

NO TO NUKES

»A nuclear weapons free world is possible«

| April / May 2015 |

Return to the International Court of Justice:

The Marshall Islands' Nuclear Zero Cases

by John Burroughs, Lawyers Committee on Nuclear Policy

Does the NPT license the indefinite possession of nuclear arsenals by the Permanent Five? The answer of the Republic of Marshall Islands (RMI) is a resounding no, as demonstrated by the applications against the nine nuclear-armed states it filed one year ago, on 24 April 2014, in the International Court of Justice.

On the contrary, the RMI maintains, NPT Article VI obligates the P5 to enter into multilateral negotiations on the elimination of nuclear weapons, and to do so soon, not in some distant future. The P5's refusal to participate in the 2013 Open-Ended Working Group is an egregious example of their lack of good faith in meeting that obligation. After all, the working group aimed only at the development of proposals for multilateral negotiations. How can the P5 say that they are "pursuing" – as Article VI expressly requires – negotiations when they will not even discuss what form multilateral negotiations should take?

The RMI also claims that planning and budgeting for long-term maintenance of nuclear arsenals is contrary to the Article VI objective of nuclear disarmament and therefore is contrary to the fundamental international law requirement of good faith – all the more so when negotiations are not being pursued. Similarly, modernization of nuclear arsenals adding to military capabilities is contrary to the Article VI objective of cessation of the nuclear arms race at an early date and therefore violative of the requirement

of good faith. Additionally, the P5 are failing to pursue negotiations that would halt qualitative arms racing, for example a ban on deploying missiles with multiple warhead capabilities.

As for nuclear-armed states outside the NPT, Israel, Pakistan, DPRK, and India, the RMI position is that they are bound by customary international law obligations of nuclear disarmament and cessation of the nuclear arms race. That position is supported by the Court's 1996 opinion, which refers to the extensive participation of states in the NPT and the history of UN resolutions on nuclear disarmament.

India, Pakistan, and the DPRK are engaged in quantitative build-up of their fissile materials and warheads even as they proclaim their support for the commencement of multilateral negotiations on nuclear disarmament. Further, all four non-NPT states are qualitatively improving and diversifying their arsenals, and generally are not pursuing negotiation of measures that would halt arms racing. All of this, the RMI maintains, places them in breach of the obligations relating to nuclear disarmament, cessation of the nuclear arms race, and good faith.

Cases are proceeding in the ICJ against the three nuclear-armed states which have accepted the compulsory jurisdiction of the Court, the UK, India, and Pakistan. The RMI has urged the other six states to accept the Court's jurisdiction in this matter and defend their view of the nuclear disarmament obligation, but so far none have done so. In the India and Pakistan cases, in December and January the RMI filed briefs on preliminary

issues relating to whether the cases are suitable for decision on the merits; hearings probably will be held in early 2016. In the UK case, in March the RMI has filed an opening brief on all issues, from jurisdiction on merits; how the case unfolds will depend on how the UK responds.

As a country whose people have suffered the effects of extensive nuclear testing - conducted by the US when the Marshall Islands was a UN trust territory - the RMI is particularly well qualified to uphold the interest of the international community in seeing fundamental obligations fulfilled and avoiding use of nuclear weapons that would negatively impact the entire world. As Foreign Minister Tony deBrum said when the applications were filed, "Our people have suffered the catastrophic and irreparable damage of these weapons, and we vow to fight so that no one else on earth will ever again experience these atrocities."

The RMI would welcome other states joining the initiative. Indeed, states have a responsibility to do so, to uphold their view of the NPT and international law. In June of 2014, the Court sent a notice to all NPT members of their right to intervene in the UK case because it involves interpretation of the NPT. It is also possible to seek to intervene in the India and Pakistan cases, or to file parallel cases against those countries. Statements of support in the Review Conference would also be welcome and helpful.

IALANA is well represented on the RMI's international legal team, by Co-Agent Phom van den Biesen, an Amsterdam-based attorney with long experience before the ICJ, and an IALANA Vice-President; John Burroughs, Executive Director of the Lawyers Committee on Nuclear Policy, the IALANA UN Office in New York City; and Peter Weiss (consultant), Co-President of IALANA. IALANA also assists Nuclear Age Peace Foundation with outreach and organizing.

