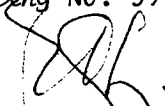


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#### Myths

One widely circulated myth concerning security and disarmament is that war is inevitable. There have always been wars, humans are inherently belligerent, nations are basically aggressive—excepting, of course, one's own country—therefore, why expect anything but more war, even nuclear war?

Wars are human-made. Whatever the controversies, hatreds, fears, or differences among nations, wars occur because national leaders start them or allow them to escalate from border skirmishes or other incidents. Wars between nations will continue to be normal and accepted events as long as the world community sanctions the use of armed force as the ultimate tool of foreign policy. Wars will continue until nations require the use of other methods to settle controversies and deter aggression.

A second dangerous myth is that a nuclear war is winnable, that nuclear weapons are just like any other weapons systems at the disposal of the military. Any doubt that I might have had about nuclear weapons was resolved by my visit in 1963 to the Hiroshima Museum which contains the relics of the first atom bomb explosion. I also visited a hospital that was full of pathetic, suffering victims of radiation exposure. All that waste and destruction was from a primitive fifteen kiloton bomb. A modern one megaton strategic nuclear warhead packs explosive power and potential devastation some 700 times greater than the bomb dropped on Hiroshima. Every military officer and civilian official who glibly considers a nuclear warhead just another weapon should be required to visit Hiroshima. A major nuclear exchange between the Soviet Union and the United States would kill 50 to 100 million people in each country; lay waste to cities, communications, and transportation systems; and poison vast areas with radiation. Who could be a winner? What a victory. Hold no false hope that once started by a few tactical nuclear shots or a limited strategic strike on

continued →

a selected target nuclear war can be controlled or halted. Once started, escalation to holocaust is almost assured.

A third dangerous myth widely held by opinion shapers and decision makers is that more and more weapons and larger and larger military forces assure national security. This concept spurs the arms races, not only between nuclear powers, but also among many other nations around the globe who rely only on conventional armaments. All nations endeavor to keep up with or move a little ahead of perceived adversaries. Their military build-ups called defense are counted on to deter the adversary from starting a war. The truth is that overarmed nations do not feel secure, despite a constant build-up of evermore destructive and sophisticated weapons and forces. The United States, for example, with its huge warchest of nuclear bombs, has embarked on a massive expansion of military power. Why? Because according to the Reagan administration, the United States is not secure. Massive military forces do not guarantee security. On the contrary, over-dependence on military power fosters a tendency to seek military answers to international problems. Misled by an adversary, such action can precipitate conflict. Rather than providing national security, today's arms races pose the threat of monumental catastrophe.

Disarmament progress is handicapped by these and related myths which are all too readily accepted. Knowledge and understanding are the appropriate instruments to reduce and overcome the harmful effects of these myths. Information about the nature of nuclear war and the resulting casualties and devastation must be more widely disseminated. The effects of war and the constant preparation for it upon national economies and lifestyles need to be presented frankly and openly. The contentions of governmental and military leaders who support these myths must be challenged.

### Pressures

Why do these traditions and myths persist? To a large degree, they are kept alive by the strong and vocal insistence of vested interests. The military industrial complex—the one President Eisenhower warned about, albeit vastly enlarged—exerts strong, well-financed pressure on governments and the public.

The military hierarchy is a primary source of pressure. Career officers benefit from an expanding, not a contracting,

military establishment. In addition, most military officers have a philosophic approach to security that impedes objective consideration of disarmament. Military minds, with few exceptions, assume the worst possible set of threats, develop elaborate strategies to meet them, add safety factors, and accordingly call for money to provide arms. This may be the proper way to prepare for war, but it is a poor approach to arms reduction. Dominant military influence, as it exists in the United States and the Soviet Union, discourages civilian leaders from objectively considering disarmament proposals and overshadows the important political, economic, humanitarian, and moral factors of security.

Pressure is exerted too by the sheer momentum of the defense system. Since World War II, the development and manufacture of conventional and nuclear arms have been amply funded and warmly encouraged. The result is an extensive and intricate organism with a life force of its own. It embraces scientists, researchers, manufacturers, managers, workers, and governmental decision makers, and has strong vocal support from many patriotic organizations. The rare political leader who sincerely endeavors to make disarmament progress is thwarted by the inertia and pressures of this massive complex and by the deliberate or inadvertent resistance of its managers.

