THE CRIMINALITY OF NUCLEAR WEAPONS

by

Francis A. Boyle, J.D., Ph.D.

Booklet 27
WAGING PEACE SERIES

NUCLEAR AGE
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As far as is known, the term "Waging Peace" originated with Warren Wells, late husband of Ethel Wells of Santa Barbara, in a letter to President Eisenhower. It was a long-standing practice of Mr. Wells to keep in close touch with key national figures and give them his views on peace issues as well as other vital matters. This series is dedicated both as a memorial to him and in gratitude to Mrs. Wells for her continued efforts in this cause.

Just as peace is more than the absence of war, waging peace is more than supporting arms reductions. In addition, it embraces positive steps toward genuine harmony. In this series the Foundation publishes and distributes short booklets stressing ideas for attaining peace. Concepts expressed will include views of many authorities, and will not necessarily be those of the Foundation.

Suggestions for topics and your reactions to this issue are welcome. Booklets in this series are available from the Nuclear Age Peace Foundation.

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INTRODUCTION

Criminal behavior constitutes those acts proscribed by society to protect its members. For those individuals convicted of criminal acts, penalties attach. We are generally familiar with the criminal justice systems at the state and national levels, but there is far less familiarity with criminal law at the international level. This is not surprising since international criminal law remains relatively undeveloped with only a sparse institutional framework to support its provisions.

The concept of international criminal behavior has its modern roots in the London Agreement signed on August 8, 1945, by representatives of the four major allied powers. The London Agreement included a Charter for the International Military Tribunal at Nuremberg. The principles laid down in the London Agreement and Charter have become known, following the Nuremberg Trials, as the Nuremberg Principles. These principles proscribe three major categories of crime: crimes against peace, war crimes, and crimes against humanity. At Nuremberg, German war leaders were tried for these crimes, and some were convicted and sentenced. On December 11, 1946, the United Nations unanimously reaffirmed in Resolution 95(1) the principles of international law recognized by the Charter for the Nuremberg Tribunal and the judgments of the Tribunal.

In this issue of Waging Peace, a distinguished professor of international law and consultant to the Foundation, Francis A. Boyle, presents the case for the criminality of nuclear weapons, including their design, development, manufacture, deployment, threat of use and use. The arguments presented here, based upon well established principles of international law, were first offered by Professor Boyle at an International Colloquium sponsored by the International Association of Lawyers Against Nuclear Arms (IALANA) held in Berlin in November 1990. IALANA itself, at its first General Assembly in September 1989, issued a Declaration stating, in part, “that the use or threat of use of nuclear weapons is a war crime and a crime against humanity, as well as a gross violation of other norms of international customary and treaty law.”

To support the principle of individual accountability under international law, the Foundation has developed a Magna Carta for the Nuclear Age which calls for the establishment of an International Criminal Court and other institutions to enforce international law. A copy of this Magna Carta may be obtained by writing to the Foundation.

David Krieger
President
Nuclear Age Peace Foundation
THE CRIMINALITY OF NUCLEAR WEAPONS
by Francis A. Boyle, J.D., Ph.D.

The human race stands on the verge of self-extinction as a species, and with it will die most, if not all, forms of intelligent life on the planet earth. In the hope of preventing a nuclear Armageddon, the jurists and human rights activists of the world must come together to proclaim certain fundamental principles concerning the requirements of international law with respect to nuclear weapons. It is my hope that the following analysis will serve to define in legal terms the stark dilemma of nuclear extinction that confronts the human race today. It also seeks to establish an antinuclear agenda for other jurists and human rights activists around the world to pursue by applying their unique training, skills, and expertise in a productive and meaningful way toward the progressive yet complete elimination of nuclear weapons from the face of the earth. Realistically speaking, we cannot expect this to happen in the immediate future. Nevertheless, jurists and human rights activists owe a special obligation to our fellow men and women around the world to struggle toward this goal with all the powers of our professions.

