TOWARD POST-COLD WAR GLOBAL SECURITY:

A LEGAL PERSPECTIVE

by

Burns H. Weston

Booklet 32

WAGING PEACE SERIES

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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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Toward Post-Cold War Global Security: A Legal Perspective *

by Burns H. Weston

I.

On December 23, 1991, when the Soviet Union dissolved into the Commonwealth of Independent States (CIS), at least four new nuclear-armed states came into being. "At least four," that is, because, for years, Soviet officials boasted of having tactical nuclear weapons in all or nearly all the former Union's republics. Furthermore, while some appear to have been withdrawn from the Baltic states and from Armenia and Azerbaijan, later admissions of nuclear weapons stored in volatile Armenia and Azerbaijan make clear that many have not been withdrawn. Added to which, there exists not a little uncertainty as to precisely where in Armenia, Azerbaijan, and elsewhere these easily concealed weapons are located and precisely who controls them.

Will the separate emergence of nuclear-tipped Belarus, Kasakhstan, Russia, Ukraine, and possibly others prove fateful for the CIS and world? Public assurances by Russian President Yeltsin and others are of course encouraging. But with the collapse of central authority and discipline, military demoralization, harsh economic reforms, and ethnic unrest everywhere, the potential for a "Yugoslavia with nukes," as U.S. Secretary of State James Baker put it, [1] is, I think, apparent. History demonstrates little support for the proposition that collapsing empires fade quietly.

Equally if not more important is the question of whether the separate emergence of Belarus, Kasakhstan, Russia, Ukraine, and possibly other former Soviet republics armed with nuclear weapons will encourage states not now nuclear to go nuclear — whether it will encourage nuclear proliferation. Again, the answer is far from reassuring. The centrifugal forces unleashed at Alma-Ata in December 1991 and the economic hard times prevalent ever since, make highly probable, especially in an atmosphere of mounting *naglost* (brazen insolence), the transnational diversion of fissile materials, weapons components, finished weapons, and scientific know-how to states thirsting for the prestige and influence that comes with membership in the nuclear club. Consider, for example, that of an estimated 27,000-32,000 nuclear

warheads in the former Soviet arsenal, some 17,000 (or 63%) are components of tactical weapons which traditionally were linked with individual military units and therefore never subject to the same tight controls that typified the Soviet Union's strategic weapons. In an increasingly decentralized political and military arena, made uncomfortably obvious by the recent tensions between Russia and Ukraine, it remains unclear precisely how actual physical safeguards will be instituted and maintained and who will maintain them.

There are some encouraging signs. Russia and the United States are undertaking significant cutbacks in their strategic (long-range) nuclear arms, down to under 3,500 each.[2] Belarus, Kasakhstan, Russia, and Ukraine have pledged that all strategic and tactical nuclear weapons outside Russia will be disabled within three years and eliminated within seven.[3] Each have ordered the "de-targeting" of their former NATO enemies and indicated their readiness to adhere to the 1968 Nuclear Non-Proliferation Treaty (NPT).[4] Russia, with help from the United States, has agreed to establish storage facilities for radioactive uranium and plutonium from its dismantled nuclear weapons and to allow the purchase of nuclear warheads for conversion to fuel for nuclear reactors. And Germany, Russia, and the United States have announced plans for a science and technology institute to employ an estimated 2,000-3,000 nuclear scientists from the former Soviet Union so as to deter them from selling their highly sophisticated services to countries eager for nuclear clout.

One must bear in mind, however, that none of these developments are guaranteed, most of them being still in the talking stage, and that the dangers of nuclearism will loom large even if they are assured. Remaining strategic warheads, each with the minimum firepower of eighty Hiroshimas, will spell overkills of awesome proportion even under the best of presently projected negotiating circumstances. Time — an ally of those who are intent upon diverting nuclear weapons and materials — is needed to secure the money and technology required to destroy nuclear weapons. Tactical nuclear weapons, as well as fissionable materials and other weapons components, are easily concealed and transported. The NPT is a loose text, full of loopholes. Warheads transferred for fuel conversion purposes are susceptible to hijack and diversion. The employment of two to three thousand scientists with advanced nuclear knowledge precludes neither leaks from among them nor the seduction of any number of the estimated 7,000-12,000 remaining scientists with classified nuclear knowledge nor of the hundreds of thousands of less skilled but still knowledgable military officials and civilians previously employed in the Soviet military-industrial complex.[5]

