

Conversion of the heart

Nuclear zero lawsuits

David Krieger

David Krieger founded the Nuclear Age Peace Foundation in 1982. The Foundation, together with the International Association of Lawyers against Nuclear Arms (IALANA), sponsored a panel in Vienna in December 2014, for which this paper was prepared, in the days before the landmark international conference on the humanitarian impact of nuclear weapons at which 158 states participated as well as numerous international and civil society organisations.

The Nuclear Zero lawsuits, initiated by the Marshall Islands of the Pacific Ocean, are about the law, but they are about much more than the law. They are also about saving humanity from its most destructive capabilities. They are about saving humanity from itself and about preserving civilization for future generations. They are incredibly important, and I will try to place them in a broader context.

I will begin by sharing two quotations with you. The first is by Jayantha Dhanapala, a Sri Lankan diplomat, former United Nations Under-Secretary General, and long-time and committed leader in the area of nuclear disarmament. He states:

‘The spectre of the use of a nuclear weapon through political intent, cyber-attack or by accident, by a nation state or by a non-state actor, is more real than we, in our cocoons of complacency, choose to acknowledge.’

The spectre of nuclear use, even nuclear war, is real and most of the world lives in ‘cocoons of complacency’. It is clear that we must break free from those cocoons, which are as dangerous to the human future as are the nuclear weapons that now imperil us. The Nuclear Zero lawsuits seek to accomplish that.

The second quote is by His Holiness Pope Francis, the leader of the Catholic Church, who has brought new light and compassion to his office. He states:

‘As long as so great a quantity of arms are in circulation as at present, new pretexts can always be found for initiating hostilities. For this reason, I make my own the appeal of my predecessors for the non-proliferation of arms and for disarmament of all parties, beginning with nuclear and chemical weapons disarmament.’

The Pope talks about disarmament in general, but he puts nuclear disarmament, along with chemical weapons disarmament, at the top of his list.

Pope Francis continues:

'We cannot however fail to observe that international agreements and national laws – while necessary and greatly to be desired – are not of themselves sufficient to protect humanity from the risk of armed conflict. A conversion of hearts is needed which would permit everyone to recognize in the other a brother or sister to care for, and to work together with, in building a fulfilling life for all.'

'A conversion of hearts.' Can there be any doubt that such conversion is necessary? Can there be any doubt that traditional diplomacy is not getting the job done? And that preparations for war and resolving conflicts by means of warfare are moving us farther away from the needed conversion of hearts?

Disarmament negotiations have been stuck for some 20 years. The 'step-by-step' approach of the nuclear-armed states is not working. There are no negotiations in good faith for nuclear disarmament, as required by international law. There are still over 16,000 nuclear weapons in the world. The use of even a small number of these would destroy civilization or, worse, end complex life on the planet – the only planet we know of in the universe that harbours life.

Nuclear weapons do not so much threaten our amazing planet itself, as they threaten the future of humanity and all the creatures, which are subject, for better or worse, to our stewardship. Over geological time, with the passing of hundreds of thousands of years, the Earth will recover from the worst we can do to it. It is ourselves and civilization that we put at risk with our nuclear arsenals. We must have a 'conversion of hearts' if we are to save our world, ourselves, and the human future.

The Marshall Islands has brought lawsuits against the nine nuclear-armed countries. They ask only that these nine nuclear-armed states do what is required of them under international law – under the Nuclear Non-Proliferation Treaty (NPT) and customary international law. They ask that the nuclear-armed countries fulfil their obligations under international law to pursue negotiations in good faith for an end to the nuclear arms race and for nuclear disarmament. They ask only for the fulfilment of unkept promises and unmet obligations.

The Marshall Islanders are very sympathetic heroes and heroines. For 12 years, from 1946 to 1958, the United States tested nuclear and thermonuclear weapons in the Marshall Islands, causing untold suffering

to the islanders. The US tested 67 times, in the atmosphere and under water. The power of these tests was the equivalent force of testing 1.6 Hiroshima bombs daily for 12 years. This led to countless health problems and premature deaths from cancer and leukaemia. It also led to many birth defects and stillbirths. After the Japanese cities of Hiroshima and Nagasaki, no place on the planet has suffered more from nuclear weapons than have the Marshall Islands.

