The Illegality of DU Weaponry
by Karen Parker, JD

Background

I found out about DU weaponry in 1996 and immediately began to condemn it at the United Nations human rights forums. I was convinced that such weaponry could not be used without violating humanitarian (armed conflict) law rules and was, accordingly banned by operation of existing law. As a consequence, their use would necessarily constitute grave breaches of the Geneva Conventions and other violations of humanitarian (armed conflict). The fact that the UN took up this issue as soon as it was presented it supports my opinion.

The presentations at the 1996 session of UN Commission on Human Rights (the Commission and at the August 1996 session of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, now renamed the United Nations Sub-Commission on the Promotion and Protection of Human Rights (the Sub-Commission) focused on the use of DU weaponry in the first Gulf War. At that session, members of the Sub-Commission were both highly shocked and moved by the presentations.
on DU weaponry\textsuperscript{6} and as a result passed a resolution (Sub-Commission resolution 1996/16) sponsored by Claire Palley (UK) in which the Sub-Commission found DU weaponry “incompatible” with existing humanitarian and human rights law. The resolution also began a procedure to address DU weaponry (and other “bad” weapons) in light of these existing norms and asked the Secretary-General to submit a report to the Sub-Commission at its 1997 session on this topic. I prepared Memorandum on Weapons and the Laws and Customs of War (IED/HLP 1997) (in CADU report) to submit to the Secretary-General, who then incorporated much of my basic analysis in his report, issued as U.N. Doc. E/CN.4/Sub.2/1997/27 and Additions. The Secretary-General’s report also contains the views of States, other NGO’s and specialized agencies. In 1997 the Sub-Commission adopted another resolution (Sub-Commission resolution 1997/36) in which it repeated its finding that DU weaponry is “incompatible” with existing humanitarian and human rights law and asked its member Clemencia Forero Ucros to study further this issue.\textsuperscript{8}

Mme Forero Ucros did not submit a paper and did not return to the Sub-Commission. At the 1998 session of the Commission on Human Rights, Claire Palley was not nominated by the UK, which instead nominated Francoise Jane Hampson who was elected. Between 1998 and 2001 our efforts turned to reinforcing the legal position with written and oral presentations (years 1998 and 1999 in CADU report), presenting new studies, having round tables and seminars, showing films, and generally trying to keep up the momentum. At the same time, we looked for a replacement for Mme Forero Ucros and kept the issue on the agenda through decisions to carry over the working paper.

At the Sub-Commission 2001 session Sub-Commission member Justice Yeung Sik Yuen agreed to take on the weapons paper and Sub-Commission member Miguel Alfonso Martinez (Cuba) introduced a decision to that effect. The Alfonso Martinez draft surfaced with sufficient signatures to pass and was “tabled” as Sub-Commission Doc. E/CN.4/Sub.2/2001/L.2. (In the UN, “tabled” means “ready for action” rather than “dismissed”. The “L” stands for “limited” documents, which are circulated at the sessions but not published). At that point Ms. Hampson tried to have the Sub-Commission agree to issue a separate resolution on DU weaponry, which would then be taken off the list of weapons that Sik Yuen was to address and assigned to another Member, presumably herself. She submitted amendments to draft L.2, circulated as Doc. E/CN.4/Sub.2/2001/L.36 forwarding this idea. Ms. Hampson appeared to not want that DU weapons be considered automatically “incompatible” with existing norms. The “other” weapons on the list to be studied are fuel air bombs, cluster bombs, chemical, biological, bacteriological and other weapons, some of which are commonly embraced under the term “weapons of mass destruction”. By requiring separate analysis of DU weaponry, the implication would be that DU weapons are not necessarily “incompatible” with existing norms.

During the debates at the 2001 session, I spoke on behalf of IED/HLP and several other NGO’s made statements about DU, as did the governments of Iraq and Yugoslavia. Not surprisingly, both the US government and the UK government spoke up strongly against this issue, and their position was widely viewed as responsible for Ms. Hampson’s attempt to sever DU from the report. Ms. Sim, representing the US, questioned the information that there was evidence showing that DU was harmful. And in any case, the US said a study of weapons containing DU would exceed the Sub-Commission’s “expertise, scope and mandate.” (E/CN.4/Sub.2/2001/SR.24). Mr. Bendall of the UK echoed the US, thereby showing yet again what the UK activists identify as “copy cat”, US driven policy. (E/CN.4/Sub.2/2002/SR.24). A number of the members of the Sub-Commission went on record strongly disagreeing with the US/UK views.

When L.2 (the Alfonso Martinez) draft was called up for vote, M. Alfonso Martinez said that he could not accept Ms. Hampson’s proposed amendments and recommended a voice vote at that point on L.2. The Chair (an American) however, said that the issue would be taken up later.(See the Summary record at E/CN.4/Sub.2/2001/SR. 25). While there was no explanation for this, the delay was assumed to be so that the US would have time to “lobby” the members to vote for the Hampson amendments. However, when the Sub-Commission did take up the issue, the Sub-Commission as a whole rejected the Hampson amendments (see the Summary Record: E/CN.4/Sub.2/2001/SR.27) and adopted L.2, which became Sub-Commission Decision 2002/6. In brief, the Sub-Commission reiterated that DU weapons, along with fuel air bombs, cluster bombs, chemical, biological and bacteriological weapons, are “incompatible” with existing law and appointed Justice Sik Yuen to prepare the working paper originally assigned to Mme Forero Ucros.
Throughout 2001 and up to the 2002 session of the Commission on Human Rights Justice Sik Yuen collected documentation, studied all the reports and information sent to him, and worked on the report. However, he was up for re-election to the Sub-Commission in 2002 at the Commission on Human Rights. The United States decided that it had to ensure that Justice Sik Yuen would not be re-elected, hoping that as a person no longer on the Sub-Commission, Justice Sik Yuen would not present a working paper. At the Commission, the US, aided by the UK, carried out an overtly insidious campaign against Justice Sik Yuen. I am certain that large-scale “debt-reduction” agreements and serious arm-twisting augmented this. The result was that Justice Sik Yuen was not re-elected.

To the disappointment of the US and the UK, Justice Sik Yuen presented his paper (U.N. Doc. E/CN.4/Sub.2/2002/38) at the 2002 session even though he had been voted off the Sub-Commission. Predictably, Ms. Hampson (UK) was quite critical of the paper, but the vast majority of the Sub-Commission members were very pleased with it. In fact, the Sub-Commission made a rarely used and highly complimentary decision to ask Justice Sik Yuen to prepare a second “up-dated” working paper to be submitted to the Sub-Commission at its 2003 session. In retaliation, the US and UK orchestrated a maneuver at the 2003 session of the Commission on Human Rights to deny the Sub-Commission the authority to ask a former member to continue work on a topic already begun as a “working paper.” In spite of this, it was too late to take away the Sub-Commission’s prior approval of an “updated” report, and Justice Sik Yuen showed that he could not be “embarrassed” away from the work. He prepared and submitted the updated paper to Sub-Commission at its 2003 session. (U.N. Doc. E/CN.4/Sub.2/2003/35).

