

Priorities for International Association of Lawyers Against Nuclear Arms (IALANA)
for the next 5-10 years

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¹ Input has been received, *inter alia*, from Aotearoa Lawyers for Peace, German IALANA, Japan Association of Lawyers Against Nuclear Arms (JALANA), Lawyers for Social Responsibility (Canada), and from a few individual members.

A. Introduction

Climate change and the threat and use of nuclear weapons as well as the current Covid-19 pandemic must be considered to be among the most serious threats that humankind faces today. They have at least two features in common, namely that they are global in nature and that they can only be eliminated through global cooperation and leadership supported and assisted by the expertise and experience of civil society. It is likely that the current Covid-19 pandemic is only a first example of different forms of global pandemics that humanity will face more frequently in the near future. Two of those threats, nuclear weapons and climate change, are part of IALANA's policy in the near future and are, therefore, covered in the present paper.

This paper is intended to summarize the near future of IALANA's policy and to come up with projects that keep it relevant in the field. It lays out the organization's priorities for the next 5 to 10 years. It is to be used for fund raising. It shall also allow IALANA members to decide whether, and to what extent, they want to be actively involved in our organization. They can sign up to certain projects and commit to their realization. Moreover, it may also help to involve a more diverse, new generation of lawyers. IALANA should seek to better connect with other civil society organizations dealing with nuclear weapons and/or human rights, climate change and development.

B. IALANA's overall mission

IALANA was created in 1988. According to its Statutes, IALANA pursues the following main objectives:

“The primary goals of IALANA are to prevent nuclear war, achieve the global elimination of nuclear weapons, engender adherence to international law relating to nuclear weapons and encourage the effective use of mechanisms for the peaceful settlement of international disputes. IALANA highlights the role that law can play to support political and civil society campaigns for nuclear abolition, general disarmament and international peace. IALANA advances a human security approach which

addresses the connection between disarmament, human rights and sustainable development.”

Today these objectives are still relevant as ever and will be guiding IALANA’s work for years to come.

C. IALANA’s priorities for the next 5 to 10 years

The numbering of the priorities does not imply a hierarchy among them.

1. Strengthening the legal, moral and political norms against the threat and use of nuclear weapons (delegitimization)

On the one hand, the norm against the threat and use of nuclear weapons has been eroded in the past few years by aggressive, pro-nuclear leadership of nuclear-armed states. On the other hand, there is a strong and growing body of existing and aspiring law outlawing the threat or use of nuclear weapons, building on international humanitarian law, law of peace and security, human rights law and law protecting future generations. This law is reflected, inter alia, in the 1996 *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons* of the International Court of Justice, the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW) and the 2018 Human Rights Committee General Comment 36 on the right to life (Article 6 of the 1996 UN Covenant on Civil and Political Rights (ICCPR)).

This law shall be used by IALANA to rebuild, strengthen and further develop the moral and political norm against threat and use of nuclear weapons. This would contribute to the further delegitimization of nuclear weapons and contribute to efforts both regionally and globally.

2. Working towards a world free of nuclear weapons

IALANA has been one of the leaders in the global movement to achieve a nuclear weapons convention – a universal treaty including nuclear-armed, nuclear allied and non-nuclear states to eliminate and prohibit nuclear weapons under strict and effective international control. The Model Nuclear Weapons Convention was drafted by IALANA, IPPNW and INESAP and was circulated as a UN Document by Costa Rica in 1997²; a revised version was released in 2007

² A/C.1/52/7, 31 October 1997.

and again circulated as a UN document.³ A significant step in this direction was taken with the adoption by non-nuclear armed states in 2017 of the TPNW. IALANA will support this treaty (see below, D.2), while continuing to advance a nuclear weapons convention that envisages the participation of nuclear-armed and allied states (see below, D.3) from day one onwards. IALANA will also support other nuclear abolition initiatives, in particular when they raise complex legal issues, such as the establishment of additional nuclear-weapon-free zones, for example for Europe, the Middle East or the Korean peninsula.