The undue pressure of the military industrial complex could be mitigated by a better informed disarmament constituency capable of countering the pressures of the military industrial complex and by national governmental disarmament organizations structured to reduce the influence and pressure of the military industrial complex while increasing the influence of disarmament advocates.

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"There is one outstandingly important fact regarding Spaceship Earth, and that is that no instruction book came with it."

— Buckminster Fuller

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# Young New Yorkers take up the fight for world peace

By Cynthia B. Hanson  
Special to The Christian Science Monitor

Friends jettisoned the kid stuff when they were selecting a birthday present for 12-year-old Monique Grodzki, president and founder of the Children's Peace Committee.

They passed up hamsters and roller skates and, instead, adopted a child from Mexico through the Save the Children Federation.

The gift was a bull's-eye for Monique, whose fervor to help children around the world has not waned since the day she founded the Children's Peace Committee, a group of young New Yorkers bent on making children a dynamic force in the world.

The idea for a peace committee developed in 1979 after Monique saw a television documentary that brought the desperate plight of Cambodian refugees into her suburban New York home.

"I found it amazing that they were still singing and had the hope and strength to go on," Monique says. "After I saw that, I actually cried. I really had to do something about it."

So she and a group of concerned friends hatched a rare bird, a peace organization run solely by children.

"All the ideas are ours," Monique explains. "It's completely run by kids."

News of the committee spread through classroom chatter. Today the New York-based operation boasts a growing membership of 200, with ages ranging from 10 to 13.

Adults don't always know at first how to take Monique's grandiose plans. But she makes a persuasive case for her committee and the involvement of children in planning the future.

"Children are involved in wars, and they suffer the most," she explains. "They should have a say about them in government. They should have a say about things in general, about things that affect them."

A 1980 United Nations population statistic shows one-third of the 4.5 billion people in the world are under age 15, and one-half of all refugees are children.

"We're putting millions and billions of dollars into nuclear armaments," Monique says, while children are starving all over the world. She pauses to ask with candor, "Wouldn't it be better to have a 'stop world hunger' race than a nuclear armament race?"

Is this dreamy rhetoric, or a genuine message? And does



By Cynthia B. Hanson

**Monique Grodzki of the Children's Peace Committee**  
the committee have a practical way to put its philosophy into practice? Certainly the committee has taken on an enormous task: to "help abolish world hunger and promote world peace."

With bullhorns blaring in the Dag Hammarskjöld Plaza at the United Nations Building, committee members inform passers-by of current peace issues, nuclear armaments, and world hunger. Petitions are circulated at their rallies, and the last petition was dispersed to world leaders with a plea for peace.

Some days after school Monique's living room is filled with the hum of young voices discussing world hunger. Committee members file through publications and determine

which aid organizations make the best use of funds — those that give the biggest part of their money directly to the cause and not to administration costs. Three years ago committee donations aided ailing Cambodians, and today Somalian refugees receive a sizable portion of the organization's efforts.

World peace is not forgotten in their own city. One small-scale, home-based peace project helped buy bulletproof vests for New York policemen. And for the family of a policeman killed in duty, the committee supplied a trip to Disney World.

The success of the committee can be attributed to its nonsense leadership — a crew devoted to the task of spreading the organization worldwide. While other children busy themselves with TV and tree forts, Monique and her four vice-presidents read four daily newspapers, research hunger issues, and organize projects. Their time is often too valuable for frivolous activity or squabbles, since they sometimes meet three or four times a week.

The consensus among the vice-presidents is that it's not difficult to work for the organization, do homework, and have fun too.

Twelve-year-old Richard Lugo says he likes being a vice-president of the peace committee because "it's very fun, and it makes you feel good to be a part of it." Committee members claim their parents support the endeavor, and Richard says his parents "think it's a good thing."

The Children's Peace Committee resolved a long unanswered question for co-vice-president Rommel Wilson: How can a concerned young person help solve world problems?