Predictably, Ms. Hampson of the UK was highly critical of this paper, and in completely unfair ways. For example, she criticized the lack of reference to the International Committee of the Red Cross (ICRC) when the ICRC had not made any statements about DU and there was nothing to report. Further, she questioned his lack of analysis under human rights law, when that issue was addressed in his earlier report. Certain DU activists emailed me comments about the report, which they felt did not have enough about possible radiological weapons use in Afghanistan, but when I replied with my explanation they indicated satisfaction with the report.8 Because of the Commission decision to forbid assignments to former members the Sub-Commission could not ask Sik Yuen to do any more. However, we decided that what needed to be said regarding the legal arguments about DU weaponry had already been set out in his two reports, votes and comments of the Sub-Commission members, in my Memorandum and numerous NGO written statements, statements and written statements of other UN NGO’s, and other sources. Ms. Hampson, meanwhile, was trying to be assigned a further DU paper but the other members rejected this — in part because she was from the UK and would likely try to undermine the legal status of DU weapons, in part because they saw through her unfair critique and in part because she had been assigned other work that she did not do. So the reports stand with Sub-Commission approval, and are, of course, part of the UN record and the work of both the Sub-Commission and the Commission. Governments are considered to be “on notice” of the illegality of DU.

In his first report, Justice Sik Yuen, sets out all the basic instruments of human rights and humanitarian law relevant to analysis of weaponry, sets out his formula for the weapons tests, and evaluates each of the listed weapons. While his analysis of this body of law and his formula of the “test” for weapons is worded a bit differently than mine, it largely parallels mine and leads to the same, obvious conclusion that DU weaponry is illegal. His “updated report” summarizes the first report and the Sub-Commission debate on it and provides new information regarding DU (such as its use in Iraq), some of the other weapons, and introduces “directed energy weapons” or “DEW’s”.

Why is DU weaponry already illegal?9

A weapon is made illegal two ways: (1) by adoption of a specific treaty banning it; and (2) because it may not be used without violating the existing law and customs of war. A weapon made illegal only because there is a specific treaty banning it is only illegal for countries that ratify such a treaty. A weapon that is illegal by operation of existing law is illegal for all countries. This is true even if there is also a treaty on this weapon and a country has not ratified that treaty. As there is no specific treaty banning depleted uranium weapons, its illegality must be established the second way.
The laws and customs of war (humanitarian law) includes all treaties governing military operations, weapons and protection of victims of war as well as all customary international law on these subjects. In other words, in evaluating whether a particular weapon is legal or illegal when there is not a specific treaty, the whole of humanitarian law must be consulted.

There are four rules derived from the whole of humanitarian law regarding weapons:

1. Weapons may only be used in the legal field of battle, defined as legal military targets of the enemy in the war. Weapons may not have an adverse effect off the legal field of battle. (The “territorial” test).

2. Weapons can only be used for the duration of an armed conflict. A weapon that is used or continues to act after the war is over violates this criterion. (The “temporal” test).

3. Weapons may not be unduly inhumane. (The “humaneness” test). The Hague Conventions of 1899 and 1907 use the terms “unnecessary suffering” and “superfluous injury” for this concept.

4. Weapons may not have an unduly negative effect on the natural environment. (The “environmental” test).

DU weaponry fails all four tests. (1) It cannot be “contained” to legal fields of battle and thus fails the territorial test. Instead the DU is air-born far a-field of legal targets to illegal (civilian) targets: hospitals, schools, civilian dwellings and even neighboring countries with which the user is not at war. (2) It cannot be “turned off” when the war is over. Instead, DU weaponry continues to act after hostilities are over and thus fail the temporal test. Even with rigorous clean-up of war zones, the air-born particles have a half life of billions of years and have potential to keep killing and injuring former combatants and non-combatants long after the war is over. (3) It is inhumane and thus fails the humaneness test. DU weaponry is inhumane because of how it can kill —by cancer, kidney disease, etc. — and long after the hostilities are over when the killing must stop. DU is inhumane because it can cause birth (genetic) defects such as cranial facial anomalies, missing limbs, grossly deformed and non-viable infants and the like, thus effecting children who may never be a military target and who are born after the war is over. The tetragenic nature of DU weapons and the possible burdening of the gene pool of future generations raise the possibility that the use of DU weaponry is genocide. (4) It cannot be used without unduly damaging the natural environment and thus fails the environment test. Damage to the natural environment includes contamination of water and agricultural land necessary for the subsistence of the civilian population far beyond the lifetime of that population. Clean up is an inexact science and, in any case, extremely expensive — far beyond the ability of a poor country to pay for.

One of the more useful provisions of treaty-based humanitarian law is the “Martens Clause” to the Hague Convention of 1907 that is repeated in subsequent humanitarian law treaties. The Marten’s Clause provides that in situations where there is not a specific treaty provision (which is the case with DU), the international community is nonetheless bound by “the rules of the principles of the law of nations, as they result from the usages established among civilized peoples, from the laws of humanity and the dictates of the public conscience.” There is a huge anti-DU international effort from a wide array of groups representing every facet of civil society. The existence of the anti-DU network is legally relevant to the finding that DU is illegal, and buttresses arguments that use of DU weaponry is a war crime or crime against humanity and may play a decisive role in stopping proliferation of these weapons.

How bad is DU weaponry?

There is a certain amount of controversy among scientists/medical researchers and developers and users of DU weaponry about exactly what DU does and how bad is it. Predictably, the users of DU claim DU weapons have no “bad” effects that would ban them, while scientific/medical researchers present a wide array of consequences that alone and together ban DU weapons from military use. However, “what it does” and “how bad is it” are scientific issues, not legal ones. Even so, the members of the UN Sub-Commission as well as other international law specialists that have looked into what is known about DU consider that even under outdated risk analysis and using the most conservative of possible negative consequences DU weapons are bad enough to be considered banned.

A complete understanding of the effects of DU on the human body or the natural environment will probably never be reached. Even so, efforts by independent and impartial scientists/medical
researchers should be made in this area as the more is known about DU weapons and their effects, the better one can treat victims and assess legal “damages.” In any case, the issue of the effects of DU weaponry is an issue for scientists and medical researchers and should be “debated” among them. Their studies and reports can then be used to better fashion medical remedies, environmental clean-up efforts, and, of course, to present in legal proceedings by which victims seek compensation. And while it would be impossible to prove that a particular case of cancer, or a particular birth defect was caused by DU, pre-DU base-line statistics, coupled with the likelihood of DU being a causal factor, can facilitate damage awards.18

It is not surprising that disagreements about “how bad is bad” (with many “opinions” of persons who are not scientists/medical researchers entering the fray) are used to draw attention from or even seemingly undermine the fact that DU weaponry cannot possibly be legal in light of existing law. The controversies seem to also have affected the dissemination of the United Nations materials on DU weaponry, as a number of prominent “anti-DU” groups do not raise the illegality of DU in their materials and do not have any references to the UN resolutions or the reports of Justice Sik Yuen. While it is certainly important to have as accurate an understanding of DU weaponry from all aspects (deleterious effects, weapons delivery, and location of all use), resolving these questions will not change the fact that DU weapons are illegal or make DU “more” illegal. DU is bad enough to be banned, and that is what should be as widely and quickly disseminated as possible.

