 and officially launched in Melbourne in April 2007.⁴⁷ Following the launch, ICAN built up many partnering organisations around the world using its IPPNW networks and also PeaceBoat, WILPF and Mayors for Peace. ICAN branches were established around the world and the organization now has a global impact. ICAN was inspired by the campaign to outlaw landmines that led to the Ottawa Convention of 1997. ICAN hopes that the achievement of a treaty banning nuclear will be one major step towards their eventual elimination. ICAN will have an input into the upcoming Open-Ended Working Group in May this year. With two-thirds of the member

states of the United Nations supporting the humanitarian pledge and believing that there is a legal gap that needs to be filled. The hopes of many are now pinned on this latest initiative in achieving the goal of a nuclear weapons free world.

Finally, there is one other important event in the quest to fill the legal gap on nuclear weapons. This is the current Marshall Islands case being held at the International Court of Justice (ICJ).⁴⁸ In April 2014 the Marshall Islands filed applications in the ICJ to hold the nine nuclear-armed states accountable for violations of international law with respect to their nuclear disarmament obligations under Article VI of the NPT and customary international law.⁴⁹ On 7 March 2016 the ICJ began hearing the Republic of the Marshall Islands' (RMI) case against India. The aim of the Marshall Islands in bringing these cases in the ICJ against the nine nuclear weapons states is to pressure them to meet their obligations under Article VI of the NPT and to eliminate their nuclear weapons. The people of the Marshall Islands have seen first-hand what damage nuclear explosions do. A total of 67 nuclear bombs were exploded in the Marshall Islands between 1948 and 1958. We await the outcome of these cases.

Conclusion

In conclusion, the eventual prohibition and elimination of nuclear weapons is by no means assured. Though the number of nuclear weapons in existence has reduced dramatically since the end of the Cold War, the numbers still left in the arsenals of the nine nuclear weapons states are enough to destroy all life on this planet. Even one explosion of a nuclear weapon would be a catastrophe way beyond anything anyone can imagine. Added to this is the fact the nuclear weapons states are embarking on modernization programs for their nuclear arsenals, in clear violation of Article VI of the NPT. It will be a long hard battle to achieve a treaty that would prohibit the possession and use of nuclear weapons, and no doubt the nuclear weapons states will be the last to agree to such a treaty. Yet if the vast majority of the nations in the world signed such a treaty this would represent one significant step on the road to achieving the elimination of the most destructive of the weapons of mass destruction, and the only WMD still not totally prohibited under international law.

¹ Dennis Wainstock, *The Decision to Drop the Bomb* (1996), p. 87

² Lawrence Wittner, *Rebels Against War: The American Peace Movement 1941-1960* (New York, 1969), p. 139

³ Wittner, *Rebels Against War*, p. 172

⁴ <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/032/52/IMG/NR003252.pdf?OpenElement>

⁵ <http://www.atomicarchive.com/History/mp/p6s5.shtml>

⁶ <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NR0/167/06/IMG/NR016706.pdf?OpenElement>

⁷ <http://www.naa.gov.au/collection/fact-sheets/fs129.aspx>

⁸ <https://www.ctbto.org/nuclear-testing/the-effects-of-nuclear-testing/frances-nuclear-testing-programme/>

⁹ <https://www.ctbto.org/specials/testing-times/16-october-1964-first-chinese-nuclear-test>

¹⁰ Lawrence Wittner outlined Cousins' crucial role in the creation of the Partial Test Ban Treaty. https://www.armscontrol.org/act/2012_12/Looking-Back-Norman-Cousins-and-the-Limited-Test-Ban-Treaty-of-1963