The United States was the trustee of the Trust Territory of the Pacific, which included the Marshall Islands. In this role, the US was responsible for protecting the life and health of the islanders. Instead, the US tested nuclear weapons on their islands, conducted secret radiation experiments on the islanders, and hid information from the islanders so as to evade paying them fair compensation for their pain, suffering and premature deaths. This was criminal behaviour; it was certainly not the behaviour of a responsible trustee.

With the Nuclear Zero lawsuits, the Marshall Islanders are acting out of compassion. They are not seeking compensation. They are breaking the bonds of complacency. They seek a conversion of the human heart in order to save their islands and the world from the ravages of nuclear weapons. They wish that no other country or people will ever suffer as they have. They have initiated these lawsuits as a public good.

As Marshall Islands Foreign Minister Tony de Brum put it,

‘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 continued existence of nuclear weapons and the terrible risk they pose to the world threaten us all.’

I should note that this is the same perspective as that of the *hibakusha*, the survivors of Hiroshima and Nagasaki. It is the perspective of all those who have suffered the terrible consequences of nuclear weapons’ use.

With regard to the legal aspects of these lawsuits, they are about whether treaties matter. They are about whether the most powerful nations are to be bound by the same rules as the rest of the international community. They are about whether a treaty can stand up with only half of the bargain fulfilled. They are about who gets to decide if treaty obligations are being met. Do all parties to a treaty stand on equal footing, or do the powerful have special rules specifically for them? They are also about the strength of customary international law to bind nations to civilized behaviour.

These lawsuits, as I already noted, are about more than just the law.

They are also about breaking the cocoons of complacency and a conversion of hearts. They are also about leadership, boldness, courage, justice, wisdom and, ultimately, about survival. Let me say a word about each of these.

Leadership. If the most powerful countries won't lead, then other countries must. The Marshall Islands, a small island country, has demonstrated this leadership, both on ending climate chaos and on eliminating the nuclear weapons threat to humanity.

Boldness. Many of us in civil society have been calling for boldness in relation to the failure of the nuclear-armed countries to fulfil their obligations to negotiate in good faith to end the nuclear arms race and to achieve complete nuclear disarmament. The status quo has become littered with broken promises, and these have become hard to tolerate. Instead of negotiating in good faith for an end to the nuclear arms race 'at an early date', the nuclear-armed countries have engaged in massive programmes of modernization of their nuclear arsenals (nuclear weapons, delivery systems and nuclear infrastructure). Such modernization of nuclear arsenals could cost trillions of dollars and ensure that nuclear weapons are deployed through the 21st century and beyond. The Marshall Islands is boldly challenging the status quo with the Nuclear Zero lawsuits.

Courage. The Marshall Islands is standing up for humanity in bringing these lawsuits. I see them as David standing against the nine nuclear-armed Goliaths. But the Marshall Islands is a David acting nonviolently, using the courts and the law instead of a slingshot. The Marshall Islands show us by their actions what courage looks like.

Justice. The law should always be about justice. In the case of nuclear weapons, both the law and justice call for an equal playing field, one in which no country has possession of nuclear weapons. That is the bargain of the Nuclear Non-Proliferation Treaty and the requirement of customary international law, and the Marshall Islands is taking legal action that seeks justice in the international community.

Wisdom. The lawsuits are about the wisdom to confront the hubris of the nuclear-armed countries. The arrogance of power is dangerous, and the arrogance of reliance upon nuclear weapons could be fatal for all humanity.

Survival. At their base, the Nuclear Zero lawsuits brought by the Marshall Islands are about survival. They are about making nuclear war, by design or accident, impossible because there are no longer nuclear weapons to threaten humanity. Without nuclear weapons in the world, there can be no nuclear war, no nuclear famine, no overriding threat to the

human species and the future of humanity.

The dream of ending the nuclear weapons threat to humanity should be the dream not only of the Marshall Islanders, but also our dream as well, our collective dream, not only for ourselves, but also for the human future.

The people of the world should follow the lead of the Marshall Islanders. If they can lead, we can support them. If they can be bold, we can join them. If they can be courageous, we can be as well. If they can demand that international law be based on justice, we can stand with them. If they can act wisely and confront hubris, with all its false assumptions, we can join them in doing so. If they can take seriously the threat to human survival inherent in our most dangerous weapons, so can we. The Marshall Islands show us the way forward, breaking cocoons of complacency and demonstrating a conversion of the heart.