Is DU weaponry “nuclear” or “conventional”?

There is also conflicting opinion from scientists as to whether DU weapons should be considered “nuclear” and thus also governed by the treaties dealing with nuclear weapons or conventional (i.e. non-nuclear). DU is also referred to as a “radiological”, or “poison” substance. While potentially important from a scientific perspective, the status of DU as nuclear, radiological, poison or conventional does not change its illegality: when the weapons test is applied to DU weaponry, it fails. Even if DU weapons are considered “conventional” they are subject to the same weapons test set out here. Further, they would also be subject to the Conventional Weapons Convention of 1980. That Convention itself incorporates most of the elements of the weapons test set out here: civilians must be protected from the effects of hostilities (Preamble, paragraph 3); “weapons, projectiles and materials and methods of warfare” may not cause unnecessary suffering or superfluous injury (Preamble, paragraph 4); weapons may not severely damage the natural environment (Preamble, paragraph 5). Paragraph 6 of the Preamble sets out the Martens clause. The inclusion of these rules in this convention reinforces the fact that these tests are universal and legally binding.

Consequences of use of DU weaponry in military operations

Under international law, there are a number of requirements to remedy breaches of the Geneva Conventions and other rules forming the laws and customs of war. A minimum requirement of the duty to remedy from use of illegal weaponry is compensation for victims. This can include, for example, military and civilian victims from wars and depleted uranium weaponry use at military ranges. Part of the minimum remedy is the duty to disclose fully all facts about the weapons and their development and deployment. Regarding environmental damages, users of these weapons are obligated to carry out an effective clean up. When lands and water resources cannot be effectively cleaned up, the State causing the damage must pay damages equal to the loss of those lands and waters from the national patrimony. In US dollars, the cost of legal claims and environmental cleanup for the Gulf Wars alone could be staggering.

In addition to liability for damages to victims or the environment, users of DU weapons should face penal sanctions under existing humanitarian law provisions. For example, the Geneva Conventions of 1949 require that signatory States have domestic legal mechanisms for trying persons alleged to have committed serious violations of humanitarian law. Article 146 further states that all signatory states have a duty to search for alleged violators and to bring them to its own tribunals, regardless of their nationality. Article 148 prohibits any State from absolving itself or any other State from liability for serious violations.

Because of these provisions in the Geneva Convention, the “agreements” sought and obtained by the United States under which other States agreed to not bring actions against United States military personnel for a number of years must be considered null and void to the degree those agreements violate provisions of Geneva Conventions. While the United States might be able to obtain anticipatory agreement to not bring
US military personnel before the International Criminal Court to which the United States is not a party, the United States cannot abrogate these Geneva Conventions rules or require that other States abrogate Geneva Convention rules.

**Grounds for considering DU weaponry use in military operations a war crime and crime against humanity**

Some argue that use of DU weaponry, while in violation of existing norms, would not constitute a war crime or crime against humanity. I disagree. War crimes and crimes against humanity are defined in the Nuremberg Charter, in the “grave breach” articles of the Geneva Conventions and Protocols Additional to the Geneva Conventions, and in other sources as set out in international treaties on war crimes and crimes against humanity. In the 4th Geneva Convention (protection of civilians), for example, grave breaches include “willful killing . . . or inhumane treatment, . . . willfully causing great suffering or serious injury to body or health” of civilians - which is exactly what DU weapons do. Article 85 of Protocol Additional I adds indiscriminate attacks affecting civilians and other acts that necessarily occur with the use of DU weaponry to the enumeration of “grave breaches.” The genocidal effects on people long after hostilities cease is another ground for consideration of DU weapons use as a crime against humanity.

**Conclusion**

In the course of armed conflicts (wars), weapons may only be used against legal military targets and for the duration of the war. Weapons may not cause undue suffering or cause superfluous injury. Weapons may not use or employ “poison.” Weapons may not severely damage the environment. DU weaponry cannot be used in military operations without violating these rules, and therefore must be considered illegal. Use of illegal weapons constitutes a violation of humanitarian law and subjects the violators to legal liability for their effects on victims and the environment as well as criminal liability. In my view, use of DU weaponry necessarily violates the grave breach provisions of the Geneva Conventions, and hence its use constitutes a war crime or crime against humanity.

**SELECTED BIBLIOGRAPHY**

The Hague Conventions of 1899 and 1907 (and Regulations).


The Statute of the International Criminal Court, and the “Elements of Crimes” set out by the Preparatory Commission.


Note: The Hague Conventions are found at www.cicr.org. Choose language. Go to "treaties and documents", scroll to "Convention (IV) respecting the laws and customs of war on land and its annex, 18 October 1907. Click on small symbol at the end of the title for the text. Use the same general instructions for The Hague Convention of 1899. This website of the International Committee of the Red Cross also contains a number of interesting articles on the application humanitarian law.

All the other Conventions are found on the website of the Office of the United Nations High Commissioner for Human Rights, www.ohchr.org. From list on left, click on "Treaties". Scroll down to "War Crimes and Crimes Against Humanity" and "Humanitarian Law" at end of list.

For UN documents, the easiest way is to retrieve by document number. Start at www.ohchr.org, from list at left, select "documents." At next screen, select "Charter-based." When a list of documents appears, click "symbol number" at top. The next screen will have a small box. Type in the document number. Do not type in "U.N. Doc.", but only the "E" number. Example: E/CN.4/Sub.2/2001/SR.24. (This is the summary record of part of the debate on DU at the 2001 session).

For resolutions and decisions of the Sub-Commission, start at www.ohchr.org, from list at left select "By body"; At next screen, select "Sub-Commission", at next screen select year, and then "decisions and resolutions."

For the Statute of the International Criminal Court, go to www.un.org/law/icc. For the "Elements of Crimes" start at ICC home page, go to "Preparatory Commission for the ICC, then to "Elements of Crimes."

References


2 I found out about DU weapons from Philippa Winkler, who along with Dr. Horst Gunther, Dr. Beatrice Boctor, and "Bridges to Baghdad" and under the credential of my organization International Educational Development/Humanitarian Law Project (IED/HLP), compiled information about DU weaponry and informed the members of the Commission on Human Rights at its 1996 session about DU. Margarita Papandreou and several other members of her organization "Women for Mutual Security, also attended on behalf of my organization, with a focus mainly on the effects of the sanctions against Iraq. Only UN-credentialed organizations may participate in the UN session, which is why my organization issued credentials for persons representing other NGO’s. In 2000 I prepared Depleted Uranium at the United Nations: A Compilation of Documents and an Explanation and Strategy Analysis (CADU report) printed and distributed by CADU (Campaign Against Depleted Uranium)(www.CADU.org.uk). It covers events undertaken at and by the United Nations Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights from the spring 1996 session of the Commission through the summer 1999 session of the Sub-Commission and contains essentially all the written statements, speeches, documents, resolutions and decisions of that period.