"I didn't know how to go about it because it's mostly adult humanitarian groups," she explains, lamenting years of inactivity. Now the committee gives Rommel the opportunity to work with other children to "help people, mostly children around the world."

Joining the committee is not for the capricious, nor is it meant to be a fad. Every applicant is screened, and motives are scrutinized to determine how serious a commitment is intended.

"They're not just joining for this to be a game, because it's not," Monique says. "If they're qualified, we take them in." The most important qualification of any applicant is a willingness to promote peace, love, and brotherhood throughout the world.

For more information on the Children's Peace Committee contact Monique Grodzki, 3430 78th Street, Jackson Heights, N.Y., 11372.

JOHN H. E. FRIED

## Law and nuclear war

There exists no international treaty outlawing nuclear war. It does not, however, follow, as some argue, that the first use of nuclear weapons is therefore legal. For, while not forbidden by a *specific* treaty, the first use of nuclear weapons is forbidden by fundamental *general* treaty rules which the nations of the world have universally pledged to obey.

This conclusion follows from the well-established rules of international law that apply to the two situations in which a first nuclear strike might occur: a sudden surprise attack, starting a war; or an escalation in the course of "conventional" hostilities, transforming it into a nuclear conflict.

It is forbidden to start a war. The most basic of all international law rules prohibits aggression and the initiation of aggressive war with *any* weapon for any purpose. Nuclear weapons obviously fall within this general prohibition.

What then about the legality of a first nuclear strike during ongoing non-nuclear hostilities? Since nuclear weapons are not specifically prohibited, such escalation would be legal, *if* they could be used within the general limits established for all weapons. But, as we shall see below, there is no way in which nuclear weapons could be used without violating the laws of war on an enormous scale.

The conclusion that a first nuclear use is prohibited is all the more crucial because of the virtual certainty that a first use against a nuclear weapons state or against a non-nuclear ally of such a state would be followed by a nuclear reprisal. Would such a reprisal be legal? The answer, reluctantly, must be yes. Reprisal is an act which is

in itself illegal but becomes permissible, exceptionally, in response to a preceding illegality of the same magnitude by the other side. If nuclear reprisal would thus transform a one-sided nuclear war into a mutual cataclysm, responsibility for the double horror would lie on the first user.<sup>1</sup>

A number of considerations compel the conclusion that the first use of nuclear weapons is prohibited by international law:

*Nuclear war has no rational war aim.* By its very technology, nuclear war destroys the *concept*, the *definition* of war—namely, organized violence between military forces for the attainment of rational war aims. Before aggressive war was outlawed by the present world order, even the most militaristic would allow the start of a war only for a rational war aim, such as the conquest of foreign territory. (In this sense, even Hitler's war was "rational.") But nuclear war would have no rational war aim. "Victory" would consist in being *destroyed less completely than the opponent*, and would cause unfathomable evil for future generations.

Aristotle's definition of the purpose of war—"the aim of all war is peace"—describes the fundamentally dialectic quality of conflict. It underscores that war is an *interruption* of the normal, and must result in a new normalcy. The twentieth century law of war is informed by the expectation that, within a relatively short historical perspective, every war will *end*. Hence war must be conducted—and this is the ultimate aim of the law on war—with the postwar situation in mind. The essentials of civilization must be salvaged. Nuclear warfare would de-

stroy those essentials for both sides, and beyond.

*Nuclear warfare inevitably violates the fundamental rules of combat.* The universally binding rules of combat are laid down in the 1907 Hague Regulations IV and in the 1949 Geneva Conventions that confirmed and strengthened the 1907 Regulations four years after the advent of nuclear weapons. In the absence of separate law concerning nuclear weapons, the Hague and Geneva rules which regulate the use of all weapons necessarily regulate nuclear weapons also. What must not be done with machine-guns must not be done with nuclear missiles. The difference is that non-nuclear weapons can be used without violating the combat rules, but nuclear weapons cannot.

