

Building a world community

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## Mondial Updates (December 2016)

### Nuclear weapons at the ICJ

In April 2014 the Republic of the Marshall Islands filed an application with the International Court of Justice (ICJ) against each of the nine nuclear weapons possessing states for failing to disarm their respective nuclear arsenals.



*The International Court of Justice holds a public hearing in the Marshall Islands' case against India in The Hague on March 7.  
[Photo: Frank van Beek/ICJ-CIJ/UN]*

Article VI of the Nuclear Nonproliferation Treaty (NPT) sets out an obligation for states possessing nuclear weapons to pursue in good faith and conclude negotiations leading to nuclear disarmament in all its aspects, an obligation that was reinforced by the 1996 ICJ Advisory Opinion on the legality of nuclear weapons.

Of the nine nuclear weapons states (NWS, i.e. China, North Korea, France, India, Israel, Pakistan, Russia, the United Kingdom, and the United States), only India, Pakistan and the U.K. have made

declarations accepting the court's jurisdiction as compulsory. The U.K. stands apart as both a signatory to the NPT as well as having accepted the international court's rulings as binding.

Two of the cases, against India and Pakistan, were therefore based on a customary international obligation to pursue and conclude negotiations on nuclear disarmament as declared by the court. The third, against the UK, rested on NPT Article VI as well as the customary obligation.

Hearings on preliminary issues in the cases against India, Pakistan, and the UK were held in the Hague this past March. The issues concerned whether the cases come under the terms of the three states' declarations accepting the court's jurisdiction and whether the cases are otherwise suitable for determination on the merits.

On October 5, by narrow margins, the International Court of Justice dismissed the three nuclear disarmament cases. The Court ruled that it lacked jurisdiction because no legal dispute existed when the Marshall Islands filed applications initiating the cases in April 2014. In the UK case, the judges were divided eight to eight, with the vote of the Court's president breaking the tie; in the India and Pakistan cases, the vote was nine to seven.

While disappointed by the ruling, John Burroughs of the international Lawyers Committee on Nuclear Policy notes that the Marshall Islands' pleadings are a rich resource for the development of political and legal arguments for disarmament, which will be useful in the years ahead, including in negotiations in 2017 on a treaty creating a legal prohibition on nuclear weapons

### **Canada's lousy Cluster Munitions law**



In the December 2013, July 2014 and December 2014 issues of *Mondial* we reported on Canada's legislation (Bill C6) to implement the UN Convention on Cluster Munitions (CCM).

The treaty's purpose is a prohibition on use, production, transfer, stockpiling, etc. of cluster munitions. The World Federalists were a leading critic of Bill C-6, passed under the Harper Government. That legislation included a number of "exceptions" to the treaty's general prohibition on use of cluster bombs, allowing Canadian personnel to participate in operations where cluster bombs were used when operating in combined operations with states not party to the treaty. Following much media scrutiny and opposition from Canadian NGOs, as well as the Liberal, NDP and Green parties, the legislation came in for additional flack at the 2015 Meeting of States Parties to the CCM, where it was strongly criticized by allied governments, the International Committee of the Red Cross, and the NGO Cluster Munition Coalition.

Would the new Liberal government take action to fix Canada's legislation? Earlier this summer, representatives of the World Federalists and Mines Action Canada met with officials at Global Affairs Canada, including a senior advisor to Minister Dion, to remind them that at the September 2016 meeting of states parties, the international community will be expecting Canada to signal its intention to repair the significant flaws in its legislation, in order that it be consistent with, and not undermine,

the CCM.

Alas, rather than announce an intention to revise the legislation, Canada used the occasion of this year's meeting to defend Bill C-6. In a statement by the Cluster Munition Coalition on national implementation, Canada's legislation was once again singled out for criticism.

### **A regional criminal court for Latin America and the Caribbean**

The December 2013 issue of *Mondial* included an article introducing a new campaign, led by the World Federalist section in Argentina, *Democracia Global*, calling for the creation of a Latin American and Caribbean Criminal Court Against Transnational Organized Crime (COPLA, after the Spanish "Corte Penal Latinoamericana y del Caribe Contra el Crimen Transnacional Organizado"). Criminal organizations related to drugs, arms and human trafficking, money laundering and other transnational crimes, have become the greatest security threat in the Latin American and Caribbean region. For a variety of reasons, their activities have eluded effective control and jurisdiction of national institutions and current regional cooperation mechanisms.

The United Nations Convention against Transnational Organized Crime (Palermo Convention) and its related protocols provide a basis in international law for the development of such a transnational court. The COPLA would build on current mechanisms for international cooperation to provide a regional jurisdiction capable of intervening when national laws prove ineffective or incapable of addressing transnational crimes.

A COPLA would be established as an independent body (not an organ of an existing regional institution) by means of an international treaty. The Court would be complementary to national criminal systems but it would also have the power of initiative to start its own investigations. It would work as a Court of last resort to intervene in those cases where states are not capable or not willing to take action. It would aim mainly at prosecuting the leaders of criminal organizations and confiscating their resources.

After steady progress in 2014 and early 2015, support for the COPLA campaign has accelerated. The proposal has been endorsed by the government of Argentina as well as received indications of support from the Presidents of Chile and Uruguay, and Brazilian Supreme Court of Justice authorities. WFM – Canada has also brought the COPLA campaign to the attention of officials at Global Affairs Canada managing the government's Anti-Crime Capacity Building Program.