HIROSHIMA AND NAGASAKI

Any attempt to dispel the ideology of nuclearism and its attendant myth propounding the legality of nuclear weapons must directly come to grips with the fact that the nuclear age was conceived in the original sins of Hiroshima and Nagasaki on August 6 and 9, 1945. The atomic bombings of Hiroshima and Nagasaki constituted crimes against humanity and war crimes as defined by the Nuremberg Charter of August 8, 1945, and violated several basic provisions of the Regulations annexed to Hague Convention No. IV Respecting the Laws and Customs of War on Land (1907), the rules of customary international law set forth in the Draft Hague Rules of Air Warfare (1923), and the United States War Department Field Manual 27-10, Rules of Land Warfare (1940). According to this Field Manual and the Nuremberg Principles, all civilian government officials and military officers who ordered or knowingly participated in the atomic bombings of Hiroshima and Nagasaki could have been (and still can be) lawfully punished as war criminals. The start of any progress toward resolving humankind’s nuclear predicament must come from the realization that nuclear weapons have never been legitimate instruments of state policy, but rather have always constituted illegitimate instrumentalities of internationally lawless and criminal behavior.

THE USE OF NUCLEAR WEAPONS

The use of nuclear weapons in combat was, and still is, absolutely prohibited under all circumstances by both conventional and customary international law: e.g., the Nuremberg Principles, the Hague Regulations of 1907, the International Convention on the Prevention and Punishment of the Crime of Genocide of 1948, the Four Geneva Conventions of 1949 and their Additional Protocol I of 1977, etc. In addition, the use of nuclear weapons would also specifically violate several fundamental resolutions of the United Nations General Assembly that have repeatedly condemned the use of nuclear weapons as an international crime. For example, on November 24, 1961, the U.N. 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 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.” Finally, the International Peace Bureau’s Appeal by Lawyers Against Nuclear War (1986) — which has already been endorsed by thousands of lawyers around the world—declared that “the use, for whatever reason, of a nuclear weapon would constitute (a) a violation of international law, (b) a violation of human rights, and (c) a crime against humanity.” Under article 38(1)(d) of the Statute of the International Court of Justice, this Appeal constitutes a “subsidiary means for the determination of rules of law.” It could therefore be relied upon by some future international war crimes tribunal. As jurists and human rights activists, however, our primary concern must be to prevent a nuclear war from ever happening.

NUREMBERG RESPONSIBILITY

As jurists, we are compelled by the Nuremberg Principles to point out the following inescapable conclusions of law to all government decision-makers in the nuclear weapons states: First, according to the Nuremberg Judgment, soldiers would be obliged to disobey egregiously illegal orders with respect to launching and waging a nuclear war. Second, all government officials and military officers who might nevertheless launch or wage a nuclear war would be personally responsible for the commission of crimes against peace, crimes against humanity, war crimes, grave breaches of the Geneva Conventions and Protocol I, and genocide, among other international crimes. Third, such individuals would not be entitled to the defenses of superior orders, act of state, tuerisque, self-defense, etc. Fourth, such individuals could thus be quite legitimately and most severely punished as war criminals, up to and including the imposition of the death penalty, without limitation of time.

THE THREAT TO USE NUCLEAR WEAPONS

Article 2(4) of the United Nations Charter of 1945 prohibits both the threat and the use of force except in cases of legitimate self-defense as recognized by article 51 thereof. But although the requirement of legitimate
self-defense is a necessary precondition for the legality of any threat or use of force, it is certainly not sufficient. For the legality of any threat or use of force must also take into account the customary and conventional international laws of humanitarian armed conflict.

Thereunder, the threat to use nuclear weapons (i.e., nuclear deterrence-terrorism) constitutes ongoing international criminal activity: namely, planning, preparation, solicitation and conspiracy to commit crimes against peace, crimes against humanity, war crimes, genocide, as well as grave breaches of the Four Geneva Conventions of 1949, Additional Protocol I of 1977, the Hague Regulations of 1907, and the International Convention on the Prevention and Punishment of the Crime of Genocide of 1948, inter alia. These are the so-called inchoate crimes that under the Nuremberg Principles constitute international crimes in their own right.