For more information: www.lcnp.org/RMI & www.nuclearzero.org



Anti-NATO Protests Chicago | © Lucas Wirl

Recommendations for the NPT Review Conference

A new paper from IALANA, "Nuclear Disarmament: The Road Ahead," is available at www.lcnp.org and www.ialana.info. It states IALANA's view that because of their very nature, nuclear weapons are, and always have been, illegal under customary international law. And it explains the tripartite mandate, arising out of General Assembly resolutions, NPT Article VI, and the 1996 advisory opinion of the International Court of Justice, for the commencement of negotiations to achieve the complete elimination of nuclear weapons. An appendix to the paper sets out IALANA's recommendations for the Review Conference. They are reproduced below.

IALANA recommends that in its Final Document, the Review Conference:

- Call for an immediate world-wide moratorium on holding exercises and war games involving nuclear forces and on testing nuclear weapons delivery systems, to lower the risks of nuclear war arising out of current crises and to set the stage for disarmament negotiations.
- Condemn statements that make or imply a threat to use nuclear weapons in any circumstance.
- Acknowledge that the threat and use of nuclear weapons is absolutely incompatible with international law, including international humanitarian law, and with morality.
- Immediately launch a process of negotiations on the establishment of a nuclear weapons-free world, with provision for participation by non-NPT states. If the Review Conference fails to do so, states should initiate a process in the UN General Assembly. Such a process would implement the disarmament obligation set out in NPT Article VI and the 1996 Advisory Opinion of the International Court of Justice, and is a logical outcome of the humanitarian initiative. As the UN Secretary-General has said, the Model Nuclear Weapons Convention is a good starting point for negotiations.
- Create an institutional capability for monitoring compliance with the obligations of nuclear disarmament and cessation of the nuclear arms race.
- Recognize that planning for long-term maintenance of nuclear arsenals is contrary to the objective of nuclear disarmament and demonstrates a lack of good-faith fulfillment of Article VI.
- Recognize that modernization of nuclear arsenals is contrary to the objective of cessation of the nuclear arms race at an ...

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Event on RMI Nuclear Zero Cases | © Lucas Wirl

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70 Years since the Hell of Hiroshima and Nagasaki:

Still Existing Risk of Use & Threat of Nuclear Weapons

by Takaya Sasaki, Japan Association of Lawyers Against Nuclear Arms

Nearly 70 years have passed since the end of World War II. As a Japanese citizen, I apologize to all victims of the brutal acts of aggression conducted by Japanese military forces, and hereby pray for the soul of those who died.

When I was 5 years old, I saw an intense flash of orange light, heard a thunderous sound, and witnessed a massive atomic-bomb mushroom cloud standing still in the sky 31 km away from the hypocenter of Hiroshima.

My uncle, who was working 1.3 km away from the hypocenter, came home with his back and both arms burnt and red flesh protruded from his skin. My lovely aunt, who was in a crowded train 700 m from the hypocenter, barely survived without injury, but died 9 months later at the young age of 23.

The City of Hiroshima, where 350,000 people lived in, was

completely devastated within only 10 seconds after the detonation. Including the casualties in Nagasaki, 214,000 people were killed by the end of 1945.

The radiation of atomic bombs forced the Hibakusha to lead miserable lives ever after. They are still suffering from radiation-induced diseases. The dropping of atomic bombs is not an incident of the past.

President Putin has acknowledged that he was ready to activate nuclear arsenals during the conflict in Ukraine. This is the very reckless threat of nuclear weapons with no regard to their inhumanity. Nuclear warheads are ready to be fired at every angle in every direction.

Human beings cannot coexist with nuclear weapons. Nuclear weapons must never be used under any circumstances. This is a crucial matter that determines the destination of our planet. The total elimination of nuclear weapons is a desire of Hiroshima and a prayer of Nagasaki.

Standing under a nuclear umbrella, Japanese government relies on nuclear weapon states, follows their opinions, and obeys their domination, even though Japan suffered nuclear attacks. We are rigorously criticizing the attitude of Japanese government, and requesting them to lead nuclear weapons abolition.

It is commendable that government delegations from 158 states out of 193 UN member states attended the third Conference on the Humanitarian Impact of Nuclear Weapons held in Vienna in December 2014. The Hibakusha were moved by many countries endorsing a way to the abolishment of nuclear weapons.

We, Japanese lawyers against nuclear arms, will go to New York, the venue of NPT Review Conference, in order to urge the world leaders to eliminate all nuclear weapons under a legally-binding international agreement, and to put an end to the nuclear age.