And to all of this must be added, of course, the refusal of Israel, India, and Pakistan to sign on to the NPT, the long-standing antipathy toward the NPT of Argentina and Brazil in addition to Cuba in Latin America, and the persisting doubts about China and North Korea despite their having become NPT parties. Policies and positions such as these only make more likely the proliferation of nuclear weapons and material from the former Soviet Union and elsewhere. And so does, perhaps most importantly, the failure of the United States, the world's preeminent military power, to embrace sincerely and not merely rhetorically the desirability of a world completely and reliably free of nuclear weapons, as exemplified by its refusal to include airborne weapons and the majority of its existing submarine-launched cruise missiles (SLCMs) among its proposed cutbacks, its insistence upon storing rather than destroying many of the weapons it proposes to withdraw, its reluctance to submit to the same kinds of inspections and verifications that it claims are needed to prevent proliferation and that therefore it asks of others, its annual weapons procurement wish-list, its only somewhat diminished love affair with Star Wars research, its long-standing refusal to confront Israel's and South Africa's ostensibly secret nuclear weapons programs, and its continuing opposition to a "no-first-use" policy. Britain, China, and France (not to mention India, Israel, North Korea, Pakistan, and South Africa) are little help either. The well-known nuclear double standard is alive and well. Who, then, can really fault non-nuclear nations for wanting to go nuclear if they can?

And so, despite the ending of the Cold War, ours remains, alas, an intensely nuclear world order. Worse, except as between Russia and the United States perhaps, it is quite probably more out of control and therefore more dangerous today than it was before the Soviet Union's disintegration, popular wisdom to the contrary notwithstanding. The turning back of the nuclear clock by the editors of ***The Bulletin of the Atomic Scientists***, reflecting mainly the easing of East-West but not North-South or South-South tensions, does not change this reality. Indeed, with the possible exception of ozone depletion, global warming, and related environmental concerns, nothing menaces our planet more than the potential hemorrhaging of nuclear technology and weaponry across national frontiers and the threat to use that technology and those weapons if and when sufficiently provoked. As the accelerating Middle East arms race alone makes clear, the need for a nuclear-free world never has been more compelling, never more mandatory.

And what are the nuclear powers doing about it? Unquestionably not enough. Sizable arms reductions and weapons production cutbacks, nuclear

"de-targeting" (by Russia at least), weapons-to-fuel conversions, and a mounting interest in scientific and military cooperation and information exchange — long sought goals of the peace movement — indicate some progress, of course. But while all this is going on, most of the nuclear powers, East and West, refuse to renounce nuclear weapons as instruments of foreign policy; and they leap at the chance, even while their economies are in extreme distress, to reorient the scientifically discredited and astronomically expensive U.S. Strategic Defense Initiative (or "Star Wars" Program) to make use of the sophisticated technologies developed in the former Soviet Union's defense complex (failing to disclose that this proposed militarization of outer space would result in putting potential Challengers and Chernobyls in the sky). Still operating according to military doctrines that were developed during the Cold War, spurred by political hubris and economic greed, and therefore refusing to concede that a space-based missile defense system or some equivalent technological fix would not be necessary were nuclear weapons and other weapons of mass destruction eliminated altogether, they cling to the notion that "arms control" and "minimum sufficiencies" are somehow more "realistic" options than broadbased disarmament and development. They cling to the phantasmagorical idea that it is somehow better to live with the bomb than to try to live without it, citing Islamic fundamentalism where once they cited communist and bourgeois evils, hastily and cynically brushing aside widespread responsible opinion (voiced perhaps most often by retired generals and diplomats) that the only real way to escape the dangers of nuclear and other weapons of mass destruction is to commit to complete nuclear disarmament and, beyond that, to general and complete disarmament linked to some form of "common" or "comprehensive" security.[6] Thus do the post-Cold War Pentagon strategists, in their Defense Planning Guidance for fiscal years 1994-99, brazenly recommend spending $1.2 trillion on the military over the next five years.[7]