3 It is important to set out that the DU work at the UN has focused on DU weaponry, although other DU issues have been presented. For example, the Commission has an existing procedure on toxics that we have utilized to address DU in general as well as in the context of weaponry.

4 The Sub-Commission is composed of 26 persons nominated by their governments who sit in their individual capacity on the Sub-Commission. Only Sub-Commission members vote. The Commission on Human Rights is composed of governments who vote as governments.

5 At the 1996 session of the Sub-Commission, Fabio Marcelli (an attorney representing "Bridges to Baghdad") and Dr. Boctor attended. In the course of the 7 years effort at the UN session, I have provided credentials for Fabio Marcelli, Philippa Winkler, Dr. Boctor, Dr. Rosalie Bertell, Dr. Horst Gunther, Damacio Lopez, Dai Williams, Margarita Papandreou and three of her teammates from "Women for Mutual Security" and a number of others. We have held "round-tables" in conjunction with other NGO’s, in which we have shown films and circulated a number of reports and eye-witness accounts of post-DU Iraq.

6 That same session, the Sub-Commission also took up our sanctions issue. I presented the view that one possible reason for the adamant United States position to maintain the sanctions against Iraq was because of the DU issue.

7 The United States was very concerned about this report going forward, and at the hands of Justice Sik Yuen, because any impartial legal analysis was certain to "condemn" DU. The US certainly does not want any of the Sub-Commission resolutions or reports on DU to circulate beyond a few UN NGO representatives. At all junctures in this work, the US has, in the words of several members of the Sub-Commission, “played dirty.”

8 Both Dai Williams and Piotr Bein felt more should have been done about Afghanistan. However, I responded with the information that the UN would not publish a paper longer than 20 pages, and at least the possibility of some type of weapon use in Afghanistan was mentioned. The 2002 Sik Yuen report was over the 20-page limit, so only the executive summary was printed in all the official UN languages. To ensure that the 2003 report would be published in all the UN languages, he met the page limit, which was very fortunate as reports more than a few pages over the much were not published at all in 2003, or only circulated as a “session” document in the original language. Of course, I used my right to submit a written statement to augment the Afghanistan information and other concerns, and this statement should be read in conjunction with the Sik Yuen paper. My written statement is U.N. Doc. E/CN.4/Sub.2/2003/NGO/16.

9 This brief summary draws on my own Memorandum and the Sik Yuen reports. I use my own formulation of the weapons test.
10 Customary international law, which includes: The Hague law (governing military operations); and Geneva law (governing protected parties in time of war) is binding on all countries. The United States Supreme Court has consistently upheld the binding nature of customary law, including customary humanitarian law. All of international law, including the UN Charter and Statute of the International Court of Justice, reflects the binding nature of customary law.

11 In 1996 the International Court of Justice, in its Nuclear case, finds that all weapons must be evaluated under the criteria of humanitarian law but does not set out what that criteria is. I wrote my Memorandum because the criteria had not yet been fully extracted from humanitarian law.

12 The first two tests (“territorial” and “temporal”) together make up the rule that weapons should not be “indiscriminate.” This is how Justice Sik Yuen presents the test. I prefer to separate the concept of indiscriminate into its two parts.

13 Article 23 of The Hague Convention of 1907, Regulations. This article also forbids “poison or poisoned weapons.” Some might argue that DU weapons are necessarily poisonous, and therefore directly forbidden by Article 23.

14 The Hague Convention of 1907, 8th preamb. para. The “Martens” clause (named for the Russian scholar who formulated it) is repeated in the Geneva Conventions of 1949 and the Protocols Additional to the Geneva Conventions of 1977. The US is a party to the Hague Conventions and the Geneva Conventions of 1949. The United States Supreme Court, in a 1942 case (Ex Parte Quirin), ruled that this clause is US law. This principle only applies to humanitarian (armed conflict) law, not the law of human rights although the law of human rights is evolving in this direction. For example, the International Court of Justice, in Corfu Channel found that “elementary considerations of humanity are even more exacting in peace than in war.” (1949 International Court of Justice Reports, p. 22).

15 Justice Sik Yuen points out the application of the Martens clause and the role of civil society in relation to DU in both of his papers.

16 Justice Sik Yuen refers to the “cavalier disregard, if not deception” by the users and developers of DU weapons of their effects. U.N. Doc. E/CN.4/Sub.2/2003/35 at para. 52.

17 There is a similar debate regarding what weapons-delivery mechanisms use DU weaponry and where have DU weapons been used. These are also extremely important questions. However, the “controversy” about what systems use DU weapons has no bearing on the illegality of DU weapons, and is best left to those with expertise in military ordinance questions. Controversy about where DU weapons have been used also has no legal bearing on the illegality of DU weaponry: wherever it has been used is an instance of the use of illegal weaponry. Knowing where DU weaponry is used, however, is essential to carry out remedial measures.

18 Trying to prove which of possible multiple causes is the operative one can be difficult. However, there is a famous case in which two persons shot at a man and the man was killed. It could not be proved affirmatively who killed the man, so each defendant had to try to prove he didn’t kill the man. As that could not be done both were determined guilty. There are many ways that attorneys in DU cases would be able to show sufficient causation.

19 The controversies about weapons-delivery and where DU has been used have, intentionally or inadvertently, also seemingly draws undue attention from or undermines information about the illegality of DU weaponry.

20 The United States tries to foster the idea that as DU weaponry is “conventional” it is not banned – giving the erroneous impression that conventional weapons are not subject to the weapons test.

21 The Hague Convention of 1907, Article 3.

22 The Corfu Channel case underscores the duty to disclose.

23 Geneva Convention IV, Article 146. This provision is an all four conventions. For convenience, I cite to the article numbers from Geneva Convention IV (civilians).

24 Some have argued that DU weapons are not weapons of mass destruction, therefore their use would not necessarily constitute a war crime. In my many statements and papers I have never urged that DU weapons are weapons of mass destruction. I merely set out the four-part test for weapons and showed why DU violates all four elements of the test. Use of a weapon that fails the test is, as I have set out, necessarily a war crime. The term “weapons of mass destruction” is currently in wide use in the international arena, and I find the term used much more politically than legally. I avoid that term, and keep my focus on the test. If a weapon violates even one element of the four-part test it is illegal, so the added “baggage” of weapon of mass destruction is not needed. That said, I think that if there would be specific criteria for weapons of mass destruction, DU weaponry would meet that criteria, especially because of its continuing damage for many years after military use.

25 See, esp., Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 754 UNTS 73. This treaty identifies genocide and as crimes against humanity. The elements of war crimes and crimes against humanity set out by the International Criminal Court are also instructive on these points.

26 Note that the same article exists in the other three Geneva Conventions of 1949 so it is equally illegal to kill combatants with DU. A fundamental rule of armed conflict law is that combatants may only be targeted with weaponry when they are “in combat” -- meaning “on duty” and not sick, wounded or a POW.