The conclusion is inescapable, therefore, that the design, research, testing, production, manufacture, fabrication, transportation, deployment, installation, maintenance, storing, stockpiling, sale, and purchase as well as the threat to use nuclear weapons together with all their essential accoutrements are criminal under well-recognized principles of international law. Thus, those government decision-makers in the nuclear weapons states with command responsibility for their nuclear weapons establishments are today subject to personal criminal responsibility under the Nuremberg Principles for this criminal practice of nuclear deterrence-terrorism that they have daily inflicted upon all states and peoples of the international community. Here I wish to single out four components of the threat to use nuclear weapons that are especially reprehensible from an international law perspective: counter-ethnic targeting; counter-city targeting; first-strike weapons and contingency plans; and the first-use of nuclear weapons even to repel a conventional attack.

COUNTER-ETHNIC TARGETING

It has been reported that various government officials in some nuclear weapons states have supervised the construction of war-plans for the threat and use of nuclear weapons systems that incorporate a philosophy known as “counter-ethnic targeting.” In other words, major population centers inhabited primarily by members of certain ethnic groups were selected for repeated and especially severe nuclear destruction because of their constituent ethnicity alone. Whatever the alleged political justification for this practice, all government officials who were involved in the nuclear targeting of ethnic groups as such actually committed the international crime of conspiracy to commit genocide, as recognized by articles 1, 2, 3 and 4 of the 1948 Genocide Convention.

COUNTER-CITY TARGETING

A nuclear attack by one state upon another state’s civilian population centers is absolutely prohibited under all circumstances, even if undertaken in retaliation for a prior nuclear attack against the first state’s civilian population centers. Consequently, the doctrine of “mutual assured destruction” (MAD) must be abandoned as an element of any strategic nuclear deterrence/terrorist policy currently pursued by the nuclear weapons states. Nevertheless, any plan to substitute for MAD the development of a “protracted nuclear war-fighting” or “war-prevailing” capability is not a licit direction in which to move under international law.

Rather, the correct approach is prescribed by article 6 of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT), which the United States, the Soviet Union and the United Kingdom are strictly bound to obey as parties: “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.” In regard to the achievement of this latter objective, we must emphasize the continued utility of the U.S.-U.S.S.R. Joint Statement of Agreed Principles for Disarmament Negotiations of 20 September 1961, the so-called McCloy-Zorin Accords.

In the meantime, however, while moving toward the goals set forth in NPT Article 6, the nuclear weapons states are obligated to recognize and declare that in the event of a nuclear or conventional attack upon them or the members of their respective alliances, they could not under any circumstances actually use their nuclear weapons against civilian population centers. Although this is already the legal situation, we must call for the nuclear weapons states immediately to conclude an international convention specifically prohibiting both a nuclear attack upon, as well as the strategic nuclear targeting of, civilian population centers. This treaty would then need to be implemented by the nuclear weapons states’ respective national parliaments making it a serious criminal offense under domestic law for their government officials or military officers to threaten or plan to use nuclear weapons against civilian population centers.

FIRST-STRIKE WEAPONS AND CONTINGENCY PLANS

A surprise, preemptive nuclear strike by one country against another would be a crime against peace and therefore is absolutely prohibited for any reason whatsoever. Consequently, all first-strike strategic nuclear weapons as well as their concomitant command, control and communications systems and first-strike contingency plans and practice scenarios are prohibited, illegal and criminal. In order to strengthen that prohibition, we must call for the nuclear weapons states to conclude a treaty that (1) prohibits the further deployment of first-strike nuclear weapons systems, (2) requires the destruction of those already deployed, and (3) mandates the removal of all first-strike contingency scenarios from governmental war-plans.

Pursuant thereto, the nuclear weapons states’ respective national
parliaments must pass implementing legislation making it a serious criminal offense under domestic law for government officials and military officers to design or practice first-strike scenarios during war games or otherwise. These developments would facilitate the conclusion of an international convention specifically prohibiting the nuclear weapons states from adopting a launch-on-warning nuclear response doctrine as well as all forms of command, control and communications systems supportive thereof and any forms of testing incidental thereto. Such measures would, hopefully, lessen the likelihood of any nuclear weapons state feeling compelled by the circumstance of a severe international crisis to seriously consider being the first to resort to the use of nuclear weapons.