Demo at NPT 2010 © Lucas Wirl

From Millennium Development Goals to Sustainable Development Goals (SDGs)

by Ingeborg Breines, International Peace Bureau

2015 is a special year with several important events:

- It is 70 years since the end of World War II and the establishment of the UN, to "save succeeding generations from the scourge of war".

- 70 years ago the world lost its innocence and entered the nuclear age following the dreadful bombings of Hiroshima and Nagasaki. (Despite intensive efforts we still have not managed to get rid of the nuclear bombs, nor managed to forbid their production and use. Hopefully efforts such as the Marshall Islands taking the nine nuclear states before the International Court of Justice and the three conferences on the humanitarian effects of a possible nuclear war, will scare and inspire the upcoming review of the Non-Proliferation Treaty, NPT, to decide to develop a concrete roadmap for negotiations of a convention against nuclear arms.)

- It is 20 years since the last world conference on women, the 4WCW in Beijing. What was supposed to be a 5th world conference on women this year is not happening due to fear of fundamentalist trends threatening to take us backwards. Instead many women and women's organizations meet in the UN to analyse hindering factors for gender equality and make strategies to overcome them.

- Our sister organization, WILPF, the Women's International League for Peace and Freedom, is celebrating end of April that it is 100 years since they were established in the Hague with courageous women from both sides of WWI gathered to signal their opposition to war and make suggestions for its termination.

- The Millennium Development Goals, MDGs, agreed in the UN in 2000 are coming to an end. The eight goals were only concerned with so-called developing countries. The Millen-

nium Development Goals have, however, proved to be important tools for development, not least for poverty reduction, as well as a platform for sharing of processes and results. There was, however, no MDG on peace, although peace was mentioned in the Millennium Declaration as essential for development.

- A new development agenda, the UN Post 2015 Development Agenda, is being developed. Preparations involve an unprecedented number of actors: governments, private sector, researchers, civil society organizations and individuals. The new agenda is universal, challenging policies and strategies for sustainable development in all countries. The agenda will hopefully be agreed in September. The present draft contains 17 Sustainable Development Goals, SDGs, and 169 targets. SDG 16 speaks about building peaceful societies with good institutions and good governance. Including the quest for peace in a development agenda has been a tough process, and SDG 16 is still considered controversial.

The International Peace Bureau has with other organisations argued for peace and disarmament to be part of the agenda, insisting on the need for a comprehensive approach based on the interrelation and interdependence between peace, human rights, development and the environment. Although SDG 16 is more concerned with fighting

criminality than militarism, the inclusion of goal 16 is a large step forward in explicitly committing to democratic values, justice and concern for the global common good and the boundaries and beauty of the planet. SDG 4 on education brings up the importance of education for a culture of peace and global citizenship.

So far it has not been possible to have disarmament included in the agenda, except for a small reference in paragraph 16.4 on significantly reducing illicit financial and arms flows. IPB continues to lobby for a 10% reduction in military costs per year and per country to be able to finance the SDGs.

Recommendations for the NPT Review Conference

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...early date and demonstrates a lack of good-faith fulfillment of Article VI, and is further contrary to the commitment to a diminishing role of nuclear weapons in security policies.

- Recognize that the humanitarian and environmental consequences of nuclear explosions are totally unacceptable. The impact of a nuclear weapon detonation, irrespective of the cause, would not be constrained by national borders and could have regional and even global consequences, causing destruction, death and displacement as well as profound and long-term damage to the environment, climate, human health and well-being, socioeconomic development, social order and could even threaten the survival of humankind.

- Declare that the record of non-use of nuclear weapons since World War II should be extended forever. During those 70 years, the Hibakusha have continued to testify to the consequences of nuclear weapons, appealing for "No More Hibakusha" and calling for nuclear abolition. That reminds us all of why nuclear weapons must never again be used under any circumstance. The Conference should acknowledge and respond to the voices of the Hibakusha and reaffirm the undertaking to achieve the goal of a world free of nuclear weapons.



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“Peace through Law” Needs Changes in Conditions

by Peter Becker, International Association of Lawyers Against Nuclear Arms

In 1997, the Project for the New American Century (PNAC) was founded by some prominent members of other think tanks, including the Enterprise Institute. With close connections to the Republicans, its founders included Robert Kagan, husband of American diplomat Victoria Nuland (“*Fuck the EU*”, “*Merkel’s Moscow stuff*”). Other members included Dick Cheney, Donald Rumsfeld, Paul Wolfowitz, Richard Perle and Gordon Libby. The primary aim of the PNAC was to consolidate the USA’s worldwide hegemony, primarily through building up its military superiority and increasing the importance of its military bases all over the world.

