

“Illegal In Any Circumstances Whatsoever”

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**Nuclear Weapons and
the Abandonment of International Law**

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The nuclear disarmament movement must focus on driving home to the public and the politicians a clear core message: nuclear weapons are immoral and illegal. They are a crime against humanity.

Though often treated separately, the moral and legal arguments have a common basis in humanity's long understanding that indiscriminate destruction of life violates the humanitarian value of life itself.

Two of the towering figures in the nuclear disarmament movement, the late Sir Joseph Rotblat and Judge Christopher Weeramantry, have forcefully expressed the inter-relatedness of this two-fold message. We ought to concentrate on what they have taught us as we ourselves explore ways to demand effectively that governments live up to their moral and legal responsibilities.

Rotblat provided an example of how to express the anti-human nature of nuclear weapons in moral language that transcends religions. Only a few months before his death, he sent a message to the 2005 Review Conference of the Non-Proliferation Treaty.

Morality is at the core of the nuclear issue: are we going to base our world on a culture of peace or on a culture of violence? Nuclear weapons are fundamentally immoral: their action is indiscriminate, affecting civilians as well as military, innocents and aggressors alike, killing people alive now and generations as yet unborn. And the consequence of their use might be to bring the human race to an end. All this makes nuclear weapons unacceptable instruments for maintaining peace in the world.

Rotblat then sealed his argument.

How can we talk about a culture of peace if that peace is predicated on the existence of weapons of mass destruction? How can we persuade the young generation to cast aside the culture of violence when they know that it is on the threat of extreme violence that we rely for security?

This language crosses all boundaries and becomes inextricably interwoven with all the processes of daily life. The language can resonate with politicians, who need to be able to relate to all segments of their constituencies.

Nuclear weapons and human security cannot co-exist on the planet. Nuclear weapons are anti-human. That is what the moral aspect of the discussion is all about. Humanitarian law has always recognized that limitation and proportionality must be respected in warfare. But the very point of a nuclear weapon is to kill massively; the killing and the poisonous radiation cannot be contained.

The social and economic consequences of nuclear war in a world whose life-support systems are intimately inter-connected would be catastrophic. The severe physical damage from blast, fire and radiation would be followed by the collapse of food production and distribution and even water supplies. The prospect of widespread starvation would confront huge masses of people. Rampant disease would follow the break-down in health care facilities. These

immense brutalities would violate the universal norm of life – to go on living in a manner befitting a human being with the inherent right to life.

No civilization, no culture has ever denied this common foundation upon which all peoples stand. Leaving aside the massive suffering, which by itself ought to stir the consciences of the nuclear proponents, the entire question of human rights would be up-ended. The right to a social and international order, as set forth in the Universal Declaration of Human Rights, would be completely lost. The structures underpinning humanitarian law would be gone. Order would be inverted into dis-order. What is the “self” that the proponents of nuclear use for “self-defence” supposed to mean? The only way to really uncover the hypocritical defence of nuclear weapons as instruments of self-defence is to focus on the over-arching humanitarian question.

It is empowering to note that the age of weapons of mass destruction arrived just at the time when the Universal Declaration on Human Rights and its follow-up instruments were being codified. Just when we have learned that every human, no matter the culture, religion, ideology or geography, has the right to life, we have perfected our ability to kill massively. The U.N.’s formulation of a Culture of Peace is leading us inevitably to the recognition that every human being has the right to peace, in fact, as is said in the early declarations on this subject, to the “sacred” right to peace. The gradual increase

in humanity's understanding of itself will lead to a societal condemnation of nuclear weapons when it is fully understood that such instruments of evil are a violation of life itself.

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The innate understanding of human rights has also been shown by Judge Weeramantry, who was Vice-President of the International Court of Justice when it issued its Advisory Opinion on the legality of nuclear weapons in 1996.