27 This bibliography is limited to major texts regarding humanitarian law, the best national military manual of the laws and customs of war (the Canadian manual), the major UN documents on the illegality of DU, and some of my written submissions to the UN regarding DU weaponry. It does not contain references to UN summary records of my oral statements or any of the general debates. Reference to certain summary records are made in the text and they and any “posted” summary record can be accessed at the website of the Office of the High Commissioner for Human Rights.
The Humanitarian Law “Rule by Analogy” in a Nutshell

This paper is meant as an addenda to my paper “Why DU Weapons are Illegal”, prepared for the International Uranium Weapons Conference Hamburg, Germany 16 - 19 October 2003

When humanitarian law (also known as “the laws and customs of war,” “the rules of war,” or “armed conflict law”) was beginning to become partially treaty-based (written) rather than customary (unwritten), drafters recognized that they could not possibly foresee all circumstances of armed conflict or the weapons with which they are fought. In fact, between the time of the first Geneva Convention in 1864 and the first Hague Convention of 1899, there had been tremendous advancements in both weaponry and types of combat. And of course when we compare how wars are fought today and with what weapons, turn of the last century weapons and warfare seem impossibly primitive. To accommodate the fact that methods and means of warfare evolve with time, the drafters of treaties on humanitarian law incorporated the rule that a new method or means of warfare may be deemed illegal if it is similar to methods or means of warfare that are expressly or by custom prohibited. This is called the rule of analogy.

The first expression of the concept that rule is set out in that part of humanitarian law that addresses methods and means of warfare (called The Hague law after The Hague treaties). The Hague Convention on 1899 contains a paragraph called the “Martens clause” after the Russian who drafted it, which provides:

The High Contracting Parties clearly do not intend that unforeseen cases should, in the absence of a written understanding, be left to the arbitrary judgment of military commanders. Until a more complete code of the laws of war is issued, the High Contracting Parties deem it expedient to declare that in cases not included in the Regulations adopted by them, the inhabitants and the belligerents remain under the protection of the rule of the principles of the laws of nations as they result from the usage established between civilized nations, the laws of humanity and the dictates of the public conscience.

This same provision was also included in the 1907 Hague Convention as preambular paragraph 8, which is the citation usually given for it. The concept of similar but not foreseen regard-
regardless of whether one considers DU weapons “conventional” or “nuclear” or radiological”, the 1980 Conventional Weapons Convention, Protocol I prohibits weapons producing fragments not detectable by X-rays. If one considers DU weapons “conventional” then this provision directly applies. If one considers DU weapons nuclear or radiological, then this provision prohibits them by analogy because DU particles are not detectable by x-rays.

The UN Paper by Justice Sik Yuen is included on the CD accompanying this reader
Hello. I’m Solange Fernex. I wanted to touch on one very important problem. This is: why does the model of the… still the model of Hiroshima, which is an external, very short term flash, dominate? So on these three days we heard about internal radiation incorporated radionuclides, which is DU, which is the subject of this Conference. And unfortunately when you go to international agency like the International Agency for Atomic Energy, or UNSCEAR, which is the United Nations Scientists Committee on the Effects of Atomic Radiation, or the ICRP which is the commission – Chris you may help me – Commission for what…[the ICRP – the International Commission on Radiological Protection]? Everybody disregards until now the effects of this photograph [the photograph of alpha star tracks from a 2 micron plutonium oxide particle in lung tissue], which was taken from the book of [Dr.] Chris Busby [ECCR: 2003 Recommendations of the European Committee on Radiation Risk: The Health Effects of Ionizing Radiation Exposure at Low Doses for Radiation Protection Purposes] on the new model of risk.

So, we have really a problem, which concerns the health effects of DU. It’s a political problem, and all the effects of the other incorporated radionuclides – be it uranium-miners – be it the Chernobyl fallout, be it the veterans from the atomic tests conducted by the five atomic powers. So, I will just come back on this and, as concerning...
this is... this was referred several times.... This was a very ancient, and disseminated. So this was not the Hiroshima bomb; with this very heavy blast. This was radioactive dust, which is exactly what we have with DU. They say in this memo, which was de-classified some years ago, particles larger than 1 micron in size are likely to be deposited in the nose, trachia-bronchii and permanently made damage appear in a few months. So, this was very well known at this time.

Just one more. They say that as a gas warfare instrument, this material would be ground into particles. So They didn’t think of the uranium oxide after the fire; they thought they had to mill it, to ground it in very small smoke to be used. It will, as inhaled by personnel, causes deaths in extremely small quantities, etc. It would be distributed so finely that it will permeate the gas mask, and it will be dissipating; they say the winds will dissipate it all over.

So when, in ten years later, we had the so-called program for peace, Atoms for Peace, and then it was not only speaking of warfare, but also on the civil use of atomic energy. And at this time, we had a very important Conference, first in Copenhagen, then in Geneva, at the WHO where the world geneticists…. We have Sievert, we had Lujon [sp.?] from France, we had several the top geneticists. And they said any additional radioactivity developed on the surface of the globe will lead to detriments to what human kinds has as its most precious treasure, which is the genome.

So they have foreseen that civil or DU or whatever would cause the deterioration of the human genome with deformed children, what we see. And this was of course absolutely unacceptable for the atomic lobby, for the how you say, the atomic powers, the atomic powers that be. And then they developed the International Agency for Atomic Energy [IAEA], which purpose is to promote the use of atomic energy for the wellbeing, peace and health of the population. And of course to pursue these aims the atomic energy [agency] was afraid of something. They were afraid of physicians, because if physicians continue to say that radioactivity will cause deformities, or other health effects, they couldn’t possibly continue with their idea.

So, the Atomic Energy Agency [based in Vienna] signed a treaty with the World Health Organization (WHO). It’s usual about UN agencies to have treaties, to say, we inform the other. Of course if we have agriculture problems, and health problems, they would be informed the other agency. But here with the WHO -- which means the physicians -- they say, whenever I have the organization propose to initiate a program, or activity on a subject, in which the other organization has or may have a substantial interest, the first party shall consult the other – shall consult, not inform – the other with the view to adjust here the matter by mutual agreement. So we have to come to an agreement. If we don’t come to agreement, we will either forbid the study, or change the premises or model with the study proposed. So this is why we heard this morning, for instance, that the WHO reports from Iraq grossly under-estimates the risks.

I will just share with you the Chernobyl “adventure.” Which is very…it’s the same, it’s incorporated radionuclides. We had in 1986 we had the Chernobyl accident, which was over the whole of Europe, Western Europe and the Middle East. And, here, we have the situation in Ukraine, Belarus, and Russia with heavy contamination in violet [on the chart].

This is the cesium map. So you see, it’s large, large parts of the continent. This is the cesium deposit in Western Europe, with here Russia, Belarus and Ukraine. But you see even in Finland it goes. And then it goes to Norway, and it fell down to Wales as we heard this morning from [Dr.] Chris Busby. This was absolutely in our county, which is France…France denied absolutely that the cloud came and here are numbers made by an independent laboratory who found very, very high cesium deposits in the east of France.