To put it all another way, the world community is suffering from a heavy dose of "crackpot realism" and is at grave risk of losing an opportunity of truly historic proportion. For the first time in almost half a century, serious interest in progressive procedural and structural change on the global plane has revived, and with it the possibility of a world largely free of nuclear weapons and the threat of nuclear war, something few of us believed remotely feasible only a few short years ago. But unless our political leaders desist from their big bucks/big brother daydreams and repeal the parochial, piecemeal, and timorous policies that have allowed ours to become a seriously endangered planet, that opportunity will be lost—perhaps forever, and with dire consequences for our children, our children's children, and beyond. It is of course

our responsibility as citizens, to see to it that they do repeal these policies. We must convince them — and, indeed, ourselves — that "reality" is never fixed, that the magnitude of the struggle is not beyond human capacity, that there *are* realistic alternatives to the horrible undertaking in which they (we) daily participate. We must convince them that it is not so much for lack of ideas than for lack of political vision and will that we fail to move toward them rapidly.

II.

Of course, it is one thing to laud nuclear disarmament and, beyond that, general and complete disarmament linked to some form of "common" or "comprehensive" security; it is quite another to persuade governments and citizens that such policies are feasible even if admitted to be desirable. With conflict likely to be violently expressed in the world system for years to come, people are not going to be easily dissuaded from a nuclear deterrence system that *seems* to have protected them against such conflict for better than four decades now. It is not enough to point out that nuclear deterrence does not guarantee against human perfidy or error, that it does not ward off technological malfunction or mechanical breakdown, that it does not prevent paramilitary terrorism or even relatively large-scale conventional wars affecting perceived vital interests. To persuade people to escape the mind-boggling risks of a nuclear bristled and proliferated world — to persuade them that genuine and lasting world peace actually is feasible and not merely some utopian fantasy — a truly effective alternative or set of alternatives to nuclear deterrence must be established. Nuclear weapons, people understand, are weapons of military decisiveness, so that any substitute for them must be more or less decisive also. Otherwise there will be no getting rid of the nuclear habit; and without letting go of the nuclear habit the world never will be free of the possibility of radioactive annihilation, never capable of real progress toward a just and lasting peace.

All of which is to say, obviously, that world peace requires far, far more than the kinds of "deep cuts" that recently Russia and the United States have been negotiating. Even heightened adherence to the already existing norms of restraint upon the transnational use of force that are part of both conventional and customary international law falls short of the full measure of legal and policy criteria that is required to bring a peaceful world into being. The same may be said of the strengthening, where needed, of already existing arms control agreements and arrangements.[8] Necessary as these and like initiatives are, what is needed, and what peace activists (public and private) must now demand, is an entire complex of policy initiatives—legal, political,

economic, military, and otherwise — that jointly can protect against international violence in such a way as will make it unnecessary for states to rely on nuclear and other weapons of mass destruction to safeguard their security.

Elsewhere I have helped to identify some of the mix of "alternative security" policy initiatives that can work to this end.[9] Here, as befits my professional credentials, I review some of the *legal* policy initiatives — normative, institutional, and procedural — that may be counted among them.[10] I do so because, having established more or less the illegality and criminality of nuclear weapons and warfare,[11] it now is time for peace activists to move the antinuclear and more comprehensive antiwar struggle to a new level of concern, toward a broad consensus on the design and construction of a global security system that can ensure the sanctity and stability of life without dependency on the nuclear threat or the threat of other weapons of mass destruction.

III.

Normative Policy Initiatives

Four normative regimes come immediately to mind as capable of assisting a world free of nuclear and other weapons of mass destruction and toward which all of us, public official and private citizen alike, should strive.