The PNAC had a particularly unilateral view when it came to the role of international law, with its belief that US-American standards should be adopted. This view is summarised concisely in the German Wikipedia article on the PNAC as follows: “*As the ‘world’s geo-politician and its geo-police’ [quoting Kagan], the United States had the power, in a ‘Hobbesian world of anarchy’ to ensure the observance of law and the upholding of standards set by the US – if necessary even without consultation with or consideration for allies and other supranational organisations, treaties or other legally binding agreements (‘unilate-*

realism’). In this, all critics see a clear historical relapse, reversing the progress in international law arduously achieved since the Peace of Westphalia.”

In 1998, the PNAC sent an open letter to the US President Bill Clinton calling for a regime change in Iraq. In 2003 this then actually occurred – after prominent members of the PNAC such as Cheney and Rumsfeld had entered positions of power. The consequences of that regime change would turn out to be terrible and it was obviously of no concern to the signatories of the letter that using military power to force a regime change in this way constitutes a violation of the prohibition of the use of force in Article 2 Clause 4 of the United Nations Charter. In other words: The political leadership of the USA in power since 2001 more or less announced an intention to no longer uphold international law as part of its programme of government.

How can worldwide compliance with international law be enforced? The most important aspect must surely be to ensure that politicians and governments know what this international law is and that they are duty-bound to uphold it. As far as US politics is concerned, it is obviously not sufficient for the President to have legal expertise: both Bill Clinton and his wife are lawyers but this

did not stop Bill Clinton from forcing a change of regime in Yugoslavia. At least, he did nothing to counter the intention of his Secretary of State Madeleine Albright: to carry out the war against Yugoslavia without a mandate from the Security Council, and to persuade the rest of NATO, including Germany, to follow this course although Article 1 of the North Atlantic Treaty obliges it to comply with the UN Charter. Instead, it was claimed that this type of war is permissible as a “humanitarian intervention”. However, this represents a form of self-authorisation which cannot be justified on the basis of the UN Charter. So we see that the existence of a UN Charter is necessary but not sufficient: the UN members still have to fulfil their obligation to actually comply with it.

It is my conviction that the struggle for a binding commitment in international law has to be tackled in a bottom-up way, i.e. by the nation states. One way is to ensure that the basic principles of international law – in particular their peace-preserving nature – are included in higher education curricula. It needs to be recognised as a simple matter of fact that a nation state has to comply with international law. However, even for a constitutional state such as Germany this does not seem to be something we can take for granted. This

is illustrated by the decision passed by the German Federal Parliament on October 16, 1998, as a large majority of the members of parliament voted for the “humanitarian intervention” that was a violation of international law. Dissenting voices were nonetheless present in the form of two prominent lawyers: Burkhard Hirsch (FDP) and Edzard Schmidt-Jortzig (FDP), at that time the Minister of Justice in the yellow-black coalition cabinet. It was the German branch of IALANA in particular which arranged for and published statements of position from experts in international law regarding this parliamentary decision. Dieter Deiseroth, member of the IALANA Scientific Advisory Board, was the first jurist to attempt a classification of this “humanitarian intervention” in terms of international law and publish this in a legal periodical.

The German constitution (Basic Law) incorporates a peace imperative comprised of the elements in Articles 25 and 26. According to Article 25, the basic principles of international law are an integral part of German federal law, which includes the prohibition of the use of force. Article 26 clearly states that a “war of aggression” is both criminal and unconstitutional. Article 25 also states that German citizens have the right to invoke the rules of international law. However, it is still disputed whether a citizen can initiate a censure of a violation of the prohibition of the use of force and oblige the state authority to prohibit or bring an end to violations of this prohibition. For example, this would apply to the conduct of war performed by the United States from its Air Base Ramstein (ABR) in Germany. In German case law there has yet to be a single case of a citizen successfully exercising this constitutional right to take to court a violation of the law prohibiting military aggression. This is in spite of the fact that in the 2+4 Treaty of 1990, Germany made a commitment to ensure that war was never conducted from German territory again.