There did...how did this happen? How did misinformation about this terrible accident? You should think, because I have to come to an end, so we should think that the WHO would be on the forefront and look at health effects; but no, it was the AEA. And here, five years later, the WHO was invited, but WHO drafted the study. It’s international agency who drafted the study to be made by physicians in Chernobyl. And this explains why now they say Chernobyl has only 32 deaths with the fireworkers. I just show you this document -- it’s very moving. It’s a veterans, the Chernobyl veterans. This is only in Moscow town; all those persons, young and old, are dead. And it’s their widows who is collecting the information.

So, WHO presented under Nakajima, presented a conference in Geneva. This Conference was never published. It was, because it didn’t agree to the international agency the reports of seven hundred presentations were not published. Six months later the Agency for Atomic Energy in
Vienna made its own Conference, and the proceeding appeared very soon after this. So, you can see now the dis-information.

So my conclusion is altogether -- this means veterans from atmospheric and other nuclear tests; DU veterans; population in countries suffered alike in Iraq, or the Balkans, the Afghanistan -- we have all to come together -- the Hiroshima survivors of course. But also the Chernobyl victims, all over this place, must come together. I think we want the truth about the effects of low-level radiation incorporated in the body, like the star [photograph] I showed in the beginning. We have to change the model of risks to take into account, like the Chris Busby organization did. This must become official UN policy for radio-protection. Because my last word is to say, of course you say it’s in Vienna, it’s very far, but every radioprotection agency in each member state reports to Vienna. They go to meetings in Vienna, they hear Chernobyl 32 deaths, and then they come back in Paris and say, ‘Chernobyl has caused 32 deaths. All what you say in those conferences is nonsense, we have the truth, we know it, it is proved.’ And so it has a terrible effect on the victims, who will never get any compensation, who we will never be recognized; the children will not be recognized. So we really have to change this international way of looking at the radiological risks of incorporated radionuclides on human health and especially on children.

Thank you very much.
To the Head of the Delegation to the World Health Assembly, May 13-17, 2002

Re: WHO - IAEA Relations: Amendment of the 1959 Agreement (Res. WHA 12-40)

Your Excellency,

Together with several other NGO’s, we demand an amendment of the 1959 Agreement signed between the WHO and the IAEA, especially Article 1 § 3 which reads as follows: "consult the other with a view to adjusting the matter by mutual agreement". It should simply read "inform the other". We believe that legally binding texts have to enshrine the political will, towards more independence and transparency, in organizations like the WHO.

As physicians and Public Health experts, we admire the excellent work performed by WHO. In all public health issues, we consider that the WHO should have the leadership, as stated in its Constitution. A dialogue with other UN Agencies requires a perfect equality between partners, without any veto and the final decision in public health issues should remain within WHO.

We feel that the example of the Chernobyl catastrophe is an illustration for the limitations imposed on WHO by a legal clause. On the one hand, the IAEA, whose objective is to promote nuclear energy, was involved from the first days on after the catastrophe; the IAEA called its first international conference in August 1986, its second in 1991, and its third in April 1996, on all occasions, drawing medical conclusions; on the other hand, the WHO started its IPHECA project only in 1992, and terminated it too early. Only few items were retained in the program, among them dental health. Genetic effects had no priority in the WHO project, though this remains the ethically most intolerable consequence of any radiological accident: the suffering will increase in the coming generations (see the report of a scientific Working Group on Genetic effects of radiation in human, Geneva, WHO, 1957).

Moreover, the proceedings of the November 1995 International Chernobyl Conference called by the Director General Hiroshi Nakajima, 50 years after Hiroshima, were not published. This gathering of 700 leading international scientists and physicians, including the Ministers of Health of the three most affected countries, heard different views on Chernobyl, some very critical. Presentations mentioned the genomic instability, mutations in minisatellites, chromosome aberrations, but also various solid cancers, leukaemia, cardiac, gastrointestinal, neuropsychic disorders, autoimmune diseases, diabetes mellitus, and others.

The former Director General of WHO, honorary chairperson of the Chernobyl Conference in Kiev, June 2001, stated in a television interview that the WHO Legal Department told him, after the Geneva Conference of 1995 that, in the UN system, the IAEA has the final decision, on health effects of radiation. Therefore, as the IAEA was involved in the WHO Conference, although it was not visible (see over: program), the proceedings, which would have been a bestseller, could not be published. The censorship exerted by the IAEA over WHO activities on health effects of radiation, still perceptible at the Chernobyl Conference organized by WHO with the "Physicians of Chernobyl" in Kiev (June 4-8, 2001), must stop. This is why, in our view, the 1959 WHO/IAEA agreement (Res. 12-40) must be amended.

Thank you for reading the attached, more explicit comments on this issue. We look forward to your reply and action.

We remain, yours faithfully

Prof. Michel Fernex (Basel) Ass. Prof. Jean-Luc Riond (Zurich) Prof. Abraham Behar (Paris)
Thank you so much. Before I start, or while starting, could someone just give me hand in distributing some paper. It would be nice, also some two or three colleagues from the back benches to just put this round.

Because this directly links to what Solange [Fernex] said at the end of her presentation, we have to do something, we have to make headway; step forward and not always getting together at a Conference like this and say, “Oh, this is all terrible! Say it’s illegal. And we have to condemn depleted uranium.

But now we – that is, IALANA, the International Association of Lawyers Against Nuclear Arms, and IPPNW-Germany -- we did some homework, and you get it now. It’s a draft convention, a draft
treaty on outlawing depleted uranium ammunition and other military use of depleted uranium. That is just our proposal to this Conference, and at a very early stage, a working paper, not yet fit for future quotation, but something to look at. And I know in this room, we may have different opinions about the usefulness of such a draft, treaty process, being started. But, I very much urge you to have a look at this paper and follow the discussion because now we have substance, I think, with the draft text and we can reach out to other experts, to governmental experts, and maybe try some lobbying schemes, scenarios to go ahead with it politically. This is something for the strategic workshop tomorrow that see some opportunities just because the human process has gone farther, explain to us, has stopped in a certain way. We have to continue with some other proposals.

And I think a draft treaty is not counterproductive at all. It is quite normal that there may be some weaponry illegal under international humanitarian law being used. On the other hand, we have a treaty confirming this and spelling out the ban of such a weapon. Take the chemical weapons. Chemical weapons are more or less illegal when used, it was clear for decades. It was clear from the 1925 Gas Protocol already; but now you have the Chemical Weapons Convention to finish this process, to have a chemical weapons institution; to have a verification schemes, and then get the stage where the weapons as such is outlawed, is banned. And that’s what we’re all striving for, to reach for, depleted uranium weaponry as well.

So maybe we have a short look. We rushed through this draft text, and then discuss it later on in the strategic workshop.

I just mention this article, not to read it out.

Just to highlight the main points, not to read it all. Just maybe to have it tonight in your hotel room to read it carefully.