¹¹ <http://www.jfklibrary.org/Asset-Viewer/BWC7I4C9QUmLG9J6I8oy8w.aspx>

¹² <http://www.state.gov/t/isn/4797.htm>

¹³ <http://www.un.org/documents/ga/res/20/ares20.htm>

¹⁴ <http://disarmament.un.org/treaties/t/npt>

¹⁵ <http://www.un.org/disarmament/WMD/Nuclear/NPTtext.shtml>

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- ¹⁶ <http://fas.org/nuke/guide/dprk/nuke/dprk012203.html>
- ¹⁷ Australia eventually signed the NPT on 27 February 1970
- ¹⁸ See pp. 11-12, http://www.geneva-academy.ch/docs/projets/ILPI%20Nuclear%20Weapons%20Under%20International%20Law_An%20Overview.pdf
- ¹⁹ <http://www.article36.org/wp-content/uploads/2014/12/Nuclear-weapons-under-international-lawbb5.12.14.pdf>
- ²⁰ Lawrence Wittner, *Confronting the Bomb: A Short History of the World Nuclear Disarmament Movement* (Stanford, 2009), p. 141.
- ²¹ This article is a handy summary of the different phases in the global nuclear disarmament movement from 1945. <http://peacemagazine.org/archive/v29n4p06.htm>
- ²² <http://www.un.org/disarmament/HomePage/SSOD/ssod4-documents.shtml>
- ²³ Lawrence Wittner, *Confronting the Bomb: A short History of the World Nuclear Disarmament Movement* (Stanford, 2009), p. 154
- ²⁴ David Hoffman, *The Dead Hand: The Untold Story of the Cold war Arms race and its Dangerous Legacy* (New York, 2009), pp. 6-11
- ²⁵ Richard Rhodes, *Arsenals of Folly: The Making of the Nuclear Arms Race* (New York, 2007), pp. 163-167
- ²⁶ <http://www.nti.org/analysis/articles/reykjavik-summit-legacy/>
- ²⁷ For a summary of US-Soviet bilateral treaties see: <https://www.armscontrol.org/factsheets/USRussiaNuclearAgreementsMarch2010>
- ²⁸ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RightOfPeoplesToPeace.aspx>
- ²⁹ Douglas Roche, *How We stopped Loving the Bomb: And Insider's Account of the World on the Brink of Banning Nuclear Arms* (Toronto, 2011)
- ³⁰ For a detailed summary of the 1995 NPT Review conference see the summary produced by *Reaching Critical Will*. <http://www.reachingcriticalwill.org/disarmament-fora/npt/history-of-the-npt-1975-1995>
- ³¹ For a list of the Annex 2 states see: <http://www.state.gov/t/avc/rls/159264.htm>
- ³² For further information on the CTBT see: <http://www.armscontrol.org/factsheets/Nuclear-Testing-and-Comprehensive-Test-Ban-Treaty-CTBT-Timeline>
- ³³ <https://www.ctbto.org/specials/who-we-are/>
- ³⁴ <https://www.icrc.org/eng/resources/documents/misc/57jfnf.htm>
- ³⁵ <http://lcnp.org/wcourt/>
- ³⁶ For the 1998 declaration of the New Agenda Coalition see: <http://lcnp.org/mpi/Declaration.htm> Also, for the 'Thirteen Practical Steps' see: <https://www.armscontrol.org/aca/npt13steps>
- ³⁷ Douglas Roche, *How We stopped Loving the Bomb: And Insider's Account of the World on the Brink of Banning Nuclear Arms* (Toronto, 2011)
- ³⁸ <http://www.un.org/press/en/2009/sc9746.doc.htm>
- ³⁹ <http://www.ipcs.org/article/nuclear/from-2000-to-2010-npt-revcon-are-the-13-practical-3167.html>
- ⁴⁰ <http://ilpi.org/publications/the-story-so-far-the-humanitarian-initiative-on-the-impacts-of-nuclear-weapons/>
- ⁴¹ <https://www.icrc.org/eng/assets/files/publications/icrc-002-1129.pdf>
- ⁴² <http://www.redcross.org.au/red-cross-and-nuclear-weapons.aspx>
- ⁴³ The Vienna Conference papers and filmed presentations can be found on this Austrian government website: <http://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/>
- ⁴⁴ <http://www.reachingcriticalwill.org/disarmament-fora/hinw/vienna-2014>
- ⁴⁵ See the report on the 2015 NPT Review Conference by John Hallam from the Sydney-based Human Survival Project.
- ⁴⁶ <http://www.icanw.org/campaign-news/new-un-working-group-to-discuss-elements-for-a-treaty-banning-nuclear-weapons/>
- ⁴⁷ Thanks to Dimity Hawkins for her account of ICAN's Australian origins.
- ⁴⁸ <http://www.theguardian.com/world/2014/apr/24/marshall-islands-sues-nine-nuclear-powers-failure-disarm>
- ⁴⁹ <http://lcnp.org/RMI/>