I am proud to be associated with the Marshall Islands and its extraordinary Foreign Minister, Tony de Brum. As a consultant to the Marshall Islands, the Nuclear Age Peace Foundation has worked to build the legal teams that support the Nuclear Zero lawsuits. We have also built a consortium of over 50 civil society organizations and individuals supporting the lawsuits. We have also created a way for individuals to add their voices of support with a brief petition. You can find out more and add your voice at the campaign website (address below).

I will conclude with a poem that I wrote recently:

Testing Nuclear Weapons in the Marshall Islands

*The islands were alive
with the red-orange fire of sunset
splashed on a billowy sky.
The islanders lived simple lives
close to the edge of the ocean planet
reaching out to infinity.
The days were bright and the nights
calm in this happy archipelago
until the colonizers came.
These were sequentially the Spanish,
Germans, Japanese and then, worst of all,
the United States.
The US came as trustee
bearing its new bombs, eager to test them
in this beautiful barefoot Eden.
The islanders were trusting,*

*even when the bombs began exploding
and the white ash fell like snow.
The children played
in the ash as it floated down on them,
covering them in poison.
The rest is a tale of loss
and suffering by the islanders, of madness
by the people of the bomb.*

www.nuclearzero.org

www.bmeia.gv.at

* * *

Our Common Home

Pope Francis told the Vienna Conference on the Humanitarian Impact of Nuclear Weapons:

‘...Nuclear weapons are a global problem, affecting all nations, and impacting future generations and the planet that is our home. A global ethic is needed if we are to reduce the nuclear threat and work towards nuclear disarmament. Now, more than ever, technological, social and political interdependence urgently calls for an ethic of solidarity (cf. John Paul II, *Sollicitudo Rei Socialis*, 38), which encourages peoples to work together for a more secure world, and a future that is increasingly rooted in moral values and responsibility on a global scale.

The humanitarian consequences of nuclear weapons are predictable and planetary. While the focus is often placed on nuclear weapons’ potential for mass-killing, more attention must be given to the ‘unnecessary suffering’ brought on by their use. Military codes and international law, among others, have long banned peoples from inflicting unnecessary suffering. If such suffering is banned in the waging of conventional war, then it should all the more be banned in nuclear conflict. There are those among us who are victims of these weapons; they warn us not to commit the same irreparable mistakes which have devastated populations and creation. I extend warm greetings to the *Hibakusha*, as well as other victims of nuclear weapons testing who are here at this meeting. I encourage them all to be prophetic voices, calling the human family to a deeper appreciation of beauty, love, co-operation and fraternity, while reminding the world of the risks of

nuclear weapons which have the potential to destroy us and civilization.

Nuclear deterrence and the threat of mutually assured destruction cannot be the basis for an ethics of fraternity and peaceful coexistence among peoples and states. The youth of today and tomorrow deserve far more. They deserve a peaceful world order based on the unity of the human family, grounded on respect, co-operation, solidarity and compassion. Now is the time to counter the logic of fear with the ethic of responsibility, and so foster a climate of trust and sincere dialogue ...

... In the context of this Conference, I wish to encourage sincere and open dialogue between parties internal to each nuclear state, between various nuclear states, and between nuclear states and non-nuclear states. This dialogue must be inclusive, involving international organisations, religious communities and civil society, and oriented towards the common good and not the protection of vested interests. ‘A world without nuclear weapons’ is a goal shared by all nations and echoed by world leaders, as well as the aspiration of millions of men and women. The future and the survival of the human family hinges on moving beyond this ideal and ensuring that it becomes a reality.

I am convinced that the desire for peace and fraternity planted deep in the human heart will bear fruit in concrete ways to ensure that nuclear weapons are banned once and for all, to the benefit of our common home ... ’

*From the Vatican
7th December 2014*

‘Ken Coates was one of the very few people of pure genius and unbounded ambition I have known; yet wholly without ambition for himself, rather than a remarkable personal modesty. He possessed genius not only in imagination but also in delivery; such as conceiving the END appeal for European Nuclear Disarmament – wrongly attributed to Edward Thompson – on which he mobilised a broad range of actors in a truly Gramscian strategy of manoeuvre. Stressing also that this could be for a European nuclear free security zone, which influenced the Soviets in a manner that I have described in my recent book, *Europe in Question – and what to do about it*, which recounts also his key role in supporting alternative European strategies both before and after becoming a member of the European Parliament. These are only some of the reasons why it is vital that we should not only remember, but also still be inspired by him.’

Stuart Holland