3. Connecting nuclear disarmament, human rights, climate, sustainable development and future generations

IALANA finds it crucial to take into account climate change issues in our future projects. It may be a separate project or a horizontal aspect that plays in in other projects. It can possibly be combined with issues of future generations, human rights and development. In this regard, the current pandemic crisis demonstrates the fragility and vulnerability of our modern and inter-connected society.

There are parallels between nuclear disarmament and climate protection.⁴ Both nuclear weapons and climate change pose existential threats to the very future of human civilization. Both climate protection and nuclear disarmament involve global processes that are articulated through and based upon multilateral instruments, for nuclear weapons the NPT and the TPNW, for climate change the UN Framework Convention on Climate Change, the Paris Agreement, and the 2030 Agenda for Sustainable Development, adopted in September 2015 by the UN General Assembly.⁵ This means that questions of international law are intertwined with questions of implementation of agreements and with solving these problems.

It is also well established that the use of dozens of nuclear weapons on cities, for instance in the context of a regional conflict between India and Pakistan, in addition to being an unprecedented humanitarian catastrophe, would cause a significant drop of the global temperature of the earth, leading to a decrease of natural growth and agricultural production (during the Cold War, this disaster was named “nuclear winter”). Information and analysis

³ A/62/650, 11 January 2008.

⁴ See *The Climate-Nuclear Nexus*, Jürgen Scheffran and others, World Future Council, 2016, available at <https://www.worldfuturecouncil.org/examining-interplay-climate-change-nuclear-weapons/>. John Burroughs and Alyn Ware of IALANA were among the contributing authors.

⁵ “Transforming our world: the 2030 Agenda for Sustainable Development,” A/RES/70/1, 21 October 2015.

regarding this phenomenon can be used for campaigning and linking to the activities of civil society groups working on climate change and development.

Moreover, it is sometimes claimed, including by the IAEA, that nuclear energy is a solution to climate change because, if used appropriately, it is less polluting than fossil fuels. It is not surprising that IAEA makes considerable efforts to promote nuclear energy for peaceful purposes in the context of the Sustainable Development Goals (SDG) deriving from the 2030 Agenda for Sustainable Development, mentioned above. This myth should be challenged because, *inter alia*, it does not sufficiently take into account the security risks of peaceful use of nuclear energy.⁶

D. Strategies and tools to achieve the above-mentioned priorities

The numbering of the activities does not imply a hierarchy among them.

1. Exploring and using human rights bodies for the anti-nuclear cause

IALANA has the knowledge to strengthen the bridge between nuclear disarmament and human rights and use UN human rights mechanisms to that end. Unlike other organizations, we have experts on board who know both areas of law.

An example for this bridge-building: On 30 October 2018, the UN Human Rights Committee (HRC), which is in charge of the implementation of the 1966 International Covenant on Civil and Political Rights (ICCPR), has adopted its General Comment (GC) no. 36 relating to the right to life (Article 6 ICCPR). It is in many respects a remarkable document and a new example of bridge-building between nuclear disarmament and human rights.⁷ In para. 66, the HRC considers the threat and use of WMD, in particular nuclear weapons, incompatible with respect for the right to life and reiterates the duties of the States Parties in the field of nuclear disarmament and non-proliferation.⁸

⁶ See below, footnote 8, referring to the debates within the Committee on the Rights of the Child on the human rights issues raised by the Fukushima disaster, in particular on the right to health. See also, among others, Daniel B. Poneman, *Double Jeopardy Combating Nuclear Terror and Climate Change*, MIT Press 2019, making the case that we can use nuclear power to combat climate change even as we reduce the risks of nuclear terror.

⁷ <https://safna.org/2018/11/07/threat-and-use-of-nuclear-weapons-contrary-to-right-to-life-says-un-human-rights-committee/>

⁸ Paragraph 66 of GC no. 36 reads as follows (footnote references omitted): “The threat or use of weapons of mass destruction, in particular nuclear weapons, which are indiscriminate in effect and are of a nature to cause destruction of human life on a catastrophic scale is incompatible with respect for the right to life and may amount

Judging from the text of paragraph 66, as it has been adopted by the HRC, it can be claimed that the submissions of LCNP (Lawyers Committee on Nuclear Policy)/SAFNA (Swiss Lawyers for Nuclear Disarmament) must have had a significant influence on its final shaping.