Their use would destroy elementary principles of the law of war, such as the distinction between combatants and civilians, a distinction the Red Cross calls "the very basis of the whole law of war."<sup>2</sup> It would destroy the distinction between permissible killing and million-fold slaughter, and the distinction between permissible destruction and wanton devastation. And it would violate the special prohibition of the use of weapons apt to cause "unnecessary suffering."<sup>3</sup>

It may suffice to cite but two other provisions of the Hague Regulations. Article 23g forbids the destruction of "the enemy's property, unless such destruction . . . be imperatively demanded by the necessities of war" (that is, imperatively demanded to achieve a legitimate military objective). This prohibition of indiscriminate or wanton destruction covers any asset, movable and immovable, public and private, from a single object to an entire city. And Article 25 prohibits "the attack or bombardment *by whatever means*, of towns, villages, dwellings, or buildings which are *undefended*." It was due to this rule that Rome and Paris were saved from destruction

during World War II when they were declared undefended, or open, cities. Could such cities now be exempted from the radioactive fallout caused by nuclear attacks on defended places?

*Nuclear warfare would prevent respect for neutral states.* The situation of neutral states poses another grave and unsolvable dilemma. They are protected by the time-honored axiom, "The territory of neutral Powers is inviolable" (Article 1 of Hague Convention V of 1907). Disregard for this immunity is considered a particular outrage. Yet radioactive fallout would inevitably cause havoc in neutral states in blatant disregard of the inviolability of neutral territory. The impossibility of waging nuclear war without violating the immunity of neutral states alone condemns any first nuclear use.

*The expectation of and preparation for nuclear first strikes increases the danger of unintended nuclear war.* It is sometimes considered a consolation that the power to trigger a nuclear war lies exclusively with the head of state—in the case of the United States, the President. But this assumption is incorrect. In the United States the awesome power to decide on the use of nuclear weapons has been *delegated* in three ways:

- It has been delegated, as far as is known, to military commanders in various areas of the world, including submarine commanders. The identities of these men and the extent of their powers is kept strictly secret.

- A vastly larger number of military personnel possess what might be called unintended delegation of power. These include personnel who have access to nuclear weapons and release facilities, and especially those who receive and evaluate computer messages, interpret photos and so forth on whom the top decision-makers must rely. The Defense Department operates an annual screening pro-

cess—the "Personnel Reliability Program"—to "remove from nuclear duties" those found to be "unreliable or potentially unreliable." In 1976, of the 115,767 personnel with "direct access to nuclear weapons, direct responsibilities in the release process, or both" who were tested, 4,966 were removed from their positions. Among these 1,474 were removed for "drug abuse," 737 for "behavior or actions contemptuous of the law," and 1,238 for "significant physical, mental or character traits or aberrant behavior, medically substantiated as prejudicial to reliable performance."<sup>4</sup>

- Top decision-makers as well as their subordinate information suppliers rely on computers and other equipment which have become ever more complex and therefore more vulnerable to malfunction. Machine failures or human failures or a combination of the two could, had they not been discovered within minutes, have caused unintended nuclear war in a number of reported cases.

The primary function of international law, as of all law, is to assure rationality in human affairs and to prescribe safeguards against the effects of culpable and nonculpable negligence; the greater the risks, the more stringent the obligations to prevent them. The law must thus condemn the dynamic by which the preparations for nuclear war expose civilization to the risk of annihilation through trivial technological or human mistakes.

*The dictates of the public conscience—the ultimate arbiter—prohibit a first use of nuclear weapons.* If all these considerations were rejected, nuclear warfare would nevertheless be prohibited by a fundamental principle of the law of war. The Hague Regulations proclaim at the outset that in cases not foreseen by the rules—and nobody in 1907 could foresee nuclear arms—"the usages established among civilized peoples, the laws of humani-

ty, and the dictates of the public conscience" shall prevail.<sup>5</sup> When there is a gap in the law as to what is permissible and what is impermissible in war, no new negotiations or treaties are required: governments must obey the overriding demands of civilization, humanity and conscience. Since the public conscience abhors nuclear war, it dictates to the governments of the world not to start a nuclear war.