The Preamble – I think it’s quite important. The Preamble is something legally valid in every treaty. It’s not only words; it’s all in the legal text. And in this Preamble, we try to make the link between customary international law, which says DU use is illegal, and this treaty. Because in this Preamble we are quoting all these principles [Dr.] Karen Parker has mentioned earlier; we’re quoting unanimous commission resolutions, everything that’s there, and so you can just combine these two processes, the legal treaty process, and the customary legal process.

Then, we started Article I: the General Obligations. And this is a comprehensive prohibition of depleted uranium weaponry being used under whatever circumstances. So this is a very kind of water-tight prohibition, very comprehensive, and it says the use is illegal, and the weapon has to be destroyed, we to get rid of this weapon; it shouldn’t even exist any longer. That’s the main message of the General Obligations of Article I.

This also extends to pre-products, also extends to the obligation to transform depleted uranium into its stable chemical compound, which is safe. We think it’s possible, but that’s something more for other experts to decide, at least it’s an idea.

Article II is normal; it contains definitions of the problem.

Article III – this is something to still be discussed further. “Exceptions.” So, exceptions concern the transfer of DU ammunition for the sake of destruction. Okay, it may be useful to transport this ammunition or this material to another country where it could be destroyed. The second paragraph is more problematic, a matter for discussion: what about civil use? We tried to introduce civil use prohibitions also into this treaty which is mainly on military use, but we are not clear whether that may work, what about “exceptions” what about civil use for scientific or medical purposes, we put it in paragraph two of Article III, something open to be debated.

Now, Article IV, I think that’s a crucial practical issue – decontamination. What about areas being contaminated by DU use for decades, decades, hundreds of years? That is the main problem also for the Ottawa Treaty, I took the Ottawa Treaty as an example here, for this obligation to identify, to warn, to decontaminate, and so on. But these are the obligations that exist which are costly to be implemented. We know that. But, anyway, that’s the core issue. By the way, the International Committee of the Red Cross has started a discussion process on “remnants of war,” as they call it, they say the explosive remnants of war, but there maybe also other remnants of war like DU in the soil, and there maybe a possibility to lobby for another draft treaty.

Now, Article V is on “support.” As I said all these measures are time consuming, they are costly, expensive, and the areas hit, the countries that suffer from DU use are extremely poor countries, like Iraq or the Kosovo area. Others, just hit by the war, suffering from war consequences.
need support, they need what we call cooperation. That’s why we have a long article, Article V on this issue.

Now, in Article VI, we try to develop a new form of cooperation calling it “partnership.” It may be that two countries have close cooperation and close ties anyway. They can use it like couples in helping each other solve this problem. That’s partnership, a new idea.

Article VII, begins very normal, natural. We have the international treaty and this international treaty has to become effective in the domestic settings of the country, of a state. So, it needs implementation measures; everything we have here in Article VII will be effective in this direction, to have penal law or administrative law in the domestic field to implement the treaty.

Now, Article IX again is somewhat tricky, maybe. You know the nuclear weapons debate. I think most of you know the construction of the security assurances, security guarantees. So, if a state is attacked by a nuclear weapon, though prohibited to have nuclear weapons, it may get help from nuclear weapons states. That’s the rationale behind. We have that system and we try to introduce this into the DU topic as well. So, if a country is attacked by DU weapons, it may ask for help in a military sense, though still being prohibited from using DU weaponry itself. It again may be something for a discussion, but we have this idea put here.

Now the rest of the treaty is institutional matters, organizational matters, but I will not bother you with that. Just say what we propose here in Article IX and following: meeting of state parties; review conference; a uranium weapons center; kind of information center. This is quite normal, but it’s still not sophisticated developed institutional system. It’s on a very low-level. If we take the Chemical Weapon Convention as a model, the parallel, there you have a huge organization: inspections systems, there you have hundreds of people working for this scheme. This is less developed; it’s a proposal at first that have only a few bodies, not so many detailed rules on this.

Article XII – again, is a little bit more important; it’s on funds. The idea behind is to have voluntary funds, give financial help to countries, to people, to persons that suffer from DU use, because they themselves are not able to cope with the problem.

The text of the draft treaty is available on the CD accompanying this reader.
Thank you.

Dear friends, colleagues, ladies and gentlemen.
I can’t start by thanking the organizers to have invited me, because actually, I invited myself. So, but I thank the organizers that they finally followed my argument and invited me.

So, my argument was that there couldn’t be much use for such a Conference if it wouldn’t draw real clear-cut conclusions from it. And the organizers actually proposed to have an “action plan” discussed later, like tomorrow, after tomorrow. I think that’s the main purpose of such a Conference. We need to draw the conclusions from the many presentations we have heard. And my contribution here is to talk about perspectives of accountability.....

Prof. Christian Scherrer,
Japan / FRG
So, I’ll just give you the framework idea of why we definitely need to have accountability being enforced; and what is in the offing, actually. What is the use of the ICC [International Criminal Court], for instance. And then talk about what we call an “independent international peoples tribunal,” which is the alternative for the state tribunals.

Let me start by defining actually the timeline, the time scope of such an enterprise. Iraq has been under aggression all along since 12 years. So, the time frame must cover these 12 years. We have had almost daily attacks on Iraq. Iraq has been sliced in three parts. Two zones in the north and in the south have been self-declared by the aggressors as “no fly zones” for the Iraqis, so this has not been accepted by Iraq as you know.

We had a situation where you’ve had actually to add one more year, because I have to remind this Conference that the main killer in Iraq was not DU, nor other “weapons of mass destruction” – and there I disagree slightly with my colleague Karen Parker. I think DU definitely is a weapon of mass destruction, because it kills not only present generation, but future generations of victims. So, it couldn’t be more mass-destructive as it is.

So, I think that we have to open ourselves to the fact that two million Iraqis died from U.N. sanctions, which were abused by the United States and Britain, chiefly by the United States. These sanctions have been used in a way that inflicted a very high death toll, and me and my colleagues believe that actually this is the best prosecutable case if we look at accountability issues, because we not only have the facts presented in secret documents which were declassified. These are secret documents by the defense intelligence agencies; and ironically you can actually find them on the website of the U.S. special – what is it called – “special rapporteur,” no, special rapporteur, [person] responsible for the Gulf War disease. So, if you go to the left side, look at “documents,” then click “in,” continue to click “in” about three times and you’ll find these documents.

You have the url’s in my paper, it’s called, “Perspectives of Accountability.” It contains all the preliminary evidence for a future tribunal, at least just the framework of it. And it also contains for instance the url’s for these documents, which are very important.

But, the case goes further. We never had such a thing if you look at DU. We have actually the highest official involved in the killing admitting the killing. We had [U.S. Ambassador to the United Nations] Madeline Allbright telling at CBS’ “60-Minutes” that killing half-million Iraqi children was “worth it.” She couldn’t prove what was worth it, of course; and it didn’t even work in their own theory, because it had no impact on the regime. It actually, rather reinforced the grip of Saddam’s dictatorship.

Let me make a few comments on the present situation. We just asked, what happens now in Iraq, and what happens in the aggressor states. What we see in Iraq is a complete disorder. It’s utter anarchy which we see today. Fifty Iraqis are being killed every day by the occupiers. We don’t read about that; it’s not reported. What is reported is that two or three American soldiers were killed that same day; that’s reported.