For a long time now, I have been proposing the establishment of the specialist area “Peace Law” in our country’s law and legal education. However, even within our association, we initially could not agree whether there is in fact such a thing as “peace law”. We then reached the first milestone by holding our congress “Peace through Law” in 2009 at the Humboldt University in Berlin. A book of the same name was then published after the conference (available in German from IALANA, “*Frieden durch Recht?*”) which included essays such as one from Dieter Deiseroth on the *Peace Imperative in the Basic Law and the UN Charter*, and from Andreas Fischer-Lescano on *Subjective Law and the Prohibition of Aggression in International Law*, or my essay on *Legal Protection against Unconstitutional Warfare*. However, it is still a long way before we see the establishment of “Peace Law” as a specialist subject in higher education or a genuine feeling for the significance of international law among German judges.

Peace education has to be provided in schools. What educational approaches are needed to help school pupils (and their teachers) develop an understanding of how conflicts arise and how they can be resolved? How can we manage to convey the complexity involved in the actions of nation states? And how can we help school pupils to see through the delusion that military force is the only way to “solve” conflicts? The opposite is true. However, “civil conflict resolution” – especially by means of the law – has to begin at school if it is then to become part of our country’s parliament. This is also why I am appealing for parliament’s involvement to be increased: at current it only has a say when it comes to deployment of the Bundeswehr but this needs to be expanded to cover the state’s commitment to settling disputes.

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Securing our Survival (SOS)

The Case for a Nuclear Weapons Convention

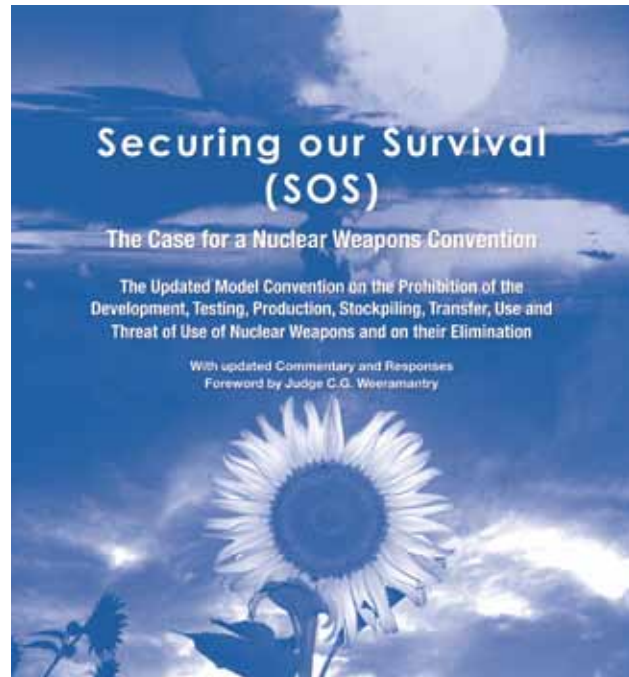
by International Association of Lawyers Against Nuclear Arms | International Network of Engineers and Scientists Against Proliferation | International Physicians for the Prevention of Nuclear War

The prohibitions of chemical and biological weapons and, most recently, of antipersonnel landmines were achieved through determined negotiations that resulted in international conventions (treaties). Recognizing that a similar convention on nuclear weapons could complete the process of abolishing weapons of mass destruction, more than a decade ago a group of lawyers, scientists, physicians, and policy experts set out to draft a document that could point negotiators toward such a convention. The result was a Model Nuclear Weapons Convention that was submitted to the United Nations as a working document. This was followed in 1999 by the publication of *Security and Survival*, which explained the rationale.

Now, ten years after the Model Convention was released in 1997, experts have returned, and have been joined by others, to reconsider the case for a Convention prohibiting and eliminating nuclear weapons in the changed global security dynamic. They agree with the Weapons of Mass Destruction Commission chaired by Hans Blix. In its 2006 report, the Commission rejected the notion that “outlawing nuclear weapons is a utopian goal” and found that a “nuclear disarmament treaty is achievable.”

Securing Our Survival is a briefing book for all abolitionists and for anyone who wants to learn more about the necessity for the elimination of nuclear weapons. The book explains in a careful, systematic way what a nuclear weapons convention should look like, who would create it, when it could become a reality, and why it is essential. The most current text of the Model Convention is provided, along with sections on enforcement and verification, and discussions of critical questions that will need to be resolved as part of the negotiating process.

Available for download here:
<http://lcnw.org/pubs/2007-securing-our-survival.pdf>



Excerpt of Ahrweiler Declaration

Has Deterrence with Nuclear Weapons Secured the Peace so far?