Those who argue that first nuclear use is legal emphasize the absence of a specific treaty prohibiting it. But they have the wrong sort of treaty in mind. First nuclear use would so blatantly violate the existing rules applicable to all weapons that only a treaty exempting nuclear weapons from those rules—a treaty specifically allowing nuclear warfare—could conceivably legitimate it. □

1. A recent survey by a Finnish scholar shows that some legal authorities consider not only any first nuclear strike but also any nuclear reprisal to be prohibited. Allan, Rosas, "International Law and the Use of Nuclear Weapons," in *Essays in Honour of Eric Castren* (Helsinki: Finnish Branch of the International Law Association, 1979), pp. 73-95.

2. International Committee of the Red Cross, *Commentary to the 1949 Geneva Conventions*, vol. IV (Geneva; 1958), p. 153.

3. Art. 23e of the Hague Regulations.

4. House Committee on Appropriations, Subcommittee on Military Construction, 95th Congress, Second Session, *Hearings on Military Construction Appropriations for 1979*.

5. This principle is known as the "Martens Clause." It is reiterated in the 1949 Geneva Conventions, the 1977 Protocols elaborated under the auspices of the International Red Cross to update them, and the Convention prohibiting or restricting the use of napalm and similar weapons, on Oct. 10, 1980.

For a fuller analysis of the Martens Clause and of other points discussed in this article, see John H. E. Fried, "International Law Prohibits the First Use of Nuclear Weapons," *Revue belge de droit international*, No. 2 (1981).

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Humanity has entered a critical period in its history as a species. Today's nuclear arsenals have the potential for annihilating a large segment of the world's populations, for devastating and contaminating vast areas of the earth's surface, and for producing unpredictable and uncontrollable biological and environmental consequences. In short, nuclear weapons threaten human survival itself.

Yet, the use of nuclear weapons once considered unthinkable is increasingly being contemplated by U.S. policy-makers. In fact, with Presidential Directive 59, the United States has officially adopted a counterforce strategy that envisions the use (including the first use) of nuclear weapons in a variety of conventional as well as nuclear settings. This shift in nuclear strategy is all the more troubling given the Reagan administration's position that the United States must be prepared to intervene, using nuclear capabilities if necessary, to protect U.S. interests wherever threatened. Thus there has developed in U.S. official policy a dangerous acceptance of the legitimacy and efficacy of using nuclear weapons to reverse international situations considered adverse to U.S. national interests.

Rather than preserving international peace as claimed, this nuclear strategy is likely to bring us closer to nuclear war. The insistence on a limited nuclear war option increases dramatically the prospect that nuclear weapons will be used in a crisis situation. Furthermore, the notion that the use of nuclear weapons can be kept from escalating into an all-out nuclear exchange is, as many experts have argued, highly questionable. Consequently, we believe there is a growing spectre of nuclear war, which requires us to undertake a fundamental rethinking of the status of nuclear weapons under international law.

The prevalent belief among the general public as well as policy-makers is that nuclear weapons are legal. This belief is based on the assumption that a state may do whatever it

is not expressly forbidden from doing. The legality of nuclear weapons, however, cannot be judged solely by the existence or non-existence of a treaty rule specifically prohibiting or restricting their use. Any reasonable legal analysis must take into account all the recognized sources of international law—international treaties, international custom, general principles of law, judicial decisions and the writings of the most qualified publicists. Of particular relevance to the legality of nuclear weapons are the many treaties and conventions which limit the use of any weapons in war, the traditional distinction between combatant and non-combatant, and the principles of humanity including the prohibition of weapons and tactics that are especially cruel and cause unnecessary suffering. A review of these basic principles supports a conclusion that the threat and use of nuclear weapons is illegal under international law.

A basic source of the laws of war are the Hague Conventions of 1907, particularly the Regulations embodied in Hague Convention IV. The United States Air Force, in its most recent official publication (1976) on international law and armed conflict, states that these Regulations "... remain the foundation stones of the modern law of armed conflict." A fundamental tenet of these Regulations is the prohibition of wanton or indiscriminate destruction. The Regulations forbid, for example, "the attack or bombardment, by whatever means, of towns, villages, (and even individual) dwellings or buildings which are undefended."

