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Lawyers Committee  
  
on Nuclear Policy

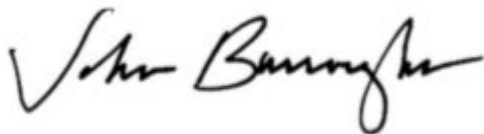
eNews, November 2016

*Next year the United States and the world will travel into the uncharted territory of a Donald Trump presidency. There will also be a new Secretary-General of the United Nations, António Guterres. And negotiations will be launched at the United Nations in New York on a treaty to prohibit nuclear weapons, leading to their elimination - but the nuclear-armed states almost certainly will be absent.*

*See this eNews for more on these topics as well as the dismissal of the Marshall Islands' Nuclear Zero cases by the International Court of Justice and our successful event featuring former Secretary of Defense William Perry. And please include LCNP in your end of the year donations - your support is needed now more than ever. To make a tax-deductible contribution, click the Donate Now button or send a check to LCNP at the address at the end of the eNews.*

*Best wishes for peaceful and enjoyable holidays,*

*Sincerely,*



*John Burroughs*

*Executive Director*



## *Terra Incognita*

Who knows what a Donald Trump administration will bring? Perhaps efforts to implement the darkest elements of Trump's campaign pronouncements. Any such moves must be resolutely resisted. We must insist on respect for the Constitution, the UN Charter, human rights and international humanitarian law, the Nuclear Non-Proliferation Treaty. And we must do our utmost to prevent backsliding on climate protection. In the nuclear sphere, we should be alert to any opportunities for halting and reversing nuclear arms racing presented by Trump's stated desire to improve relations with Russia. (See June LCNP [memo](#) to presidential campaigns.) The

multilateral agreement limiting Iran's nuclear program, joined with a Security Council resolution, must be preserved.

The incoming UN Secretary-General, António Guterres, as LCNP consultant Alyn Ware [writes](#), has no record on nuclear disarmament, but will have plenty of opportunities to facilitate dispute resolution among the nuclear powers and to carry forward Ban Ki-moon's emphasis on the historic UN mission of accomplishing elimination of weapons of mass destruction. We recommend to Mr. Guterres, and eNews readers as well, the recent publication of the UN Office for Disarmament Affairs - *Rethinking General and Complete Disarmament in the 21st Century*, which is available [online](#). LCNP Executive Director John Burroughs has a chapter on legal aspects; LCNP Consultative Council member Jackie Cabasso and Andrew Lichterman have a chapter on broad-spectrum arms racing and nuclear disarmament; and Consultative Council member Randy Rydell has a chapter on creating disarmament synergies.



Antonio Guterres. UN Photo/Manuel Elias.

## *Negotiations in 2017 on a Ban Treaty*

The UN General Assembly will soon adopt a resolution recommended by its First Committee deciding to commence negotiations in 2017 at the UN in New York on a treaty prohibiting nuclear weapons, leading to their elimination. The resolution builds on the work of 2016 UN Open-ended Working Group on nuclear disarmament. The governments leading the initiative on the humanitarian impact of nuclear weapons, especially Austria and Mexico, and also Thailand, the chair of the working group, have done a marvelous job in getting this far, as have our colleagues at the International Campaign to Abolish Nuclear Weapons.

While nothing is set in stone, the current direction is toward a treaty that will prohibit the development, possession, deployment and use of nuclear weapons but not contain detailed provisions relating to the verified elimination of existing nuclear arsenals. That is in large part because as things now stand, the nuclear-armed states will not participate in the negotiations. The result would be a treaty prohibiting nuclear weapons applying to states that do not have such weapons and are furthermore barred by the Non-Proliferation Treaty and regional nuclear weapons free zones from acquiring them. Nonetheless, France, Russia, the United Kingdom, and the United States have been vociferous (Russia especially so) in opposing the initiative.

Why? The answer must be that they fear its effects in delegitimizing reliance on nuclear weapons, aka 'nuclear deterrence', in entrenching the norm of non-use, and in catalyzing nuclear disarmament. This in itself is a good reason to support the ban treaty initiative. In this connection, LCNP emphasizes that a ban treaty by its terms must acknowledge and confirm the existing illegality of use of nuclear weapons under international law protecting civilians and the environment from the effects of warfare. See this [paper](#) by LCNP's international body, IALANA, for more, as well as this [paper](#) by Burroughs for The Simons Foundation.

## *Dismissal of the Marshall Islands' Nuclear Zero Cases*

On October 5, by narrow margins, the International Court of Justice

dismissed the three nuclear disarmament cases brought by the Marshall Islands against India, Pakistan, and the United Kingdom. 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.



Nicholas Grief, Laurie Ashton, Luigi Condorelli, and Phon van den Biesen of the Marshall Islands' legal team at the Peace Palace in The Hague on October 5. Photo AFP/Bart Maat.

As the dissenting judges observed, the ruling ignores the fact that the Marshall Islands' claims were rooted in longstanding opposing views of the large majority of the world's states, on the one side, and the states possessing nuclear arsenals, on the other, regarding whether the latter states are complying with the Court's unanimous conclusion in its 1996 Advisory Opinion that there exists an obligation to pursue in good faith and conclude negotiations leading to nuclear disarmament in all its aspects. (See John Burroughs' [assessment of the opinion in Arms Control Today](#) on the occasion of the 20th anniversary of its release.) The ruling also gave insufficient weight to the Marshall Islands' articulation of claims in multilateral forums prior to bringing the cases and to the opposing positions taken by the Marshall Islands and the respondent states in the proceedings after the cases began.

LCNP salutes the courage and determination, rooted in tragic experience, and the good faith as well, of the Marshall Islands and its then Foreign Minister Tony deBrum in bringing the cases. Simply doing so raised to world attention the failure of the nuclear powers to fulfill the obligation to negotiate the global elimination of nuclear weapons. LCNP also commends the hard work of the Marshall Islands' [international legal team](#). The Marshall Islands' pleadings are a rich resource for the development of political and legal arguments for disarmament.

For more on the outcome, see this Arms Control Today [story](#), this Nuclear Age Peace Foundation [press release](#), and the case pages at [www.icj-cij.org](http://www.icj-cij.org). See also Burroughs' appreciation of the Marshall Islands and deBrum in [remarks](#) at an August rally at the Livermore nuclear weapons laboratory in California.

## *William Perry at All Souls Church*

With the All Souls Nuclear Disarmament Task Force and Peace Action of New York State, LCNP organized a well-attended event featuring Bill Perry, former US Secretary of Defense, speaking on "My Journey at the Nuclear Brink," the title of his recent book, at All Souls Unitarian Church in Manhattan on October 24. [See this video for his riveting talk and Q&A](#), in which Perry discusses the risk of nuclear catastrophe (higher than during the Cold War), the necessity of repairing relations with Russia and halting the emerging nuclear arms race, dangerous tensions in South Asia, the proposed ban treaty (he supports it), the imperative of education (esp. of millennials) to lay the basis for action to achieve a world free of nuclear weapons, and much more. There is also an excellent introduction of Perry by Peter Weiss with reflections on use of language - thus the only true 'nuclear security' is the global elimination of nuclear arsenals. The event was endorsed by Global Security Institute; NGO Committee on Disarmament, Peace and Security; Brooklyn For Peace; Long Island Alliance for Peaceful Alternatives; and United Religions Initiative.

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