1. A Comprehensive Nuclear Weapons Ban [12]

The enforcement of existing legal norms that interdict virtually all currently planned uses of nuclear weapons is seriously encumbered by a tradition of political leadership — Machiavellian in character — that typically indulges self-serving interpretations of the legal status of controversial uses of force. A pervasive subjectivity in world politics makes it exceedingly hazardous to tie restraint vis-á-vis nuclear weapons to characterizations of warfare either as "defensive" or "aggressive," these labels commonly masking politically congenial and politically hostile uses of force. Thus, a comprehensive anti-nuclear-weapons ban is needed.

Such a ban would embrace at least the following:

a. an absolute prohibition on the development, production, stock piling, use and threat of use of all nuclear weapons and weapons systems — land-based, sea-based, and air-launched — without exception save for the limited possibility of a less comprehensive but absolute ban on all first-strike nuclear weapons and weapons systems during transition to complete nuclear disarmament (because such weapons and weapons systems increase the pressure to launch on warning and thereby increase the possibility of nuclear war by accident or miscalculation);

b. a presumption that *any* use of nuclear weapons, particularly a first use of such weapons during transition to complete nuclear disarmament (even in a defensive mode) and including a second or retaliatory "countervalue" use against cities and other civilian targets, violates the international law of war and constitutes a "crime against humanity";

c. a declaration that all nuclear weapons research and development (R&D), war plans, strategic doctrines, and strategic threats, especially those having first-strike characteristics, are illegal *per se*, and that all persons knowingly associated with them are deemed engaged in a continuing criminal enterprise;

d. an unequivocal obligation on the part of all states to pursue nuclear disarmament and otherwise minimize the role of nuclear weapons in inter-state conflict (consistent with Article VI of the NPT[13]) by way of, *inter alia*, (i) a renunciation of the policy of first use and the war-fighting doctrines and capabilities that accompany it, (ii) a comprehensive nuclear test ban, and (iii) strengthened nuclear non-proliferation regimes;

e. a commitment to a multilateralized Anti-Ballistic Missile (ABM) Treaty[14] (because pursuit of anti-ballistic missile defense systems stimulates competition in offensive weapons) together with a ban on all space weapons and space-based missile defense systems (because such systems, especially if not preceded by deep cuts in offensive ballistic missiles, are likely to encourage a proliferation of the most destabilizing weapons and weapons systems); and

f. a clear mandate for all citizens to take whatever steps may be available to them, including acts of nonviolent civil resistance, to expose the illegality of the use of nuclear weapons and to otherwise insist upon the lawful conduct of the foreign policies of their own governments.

A comprehensive nuclear weapons ban such as this, it should be understood, would cause even the "minimum deterrence" strategies currently popular to be legally, if not also morally, suspect.

2. A *Comprehensive Ban on Non-Nuclear Weapons of Mass Destruction*

The same arguments that warrant a comprehensive ban on nuclear weapons compel also a comprehensive ban on non-nuclear weapons of mass destruction, *especially chemical and biological weapons*. Indeed, the two are fundamentally interdependent. A comprehensive ban on nuclear weapons makes less likely resort to chemical and biological weapons, and a ban on such weapons lessens the prospect that a belligerent state, especially a beleaguered one threatened by such weapons, might establish or renew dependence upon nuclear weapons. Mirroring the "Comprehensive Nuclear Weapons Ban" outlined above, a comprehensive ban on non-nuclear weapons of mass destruction would include at least the following:

a. an absolute prohibition on the development, production, stockpiling, and use of conventional mass destruction weapons and weapons systems, including chemical and biological weapons of mass destruction, with

   (i) a strengthened Geneva Gas Protocol,[15] prohibiting the possession as well as the use of the gas and bacteriological methods of warfare covered by the Protocol, and

   (ii) a strengthened Biological Weapons Convention,[16] providing for effective on-site inspections and enforcement mechanisms capable of responding to scientific advances and new biological technologies;

   (iii) a Chemical Weapons Convention,[17] prohibiting the development, production, possession, transer, use or threat of use of such weapons and providing an effective system of on-site verification.