The universally accepted Geneva Conventions of 1949 updated and greatly strengthened the 1907 Regulations. In particular, the Convention on "the Protection of Civilian Persons in Time of War" imposes additional detailed obligations on all belligerents to ensure the essential requirements for the health, safety and sustenance of the civilian population. A primary objective of these Conventions is to assure that "disinterested (outside

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aid (can be) given without discrimination to all victims of war including members of the armed forces who on account of their wounds, capture or shipwreck cease to be enemies but become suffering and helpless human beings." The use of nuclear weapons of any type would inevitably result in massive violations of both the 1907 and 1949 rules.

Furthermore, restraints on the conduct of hostilities are traditionally not limited to those given explicit voice in specific treaty stipulations. Aware of the continuous evolution of war technology, the 1907 Hague Regulations contain a general yardstick intended exactly for situations where no specific treaty rule exists to prohibit a new type of weapon or tactic. In such cases, "the inhabitants and the belligerents remain under the protection and the rule of the principles of the laws of nations, as they result from the usages established among civilized peoples, from the laws of humanity, and the dictates of public conscience." In short, this general rule, known as the Martens Clause, makes civilized usages, the demands of humanity, and the dictates of public conscience obligatory by themselves—without the formulation of a treaty specifically prohibiting a new weapon. Any specific Convention solemnly prohibiting a specific new weapon or tactic, of course, would serve to reconfirm and strengthen the existing body of law.

Historically, the principles of humanity have been one of the primary sources of law limiting the violence permissible in war. Ever since the Declaration of St. Petersburg of 1868, the principles of humanity have been asserted as a constraint upon military necessity. The Declaration embodies what may be the twin ground rules of the laws of war: that "the right to adopt means of injuring the enemy is not unlimited" and that "the only legitimate object which States should endeavor to accomplish during a war is to weaken the military forces of the enemy."

The protection of civilians and neutral countries flows logically from the elementary distinction between combatant and non-combatant. The commitment to protect civilians and neutral countries also implies that weapons must be used selectively, and only against military targets. As stated by the International Red Cross Committee in its commentary on the 1949 Geneva Conventions, "the civilian population can never be regarded as a military objective. That truth is the very basis of the whole law of war." Without differentiating between military and non-military targets, the fundamental distinction between combatant and non-combatant becomes meaningless.

It is clear that the use of nuclear weapons in populated areas would result in the indiscriminate and massive slaughter of civilians. Moreover, even if nuclear weapons were used only against an enemy's strategic nuclear forces, the annihilation and extermination of the civilian population of the enemy would be an inevitable by-product. As the experiences of Hiroshima and Nagasaki amply demonstrate, the effects of nuclear weapons because of their very awesome nature cannot be limited to military targets.

The 1949 Geneva Conventions were adopted four years after the advent of the "nuclear age." It would therefore be illogical to assume that their provisions are not applicable to nuclear weapons from their provisions. Nor did any nuclear-weapons State or any of the 130-odd other States that ratified or acceded to the Geneva Conventions make any reservation to such effect. However, it would be impossible under conditions of nuclear warfare to carry out the obligations of the Geneva Conventions, just as it would also be impossible to live up to the universally binding rules of the Hague Conventions of 1907, all of which aim at preserving the minimum requirements for the continued survivability and viability of all societies involved in armed conflict. Hence, the

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use of nuclear weapons would inevitably result in the commission of war crimes on an enormous scale. This fact alone is sufficient to prohibit the use of nuclear weapons.

The use of nuclear weapons would also result, directly or indirectly, in the indiscriminate destruction of people of a particular nationality. If, for example, the stated objective were the destruction of a nation-state, then the threat or use of nuclear weapons toward this end would violate at least the spirit of the Genocide Convention of 1948—which made the destruction of groups on racial, religious, or nationality grounds an international crime. To assume the legality of a weapon with the distinct capability to terrorize and to destroy an entire civilian population would make meaningless the entire effort to limit combat through the laws of war. As fragile as the laws of war may be, they must be supported, especially in the present setting where the risks to human survival are so great.

One of the most important law-making treaties, the United Nations Charter, establishes a legal duty for all states to refrain from the threat or use of force in their international relations except in self-defense or under the authority of the United Nations. Furthermore, the principle that a war of aggression warrants the highest degree of international opprobrium, namely, to be branded as an international crime, was affirmed by the Nuremberg Tribunals. These two principals have so often been unanimously reaffirmed by the General Assembly as to have become undisputed axioms of international law.