THE FIRST-USE OF NUCLEAR WEAPONS

The first-use of nuclear weapons to repel a conventional attack would be totally disproportionate and indiscriminate to the threat presented and therefore constitute an impermissible act of self-defense. Therefore, both NATO and the Soviet Union must phase out all of their battlefield, short-range and theater nuclear weapons systems from Europe as part of a mutually negotiated process. In this regard, we must applaud the efforts by the United States and the Soviet Union to eliminate so-called theater or intermediate range nuclear weapons systems deployed on that continent by means of the December 1987 INF Treaty. We must also encourage them to initiate negotiations over the elimination of all so-called battlefield nuclear weapons from Europe. The immediate and complete denuclearization of Europe by the respective members of NATO and the former Warsaw Pact states is a political, legal and moral imperative. In this regard, we must all work together as vigorously as possible to denuclearize the new United State of Germany as soon as possible in order to serve as an example for, as well as a prelude to, the denuclearization of Europe first, and then the rest of the world.

The Soviet Union and China have each already given a unilateral pledge of “no-first-use” of nuclear weapons that creates a binding international legal obligation on its own accord. The United States and the concerned NATO members must respond in kind by doing the same, and then expressing their readiness to conclude an international convention to that effect. Considerations of international law would fully support such a “no-first-use” treaty as a preliminary step toward the complete denuclearization of Europe. Other nuclear weapons states could then join this convention for the purpose of initiating a denuclearization of their respective regions in the world.

THE CRIMINALITY OF NUCLEAR WEAPONS

As can be determined in part from the preceding analysis, today’s nuclear weapons establishments as well as the entire system of nuclear deterrence/terrorism currently practiced by the nuclear weapon states are criminal—not simply illegal, not simply immoral, but criminal under well established principles of international law. This simple idea of the criminality of nuclear weapons can be utilized to pierce through the ideology of nuclearism to which many citizens in the nuclear weapons states have succumbed. It is with this simple idea of the criminality of nuclear weapons that such people can proceed to comprehend the inherent illegitimacy and fundamental lawlessness of the policies that their governments pursue in their names with respect to the further development of nuclear weapons systems.

The idea of the criminality of nuclear weapons is quite simple. And yet simple ideas are often times the most powerful. For example, at one point in historical time, people saw no legal or moral problem with the institution of slavery. But as a result of the Abolitionist Movement in England and the United States, the entire international community eventually came around to the point of view that slavery and the slave trade were immoral, illegal, and criminal and therefore must be abolished and repressed, which they were and still are today. The same type of moral and perceptual transformation must occur now with respect to nuclear weapons among the citizenry in those states that possess them.

In all fairness, however, I should point out that there are today tens of thousands of people in the United States of America who truly believe that nuclear weapons are criminal under well-recognized principles of international law that have been fully subscribed to by the United States government and incorporated into United States domestic law. That number is increasing every day. Furthermore, there are hundreds of thousands of people in Europe, Canada, and the Western Pacific who believe that nuclear weapons systems are criminal, and that number is increasing every day. Finally, there are tens of millions of people around the world who believe that nuclear weapons systems are criminal. It therefore becomes necessary for all of us to further propagate the idea of the criminality of nuclear weapons in order to increase the number of people who hold that opinion in the United States as well as in the other nuclear weapons states for the purpose of compelling them to consider developing constructive strategies for the abolition of nuclear weapons from the face of the earth.