And more than 50 people die every day by just normal criminality: but this is not a normal criminality because if you take away the state, if you take away all the institutions, this is to be expected. And actually, according to international law, the occupier is liable for these things happening now. The United States, by telling us all these lies, all these pretexts to go to war, has for instance, one of the pretexts was to “fight terrorism.” I have never seen in any circumstances in recent years. We have seen even the headquarters of the United Nations being dynamited; the representative of [U.N. Secretary General] Kofi Annan being killed, and his close collaborators.

The U.S. Army apparently is unable to provide even token security. They are totally unable to provide any security for Iraqi citizens; they are even unable to provide security for other actors, and actually for the most important actor in the future in Iraq, which is the United Nations, because we have seen how much the situation got out of hand for the invaders. I’m sure they will have to very much consider the option of leaving the U.N. doing the post-conflict reconstruction. There is no other way out.

And they should know it, because in the 1920’s, when indiscriminate bombing was invented actually, and was applied to Iraq – this was one of the first countries who saw indiscriminate bombing by the same [WWII British Air Marshall] Arthur Harris, who designed the bombings of Germany, of Dresden and other cities, and who designed probably what the Americans also applied to Japan, the complete destruction of most Japanese cities – so, this was done in Iraq in the year 1920, to put down a revolt of the tribes in Iraq. And this revolt, at present time, is continuing, and it will continue until the invaders have left the country.
Let me say a few more words about the situation in the aggressor states. This is very important if you talk about prospects for accountability. It looks like [British Prime Minister] Tony Blair is really in a very difficult situation at the moment. He had to sacrifice one of his very close collaborators already. But I don’t believe that the Hutton Inquiry actually will bring out what we want to hear, these personal responsibilities. So I appeal to the British citizen to just go on with their stand to the wall. It was very clear cut – the Brits have 70-75% said “no” to the War, and nevertheless it happened. And actually this is what happened worldwide. I think there was never any violent conflict in recent history which has been almost universally condemned before it actually started, with millions of people going to the streets [applause].

We see the idea of a “people’s tribunal” as part of this peace movement. We have to continue this way. First, let me look at the ICC. We have the ICC is operational since July of last year; there is, no, it’s not operational, but I mean, they have jurisdiction. But since April there is a prosecutor being elected, and it’s a very good man actually. His name is Moreno Campo (sp?), and he has been involved in bringing the generals in Argentina behind bars after they have committed massive crimes, crimes against humanity, torture, whatever. This man has a difficult problem, because contrary to the beliefs of common people actually, the ICC does not have universal jurisdiction. It has, it is made to look into the violations, the most serious breaches of crimes, like genocide, the crimes against humanity, the war crimes. It should be the right tribunal.

The problem is the hands of Mr. Campo are tied – he cannot prosecute Bush Jr. and his crew, because neither the U.S., nor the place where the crimes were committed, it’s Iraq, are parties to the Rome Statute, to be a statute of the Tribunal. So he will have a big problem. There is a construction which might give some leverage whatsoever on the government, because they sent their bombers actually from British territory into Iraq; so these islands, which are actually not British property if we look at it very closely, is just occupied by Britain illegally, but they have been used, these islands have been used by U.S. bombers. But it’s a kind of a weak, a very weak bridge.

What can be done is to indict Mr. Blair at the ICC. Then, we have a difficult situation that actually the big bully man gets away with it, and the smaller is being sacrificed, which doesn’t really make sense in my eyes. So, what I am talking about now is an initiative, we have been starting soon after the war began. We have been starting to mobilize among “No War” lists in different countries. I will represent this idea in Istanbul the end of this month when we have the global meeting of RepCom meeting for the independent international criminal tribunal on Iraq in Istanbul, because this is the country most closest to Iraq, which will have the last session of the Tribunal which we plan to start next year. I’ll just give you a few ideas about what that means. When we met last time most of us met, those who were interested in organizing such a tribunal, we met in Brussels at a Conference organized by the Russell Peace Foundation, which used to have the so-called Russell Tribunal which later became the permanent People’s Tribunal. These people have told us that we can actually use their name, but the question is, how much use we can actually make out of that, because it seems in two decades there hasn’t been any Russell Tribunal anymore. So, we are also going into new lands in a way, because, what we propose since the condemnation of the War has been almost universally our Tribunal is in so many different countries; we will have a kind of shifting international independent tribunal with different tribunal sessions in different countries. And the idea is to start in New York. That would be very important; or Washington, D.C. for that matter.

But the problem is that, so far, the U.S. groups – especially United for Peace and Justice and ANSWER – they have some problem to get together. So, I hope that the Americans, which played such a positive role in protesting this war, are actually getting their act together and forming a group which can actually sustain and organize a tribunal hearing.

The next second hearing will be taking place in Brussels. That is already in the making. That is already being organized. Its main topic is the ideology behind these whole warfare, which is basically looking into the so-called Project for A New American Century. This shadowy project of a New American Century – you’ll find the url also in my paper if you’re interested in that – basically the main ideologists of this present Bush team, this Bush government, are part of this Project for a New American Century. They were, it’s basically a group of people which have a conspiracy against the rest of the world, and have been telling it openly in their reports. So, look at their report they have been publishing in 1999, and have a look at what they think, which what they say, is the need for a “constabulary duty” of the United States to look after all the evil by their troops, being spread out all over the world. They need bases in each major world region; and specially,
they need basis in the Middle East, because this is a strategic region. This is one of the main reasons behind the aggression against Iraq.

Another reason in our eyes is that the U.S. played no role in the Iraq oil industry. They were completely cut out. Iraq was one of the few countries that doing its oil business in Europe, not in dollars anymore. And all of the post-war contacts have been made with countries as far as China and Russia and France.

Then the fourth and last –and probably there are more, I don’t know – there seems to be a group in Buenos Aires that wants to organize a tribunal hearing, and I’m sure we can accommodate that – but, the last session, as I said will be in Istanbul because it is closest to Iraq, and what else is there. I think the Turkish people have been really admi-

So, just to cut it short, this second hearing in Belgium will actually look into these kind of matters. Then, we have a kind of plan to organize a third tribunal hearing in Hiroshima, and there couldn’t be -- and it has been mentioned several times during our Conference, the Hiroshima model is still there – there couldn’t be a better place to look into issues like DU and other uranium weapons than in Hiroshima. We believe it is important for this tribunals to have a hearing and have a session of

the tribunal in Hiroshima focussing on the DU question, and what we propose, also focussing on the sanctions question.

They have refused the biggest bribe I know in modern history, which was $16 billion! [applause] And they couldn’t be bullied, they couldn’t be bullied, because what the Western media wants us to believe is that there was an Islamic government in Turkey. This is nonsense; it’s a very moderate Islamic government, and they are able to stand against pressure, they are able to stand against bullying and bribing. That’s why we want to have that final tribunal in Istanbul in Turkey.
Organizations Panel

Dave Kraft, NEIS, USA