Contrary to the widely held opinion, which always reasserts that the nuclear deterrence system has impressively demonstrated its effectiveness and functionality during and after the Cold War and until today, it should be noted that the number of situations in which the world has been close to the nuclear abyss in recent decades is considerably high. Most people do not know this, or at any rate are not even aware of it. In the past sixty years there have been at least twenty critical situations – both in the East and the West – where the world stood on the brink of nuclear inferno. However, due to very fortunate circumstances, the world escaped falling into the abyss of a disastrous nuclear situation. The survival of mankind in the nuclear age in recent decades is due in part – as the former US Defense Secretary Robert McNamara formulated— to fortunate coincidences.

The survival of mankind and of this planet can no longer be left to such “fortunate coincidences”. Security strategies which are based on mega-risks, including a nuclear inferno, are inhumane and ultimately criminal.

The Contradictions of Nuclear Deterrence

All concepts and strategies of nuclear deterrence assume that potential adversaries could effectively be deterred from either a nuclear or non-nuclear attack, by inflicting on the adversary a devastating military retaliation, causing unacceptable consequences and damages, and possibly leading to total destruction in a nuclear inferno. In order to credibly demonstrate one’s

ability and readiness for such a reaction appropriate military equipment and weapons systems, logistic facilities and strategies and use-doctrines are required.

But the constitutive component for the “functioning” of deterrence logic is always logical, i.e. that one is dealing with an opponent making rational decisions on the basis of rational calculations based on sufficient information, including ad hoc information.

The concept of deterrence, therefore, cannot function on its own “logic” when it comes to the deterrence of an “irrational” opponent. This can, for example, be the case when the opponent is not receptive to “rational” arguments, as when – for whatever reason – he is not able or willing to weigh the rationality of the case. Historical examples of such “deterrence-resistant” opponents, in any case, were not exactly rare in the 20th century, the bloody “age of extremes”. Just imagine what would have happened if the party to be deterred had had nuclear weapons.

But even in the case of a fundamentally “rational opponent”, the viability of nuclear deterrence (as well as so-called conventional deterrence) depends on the circumstances of the particular temporal and informational capacity available to critical decision-making situations at the time, in which the required level to assess each estimate rises with the available limited time allowing for conclusions to be drawn.

The logic of “deterrence works” does not function either and reaches dangerous limits where human miscalculation or “technical failure” are present. This is the case when defects creep into communication systems and make it difficult or even impossible for the other side to safely diagnose a situation given a very short warning time e.g. to determine whether the data available from the computer systems indicate an enemy attack or not.

And finally: nuclear deterrence is useless against terrorist groups and suicide bombers, who do not recoil in fear before either nuclear explosives or their own death.

Collective/Common Security rather than Nuclear Deterrence

The so-called Palme Commission, which consisted of 19 important politicians and experts from the East and West, North and South, including the previous German Federal Minister and disarmament expert Egon Bahr, analyzed the life-threatening consequences of the doctrine of deterrence in the heyday of the Cold War and drew many remarkable conclusions, which they summarized in an alternative concept, “common security”:

“In today’s times, security cannot be gained only through one method. We live in a world in which economic, political, cultural and particularly military structures are increasingly dependent on one another. The security of one nation cannot be bought at the expense of other nations”.

In this nuclear age of mutually assured destruction, security therefore cannot be achieved against the potential enemy but only with that enemy.

View the full Ahrweiler Declaration on www.ialana.info

Advertisement



International Appeal
To the heads of universities and responsible academic bodies

Commit Universities to Peace – Reject Research for the Military
It is time to act.

Freedom of thought and ideas for a peaceful, sustainable and just world are universal human rights. Today, they are threatened in many places, including even the universities around the world. Growing militarization of academic research in not only engineering and natural sciences, but also humanities, is further eroding those rights. Immediate steps need to be taken to reverse this process. The undersigned believe that universities must focus on promoting peace and understanding among peoples by rejecting any research and teaching for military purposes.

We call for the abandonment of all research and teaching for military purposes and urge the university authorities and the responsible academic bodies everywhere to adopt binding commitments in the university statutes similar to Civil Clauses in some countries.



Nuclear Bunker of German Government in Ahrweiler | © Lucas Wirl

Imprint:



IALANA
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Editorial Team: Reiner Braun, Lucas Wirl
Layout: www.ronald-schrodt.de

We would like to thank Kurt Groenewald for his financial contribution