THE CRIMINAL CONSPIRACY OF NUCLEAR DETERRENCE/TERROIRISM

Humankind must abolish nuclear weapons before nuclear weapons abolish humankind. Nonetheless, a small number of governments in the world community continue to maintain nuclear weapons systems despite the rules of international criminal law to the contrary. This has led some international lawyers to argue quite tautologically that since there exist a few nuclear weapons states in the world community, therefore nuclear weapons must somehow not be criminal because otherwise these few states would not possess nuclear weapons systems. In other words, to use lawyers’ parlance, this minority state practice of nuclear deterrence/terrorism by the great powers somehow negates the existence of a world
The very existence of nuclear weapons requires that the rule of law be subverted both at home and abroad.

Furthermore, nuclear weapons are anti-democratic. There has never been any form of meaningful democratic accountability applied to the U.S. nuclear weapons establishment. The American people as individuals or as a whole have never had any significant input into the process of developing nuclear weapons systems except to the extent that Congress has voted blank checks. The very existence of nuclear weapons systems and their requisite degrees of super-secrecy require that our system of nuclear government be kept stealthily anti-democratic.

Finally, the same principles hold true for the U.S. Constitution. Constitutional protections became meaningless when nuclear weapons were integrated into the U.S. foreign affairs and defense establishment. Indeed, the U.S. Constitution has become a farce and a facade in the name of national security as a direct result of nuclear weapons. In a similar manner, fundamental principles of legality, democracy and constitutionality have been trampled under foot by all the nuclear weapons states in their mad stampede toward humankind’s nuclear abyss.

Nuclear deterrence/terrorism as currently practiced by today’s nuclear weapons states—this small gang of international criminal conspirators—cannot succeed over the long run because it is premised upon assumptions and practices that are immoral, illegal, unconstitutional, criminal, and irrational in the estimation of the respective public opinions in the various nuclear weapons states as well as around the world. Unless it is destroyed, nuclear deterrence terrorism will ultimately fail and destroy all of humankind because of its own inherent contradictions. In particular, the assumptions, policies and practices underlying the U.S. nuclear weapons establishment are irrational and insane from any meaningful perspective. Nevertheless, this conspiratorial doctrine of nuclear deterrence/terrorism has required that what is inherently irrational and insane somehow be made to appear to be completely rational and sane. America has quite necessarily had to invent and pervert its entire system of democratic values, legal ethos and constitutional practices in order to account for and accommodate the existence of nuclear weapons.

THE IRRATIONALITY OF IRRATIONALITY

For example, a good deal of the U.S. nuclear weapons establishment and nuclear deterrence/terrorist practices are premised upon the Harvard political scientist Thomas Schelling’s theory known as the “rationality of irrationality” that was expounded in his classic book The Strategy of Conflict (1960).

According to this pernicious doctrine, in theory it could sometimes prove to be a rational strategy for a government decision-maker to pretend to be completely irrational in his dealings with other states in order to get his own way. Adolph Hitler was said to be the paradigmatic example of this phenomenon during the 1930s. The outbreak of the Second World War in 1939, however, demonstrates the severe limitations
of Schelling’s theory with respect to nuclear weapons.

Applying Schelling’s concept to nuclear weapons, an analyst could mistakenly come to the conclusion that it might prove to be useful for a government to threaten to commit the completely irrational and insane act of starting a nuclear war in order to avoid a conventional or nuclear war, or more cynically and realistically, to achieve certain geopolitical objectives. Furthermore, in order to make this insane threat credible, the threatening state must then supposedly proceed to develop the capability to launch and wage a nuclear war so that in the eyes of its intended adversary the completely irrational threat might begin to look somewhat more rational. When the adversary inevitably responds in kind, these psychological and bureaucratic dynamics produce the momentum needed for generating the self-fulfilling prophecy of nuclear Armageddon.

I will not bother here to analyze at any length the logical contradictions and psychological fallacies of U.S. nuclear deterrence/terrorist doctrine since that task has already been performed quite admirably by Robert Jervis in his definitive work on The Logic of American Nuclear Strategy (1984). But I simply wish to point out that the entire theory of nuclear deterrence/terrorism as currently practiced by the world’s nuclear weapons states represents a working out of Schelling’s hypothesis propounding the “rationality of irrationality.” All of the world’s nuclear weapons states, and especially the two nuclear superpowers, have spent the past forty-five years trying to make a completely irrational threat appear to be rational and in the process have had to pervert and destroy all elements of rationality, legality, constitutionality, morality and sanity that stood in their way. That task itself is ultimately doomed to failure unless and until the citizens of the world’s nuclear weapons states can figure out some practical means to eliminate nuclear weapons before nuclear weapons eliminate them.