Moreover, on 3 October 2019, LCNP, Western States Legal Foundation (WSLF) and SAFNA have submitted observations to the Human Rights Council's Universal Periodic Review with respect to the United States, to be discussed in November 2020, entitled "US Nuclear Policy Violates Right to Life".⁹ Then, on 1 June 2020 LCNP and WSLF submitted observations to the UN Human Rights Committee regarding its review of Russia, entitled "Russian Nuclear Weapons Policy and the Right to Life." A date for the discussion has not yet been set.

IALANA shall try to repeat what has been done in respect of the US nuclear weapons policy concerning other nuclear powers within the UN periodic review mechanisms. Moreover, it shall reach out to other human rights bodies, in particular those dealing with particularly vulnerable groups - children (UN Committee on the Rights of the Child),¹⁰ women (CEDAW), indigenous peoples, and more. Moreover, revisions of other General Comments of UN human rights bodies might come up and IALANA should render those bodies attentive to relevant nuclear issues, as it has done successfully concerning GC no. 36.

2. Support for the Treaty on the Prohibition of Nuclear Weapons (TPNW)

There is still momentum surrounding the TPNW. The first aim regarding the treaty is to bring it into force; there are currently 44 ratifications (18 September 2020) of the 50 required. IALANA should deploy efforts to support entry into force of the treaty and assist states ratifying it. Once the treaty enters into force, IALANA shall continue to give input and deploy efforts in relation to the universalization of the treaty and attend the conferences of states parties

to a crime under international law. States parties must take all necessary measures to stop the proliferation of weapons of mass destruction, including measures to prevent their acquisition by non-state actors, to refrain from developing, producing, testing, acquiring, stockpiling, selling, transferring and using them, to destroy existing stockpiles, and to take adequate measures of protection against accidental use, all in accordance with their international obligations. They must also respect their international obligations to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control and to afford adequate reparation to victims whose right to life has been or is being adversely affected by the testing or use of weapons of mass destruction, in accordance with principles of international responsibility."

⁹ <https://safna.org/2019/10/10/us-nuclear-weapons-policy-violates-the-right-to-life/>

¹⁰ See also the Committee on the Rights of the Child addressing the Fukushima disaster, in particular health issues of children, summarized and analyzed in the following article: <https://safna.org/2019/11/24/the-un-convention-on-the-rights-of-the-child-celebrates-its-30th-anniversary-an-instrument-that-remains-relevant-including-to-asses-the-right-to-health-after-the-2011-fukushima-disaster/>

and review conferences. Concerning universalization, ratification of the TPNW by states like Switzerland does not seem excluded and would be key for other states to join.

IALANA is particularly well placed to conduct research on article 18 of the TPNW (relationship to other relevant instruments). Moreover, IALANA could assist states parties regarding implementation of the treaty, in particular by providing information, for example via a fact sheet, concerning (model) national legislation.

Once the TPNW is in force, IALANA and Swiss Lawyers for Nuclear Disarmament shall update their brochure on the TPNW (commentary article by article), including its German and Japanese versions.¹¹

3. Engaging with states possessing nuclear weapons, in particular working towards a Convention on Nuclear Disarmament

Much energy is currently deployed by civil society in order to bring the TPNW into force, but other goals should not be neglected. Since it is very unlikely that the nuclear-armed states will soon ratify that treaty, alternative solutions should be proposed. The most needed would be a treaty on nuclear disarmament negotiated with the participation of the nuclear-armed states, contrary to what was the case with the TPNW. This could be based on the Model Nuclear Weapons Convention which was drafted, *inter alia*, by IALANA (as mentioned earlier, a revised version was released in 2007 and circulated by Costa Rica and Malaysia as an official UN document¹²). If negotiations on verified elimination of nuclear arms involving some or all nuclear-armed states commence, that could result at some point in those states joining the TPNW and in any case the TPNW and any agreement on elimination of nuclear arms would be complementary.

The entry into force of the CTBT, adopted in 1996, should remain another goal. It is generally understood that if the United States ratifies the treaty, ratification by other states whose ratification is required for entry into force would be much more likely.