His 88-page dissent deals convincingly with every last argument advanced by the nuclear weapons states in support of their position, including deterrence, reprisals, internal wars, the doctrine of necessity, and the health hazards of all, including so-called "mini," nuclear weapons. Then he stated:

My considered opinion is that the use or threat of use of nuclear weapons is illegal *in any circumstances whatsoever*. It violates the fundamental principles of international law, and represents the very negation of the humanitarian concerns which underline the structure of humanitarian law. It offends conventional law and, in particular, the Geneva Gas Protocol of 1925, and Article 23 (a) of The Hague Regulation of 1907. It contradicts the fundamental principles of the dignity and worth of the human person on which all law depends. It endangers the human environment in a manner which threatens the entirety of life on the planet.

While regretting that the Court did not hold that the use or threat of use of nuclear weapons is unlawful "in all circumstances without exception," Judge Weeramantry said that the Court's Opinion does "take the law far on the road towards total prohibition."

The effect of the World Court Advisory Opinion is to provide, for the first time, a legal basis for political action to ban nuclear weapons.

At first, the effect might seem minimal because the nuclear states are ignoring it, NATO is hostile to it, and the media have generally marginalized it. But the Opinion is a watershed because it has made a strong statement of the law governing the threat or use of nuclear weapons. It effectively delegitimized nuclear deterrence. At the very least, nuclear proponents can no longer claim that nuclear weapons are a legitimate tool of warfare. The Court forcefully identified the elimination of nuclear weapons as the true solution to the risk of planetary catastrophe posed by the existence of nuclear weapons.

It is the highest-level legal push ever given to governments to get on with nuclear disarmament. It goes beyond the NPT's Article VI, which obliges nations merely to *pursue* negotiations on nuclear disarmament: the Court has deemed that such negotiations must be *concluded*. Moreover, it explicitly separated the two themes in Article VI: nuclear disarmament, and general and complete disarmament. No longer can the nuclear powers credibly state that nuclear disarmament can only come in the context of general disarmament. The "ultimate evil" must be eliminated urgently.

By emphasizing that nuclear weapons are not exempt from the rules of humanitarian law, the Court, even though it divided on the application of certain

questions of law, has brought nuclear weapons into the legal arena. It threw a spotlight on the laws of humanity and the dictates of the public conscience.

Since leaving the Court, Judge Weeramantry, has maintained his ardent stance on the illegality of nuclear weapons. In 2003, he told a seminar in Colombo:

Nuclear weapons are illegal under international law because the usages established among civilized peoples, the laws of humanity and the dictates of the public conscience of the global community of human beings would all undeniably unite in condemning this monstrosity which can obliterate entire cities, destroy the environment and even extinguish all the culture and civilization built up by centuries of human efforts in one fell stroke. Can there be any doubt that all civilization, all humanitarian sentiment, all dictates of this public conscience would reject out of hand even the semblance of a contention that such a weapon could be brought within the bound of legality?

Interpreting the law on this matter is a complex process if one takes the view that any means of self-defence is valid. The nuclear proponents have, of course, taken this route. The search for security through technology led to the nuclear arms race and the public – everywhere – was told this was necessary for self-defence. Our common humanity was denied, as if the moral problems of the obliteration of huge sections of humanity could be swept aside by technology. In secular cultures, the maintenance of nuclear weapons has been rationalized away. No law expressly forbids the threat or use of nuclear weapons; the absence of such a law enables the nuclear proponents to drive

onward. The World Court felt that it by itself could not *invent*, so to speak, a new law. But it clearly pointed the way to the political development of such a law which would be built on a common understanding that humanitarian law does not permit mass killing.

Humanitarian law must be applied to every use of every nuclear weapon. A return to humanitarian law, not technological refinements of the act of killing, is required for society to deal with the illegality of nuclear weapons. A Nuclear Weapons Convention, prohibiting the production as well as use of all nuclear weapons in all circumstances is urgently needed. Law-makers – i.e., politicians and government officials – must be awakened by public demand to pass such legislation. An iron-clad law prohibiting all nuclear weapons must be made. This will happen only when the evil nature of nuclear weapons is recognized rather than being denied as it is today. By emphasizing our humanity, not our technological prowess, we can achieve a universal law criminalizing the production and use of all nuclear weapons.