THE ILLEGAL STATUS OF NUCLEAR ARMS CONTROL AGREEMENTS

These observations then logically bring us to the question of the international legal status of nuclear arms control agreements. From the perspective developed above, nuclear arms control agreements are simply part of an international criminal conspiracy between a small gang of criminal states that are designed to further perpetuate the conspiracy. Nuclear arms control agreements attempt to rationalize, regularize, modernize and perfect the instrumentalities of international criminal activity and mass extermination. Hence, they are entitled to no validity at all as a matter of positive international law.

Nevertheless, until humankind can get rid of those instrumentalities of crime, it is probably preferable to try to control nuclear weapons than not to try to control them. To be sure, a compelling argument can be made that nuclear arms control negotiations and agreements have never constituted more than soporifics designed by the nuclear weapons states, and especially by the two superpowers, to lull world public opinion into a false sense of trust in the process while, under their deceptive guise, these governments have pursued an unrelenting nuclear arms buildup and modernization. It appears that START I will be no exception to this general rule. Yet, whatever position one ultimately takes on this latter issue, we must never forget that all forms of nuclear arms control treaties concluded between the United States and the Soviet Union and among the nuclear weapons states themselves still deal with these instrumentalities of internationally criminal and lawless behavior.

Thus, nuclear arms control agreements can only constitute a temporary expedient. Their overall objective must always remain that prescribed by article 6 of the 1968 Treaty on the Non-Proliferation of Nuclear Weapons. To reiterate: “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.” Universal nuclear disarmament is the only legally defensible, morally acceptable and logically consistent position that can be taken.

THE STRATEGIC DEFENSE INITIATIVE

Unfortunately, the prospects for meaningful strategic nuclear arms reductions were seriously set back by the Reagan administration’s proclamation of the so-called Strategic Defense Initiative (SDI) in 1983. That act represented nothing less than a formal statement by the United States government of its intention to pursue a policy that will eventually result in the commission of numerous material breaches of the 1972 U.S.-U.S.S.R. Anti-Ballistic Missile Systems (ABM) Treaty. In other words, the SDI program actually constitutes an anticipatory repudiation of the ABM Treaty itself. In addition, SDI would probably violate the 1967 Outer Space Treaty, which prohibits the deployment of some of SDI’s envisioned weapons of mass destruction in outer space. Moreover, illegal testing of SDI’s proposed technologies (e.g., the X-ray laser) would violate the pathbreaking 1963 Limited Test Ban Treaty, which specifically prohibits any type of nuclear explosion in outer space. Finally, the Reagan administration invoked the supposed need to test SDI technology as one of the grounds for its refusal to resume negotiations with the Soviet Union over the conclusion of a Comprehensive Test Ban Treaty (CTBT).

We must call upon the United States government to reaffirm its commitment to the clear language as well as to its longstanding interpretation of the ABM Treaty, and therefore to immediately terminate the SDI program. Furthermore, the ABM Treaty must be strengthened by the conclusion of a separate international convention that prohibits the development, testing and deployment of anti-satellite weapons systems, which can also be used for SDI purposes. Finally, the U.S. and the U.S.S.R. must clarify the limited scope of permissible “research” under the ABM Treaty by means of concluding a supplementary protocol for that purpose.
COMPREHENSIVE TEST BAN TREATY

The decision by the Reagan administration to reject the invitation by the Soviet government to duplicate its imposition of a unilateral moratorium on the underground testing of nuclear weapons upon the occasion of the fortieth anniversary of the atomic bombing of Hiroshima was deplorable. Under the aforementioned principles of international law, all of the nuclear weapons states are obligated to impose an immediate moratorium on the design, testing, development, deployment and modernization of all forms of nuclear weapons and their attendant delivery and communications systems. Those concerned nuclear weapons states must also return to the negotiations for the conclusion of a Comprehensive Test Ban Treaty (CTBT), which were unilaterally suspended by the United States government in 1980. The successful conclusion of a CTBT under strict national and international verification would serve as a significant impediment to the further acceleration of the nuclear arms race as well as to the further proliferation of nuclear weapons around the world.