¹¹ Daniel Rietiker and Manfred Mohr, "Treaty on the Prohibition of Nuclear Weapons: A Short Commentary Article by Article," April 2018, available at

<https://www.ialana.info/2018/04/article-by-article-treaty-on-the-prohibition-of-nuclear-weapons/>.

¹² A/62/650, 11 January 2008.

4. Educational activities, including a summer/winter school or a similar regular event

IALANA shall educate students, civil society and legislators, in particular through fact sheets, blogs, newsletters, webinars, events and side-events, as well as speeches during conferences, such as the NPT Review Conferences and, in the near future, the meetings of states parties to the TPNW (Article 8 TPNW).

In particular, IALANA should strive to organize on a regular basis, namely every year or every second year, an educational initiative, for instance a summer/winter school for young people (possibly law students in states possessing nuclear weapons), perhaps combined with a moot court or model negotiations.

We should avoid duplicating already existing offerings and come up with something new and innovative. A course could be inter-disciplinary and include topics such as climate change, human security, right to health, human rights, future generations etc.

Another question would be to find an appropriate place to organize a school or similar venture. It could, *inter alia*, be Vienna, Geneva or the Hague, with the advantage of being able to visit international organizations. Who could be potential partners? Universities? Should it be rather academic in nature or more aimed at activism and youth? It is obvious that this initiative would be quite time-consuming and expensive.

Another possibility could be regular presentations in law schools. Lawyers Committee on Nuclear Policy has done such presentations on an occasional basis, and in the early 2000s had a funded law school outreach project.

5. Litigation on the national and international level

IALANA shall continue to engage in national and international litigation. For instance, IALANA Germany shall continue its fight against US nuclear weapons stationed in Büchel and IALANA is encouraged to continue its “No More Hibakusha Lawsuits”.

IALANA shall consider nuclear topics in the broad sense, including for instance, uranium mining, depleted uranium, nuclear testing, or weapons exportations in light of the Arms Trade Treaty. Such topics have the advantage to be more concrete than the – sometimes considered abstract – danger of nuclear deterrence and weapons. Moreover, in such litigation, actual

victims of uranium mining, depleted uranium or nuclear testing can be involved, which might trigger the jurisdiction of certain human rights bodies for such litigation.

6. Returning to the Court?

IALANA was instrumental in the 1996 *Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons*, in which the Court concluded that there is an obligation to pursue in good faith and to conclude negotiations leading to nuclear disarmament in all its aspects under strict and effective international control. While the obligation is based in particular on Article VI of the NPT, there is very good reason to read the Court's conclusion as applying to all states, including the few that are not party to the NPT. Considering the stagnation in nuclear disarmament and the huge amount of money invested by the nuclear-armed states to modernize their weapons, IALANA should consider the pros and cons of embarking on a new campaign aimed at getting another Advisory Opinion from the World Court. This time, the focus could be on questions about the legal consequences of the failure of the NWS to not initiate or participate in "negotiations leading to complete nuclear disarmament under strict and effective international control" and related questions. Substantive materials in support of such a project can be taken from the Marshall Islands cases, which never reached the merits stage since the Court was split evenly on the question whether there was a "dispute" between the Marshall Islands and the NWS, so the vote of the French President of the Court was decisive and the Court declared the cases inadmissible. This project should in its first stage lead to a request for an advisory opinion that would have to be submitted by the UN General Assembly. From our point of view, such an approach could potentially attract many states and would bring new life to Article VI and the universal nuclear disarmament obligation.

E. Final remarks

The aim of the present paper is to describe the priorities for IALANA for the next 5 to 10 years. It is the outcome of an internal brainstorming process that is and will be ongoing.

During an internal IALANA discussion in June 2020, other important issues and possible related activities have been proposed. It was, however, acknowledged that, considering the organization's limited resources, efforts shall be concentrated on the effective realization of a rather limited number of activities in fields where IALANA has the necessary expertise and which might not be covered by other organizations.

Finally, the activities proposed in the present paper are not necessarily exhaustive and the organization must remain flexible enough in order to timely respond to global developments and significant events related to nuclear arms control and disarmament, such as the withdrawal from an international treaty by a State or the conduct of nuclear explosive tests.