On the basis of these unquestioned principles of international law, the United Nations has repeatedly condemned the use of nuclear weapons as an “international crime.” On November 24, 1961, for example, the General Assembly declared in Resolution 1653 (XVI) that “any State using nuclear or thermonuclear weapons is to be considered

as violating the Charter of the United Nations, as acting contrary to the law of humanity, and as committing a crime against mankind and civilization.” In Resolution 33/71-B of December 14, 1978, and in Resolution 35/152-D of December 12, 1980, the General Assembly again declared that “the use of nuclear weapons would be a violation of the Charter of the United Nations and a crime against humanity.” As evidenced by these actions of the General Assembly, a consensus has been clearly emerging that the use of nuclear weapons contradicts the fundamental humanitarian principles upon which the international law of war is founded.

Yet, there is an influential school of thought which would deny the applicability of the existing laws of war to nuclear warfare. This school asserts that in an era of “total war” even the most fundamental rules can be disregarded if this enhances the chances for victory. This argument was urged in another context by some of the Nuremberg defendants, and indignantly rejected by the International Tribunal. The Tribunal’s judgment warns that this “nazi conception” of total war would destroy the validity of international law altogether. Ultimately, the legitimacy of such a view would exculpate Auschwitz.

In sum, if the goal of the laws of war—to set limits on permissible violence—is to be realized to any serious degree, and if the fundamental principles of humanity are to be of continuing relevance to their interpretation, then it must be concluded that any threat of use of nuclear weapons is illegal. Global “survivability” is so elemental that the prohibition can be reasonably inferred from the existing laws of war. To conclude differently would be to ignore the barbaric and nefarious character of the use of nuclear weapons. As the laws of war embody the minimum demands of decency, exempting nuclear weapons from that body of laws would be abandoning even this minimum standard.



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The genetic and environmental effects resulting from the use of nuclear weapons, alone, provide a compelling moral and humanitarian argument against their legality. But, as indicated above this is not the only basis for concluding that the threat or use of nuclear weapons is illegal. The unnecessary and disproportionate suffering resulting from their use; the indiscriminate nature of their effects for civilians and combatants alike; the uncontrollable radioactive fallout they set off; and their similarity in terms of effects to poison, poison gas, or bacteriological weapons (all of which are prohibited by the Hague Convention of 1907 and the Geneva Gas Protocol of 1925)—each is a sufficient basis for concluding that the threat or use of nuclear weapons is prohibited under existing international law. When taken together, these arguments provide overwhelming support for the conclusion that any threat or use of nuclear weapons is contrary to the dictates of international law.

So too, these arguments provide a sound legal basis for delegitimizing and criminalizing the manufacture, possession, and ownership of nuclear weapons. If a course of action is illegal, then the planning and preparation for such an action are, by legal and moral logic, also forbidden. Moreover, the attack on the legality of manufacturing and possessing nuclear weapons is all the more necessary given the increasing prospects for the "accidental" use of nuclear weapons arising out of today's dangerous first strike strategies.

Our intention is not to score points in a battle of legal wits. What we wish to present to fellow lawyers, to governmental decision-makers, and to the public is the view that nuclear warfare would lead to results incompatible with fundamental rules of international law, elementary morality, and contrary to any rational conception of national interest and world order. In short, the very nature of nuclear warfare is destructive of all the values

which law obligates us to preserve. While it is accurate to say that international law has not been as effective as it should have been in regulating state acts, international law is important to preserve our sense of humanity and to enhance the prospects for peace.

Reducing the likelihood of nuclear war must obviously, then, be the highest priority of our profession. To this end, the legal community needs to give its urgent attention to the study and implementation of the international law relating to nuclear weapons.\*

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\*For a more extensive discussion of the legal arguments presented in this statement, see Richard Falk, Lee Meyrowitz, Jack Sanderson, "Nuclear Weapons and International Law," Center of International Studies, Princeton University, World Order Studies Monograph, 1981 and John Fried, "First Use of Nuclear Weapons—Existing Prohibitions in International Law," Bulletin of Peace Proposals, January 1981, pp. 21-29.

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