NUCLEAR PROLIFERATION

To a significant extent, the proliferation of nuclear weapons and the capability to produce them can be directly attributable to the failure of the concerned nuclear weapons states, and especially the two superpowers, to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament... as required by article 6 of the 1968 Nuclear Non-Proliferation Treaty. We must call upon the concerned nuclear weapons states to strictly discharge their solemn obligations under NPT Article 6. We must also urge those acknowledged nuclear weapons states that have not yet accepted the NPT to become parties. Finally, we must encourage those states which possess the capability to construct nuclear weapons but have not yet accepted the NPT to become parties and thereby expressly renounce any nuclear intentions. The security of states is fatally threatened, not protected, by the acquisition or development of a nuclear weapons capability. In addition to joining the NPT regime, the security of non-nuclear weapons states in various regions around the world can best be promoted by means of the mechanisms envisioned by Chapter VIII of the United Nations Charter on Regional Arrangements.

NUCLEAR FREE ZONES

Significant progress by the two superpowers in the areas of reducing strategic nuclear weapons and preventing space weapons can facilitate the complete elimination of nuclear weapons systems at the regional level. In this regard, we must commend the efforts by governments, statesmen and private individuals around the world to establish so-called "nuclear-free zones" in Europe, Latin America, and the South Pacific, etc. It would also be a positive development to establish nuclear-free zones at the national, state, and local levels as well. In this regard, I would like to suggest that the best way to start the life of the new United States of Germany would be for the German people to declare their new capital, Berlin, to be a nuclear-free-zone. In addition, building upon existing treaties, the nuclear-free-zone principle should be applied on a permanent and universal basis to Outer Space, Antarctica, the Deep Seabed, the Arctic Ocean, the Indian Ocean, Africa, and the Middle East, interalia. The progressive development of the nuclear-free-zone movement has the potential to close off large sections of the global commons to the criminal activities by the nuclear weapons states and to the further proliferation of nuclear weapons.

THE RULE OF INTERNATIONAL LAW

We must reaffirm our unwavering commitment to the rule of international law, to the peaceful settlement of international disputes, to upholding the integrity of the United Nations Organization, and to respecting the authority of the International Court of Justice. Pursuant to this commitment, we must urge the membership of the U.N. General Assembly to give serious consideration to the conclusion of an international convention that expressly criminalizes the possession, design, testing, development, manufacture, deployment, use, and the threat to use "nuclear weapons" specifically by that name. Moreover, the General Assembly must give urgent consideration to further steps that would lead to the complete elimination of nuclear weapons from the face of the earth. In particular, the General Assembly should request an Advisory Opinion from the International Court of Justice on the general subject of Nuclear Weapons and International Law. A sound repudiation of the alleged legality of the threat or use of nuclear weapons and of the nuclear arms race by the International Court of Justice would go a long way toward convincing the entire international community that nuclear weapons are not legitimate instruments of state policy, but rather manifestations of lawlessness and criminality.

CONCLUSION

Admittedly, the agenda set forth above is ambitious, but under the specter of nuclear extinction, we have no alternative but to struggle for its achievement. We must call upon all jurists and human rights activists around the world, as well as all men and women of good faith everywhere, to join us in this crusade for universal nuclear disarmament. Otherwise, the human race will suffer the same fate as the dinosaurs, and the planet earth will become a radioactive wasteland. The time for preventive action is now!
THE AUTHOR

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FOR FURTHER READING


"Nuclear Arms and the Law," prepared by the International Association of Lawyers Against Nuclear Arms (P. O. Box 11589, 2502 AN THE HAGUE, The Netherlands), 1990.