b. a presumption that any use of non-nuclear weapons of mass destruction, particularly a first use of such weapons during transition to general and complete disarmament (even in a defensive mode), but also a second or retaliatory "countervalue" use against cities and other civilian targets, violates the

international law of war and constitutes a "crime against humanity";

c. a declaration that all R&D, war plans, strategic doctrines, and strategic threats having non-nuclear mass destructive characteristics are illegal *per se*, and that all persons knowingly associated with them are deemed engaged in a continuing criminal enterprise;

d. an unequivocal obligation on the part of all states to eliminate all non-nuclear weapons of mass destruction from their arsenals, including chemical and biological weapons of mass destruction, and otherwise to minimize the role of such weapons in inter-state conflict; and

e. a clear mandate for all citizens to take whatever steps may be available to them, including acts of nonviolent civil resistance, to expose the illegality of the use of non-nuclear weapons of mass destruction and otherwise to insist upon the lawful conduct of the foreign policies of their own governments.

The point of these limitations, it should be understood, is to restrict all military strategy to a non-offensive/non-provocative defense posture exclusively. Only such an arrangement will permit States to resist the temptation to resort to nuclear or other weapons of mass destruction.

3. A *Conventional Weapons Non-Proliferation Regime*

Just as there has been a proliferation of nuclear weapons since 1945, so has there been a proliferation in the manufacture and export of conventional weapons, particularly to the Third World. This fact is well known. Yet, notwithstanding that this traffic in conventional arms increases not only the destructiveness of conflict but also the likelihood of bloody conflict erupting, the world community stands by and does essentially nothing.

The world community is negligent, however, at great peril to itself. Just as conventional arms are trip wires to conventional wars, so are conventional wars — and their arms — trip wires to nuclear conflict, capable of engaging nuclear powers and thereby risking escalation to nuclear war. Absent a ban on the manufacture, sale, and transfer of conventional weapons, a nuclear weapons-free world is similarly endangered. To the extent that, in such a world, conventional wars could seriously jeopardize the real and perceived interests of nuclear-prone states, so too could they serve as catalysts to the

"reinvention" and subsequent actual use of nuclear weapons to safeguard those interests.

Thus, a conventional weapons non-proliferation regime, greatly limiting if not altogether prohibiting conventional arms sales and traffic, would seem as much a necessity to a post-Soviet, post-nuclear global security system as a nuclear non-proliferation regime is essential to the present-day nuclear deterrence system. It seems particularly a necessity relative to such large and potentially provocative weapons and weapons systems as tanks, armored cars, warships, long-range "attack" aircraft, missiles, and other components of "forward defense." In addition to being the most easily regulated because they are the most easily detected, these large weapons and weapons systems are, among conventional weapons systems, the most capable of contributing to mass destruction. At the very least, such a regime should ensure an effective surveillance and record-keeping system, capable minimally of alerting responsible elites to the presence of dangerous world practices and trends.

4. A *Worldwide Nonintervention Regime*

It is clear that the current nuclear deterrence system operating among the nuclear powers is in reality a system of extended deterrence, meant to guard against far more than strategic or theater-level attacks (and that it is of necessity nuclear because, as is now being made increasingly manifest, few economies can afford, without major domestic sacrifice, a conventional one). Despite the ending of the Cold War, nuclear powers continue to seek to maintain hegemonic interests, particularly the United States.

Thus, because the strong economic and political interests of nuclear powers simply will not go away (and, indeed, may become even more "vital" to them as they ever more discover that they are unable to control people and events as they once did), a post-Soviet, post-nuclear global security system must include as one of its cornerstones a worldwide compact to refrain from unilateral military intervention under all circumstances — save possibly circumstances defined by a gross and systematic violation of human rights and the simultaneous absence of effective multilateral sanctioning machinery on the global or regional planes. A promise of interventionary self-restraint on the part of all governments, one that would supplement and strengthen U.N. Charter Article 2(4) by ensuring the territorial integrity and political independence of Third World countries especially, would go a long way toward guaranteeing the viability of a post-nuclear global security system. For those occasions when force may be needed to prevent or minimize deprivations of fundamental human rights and freedoms, recourse to improved global

and regional intergovernmental organizations that are designed to police such matters should be pursued, in accordance with right process and on a genuinely multilateral basis.[18]

Institutional Policy Initiatives

At least six institutional initiatives recommend themselves to a post-nuclear security system, some operating perhaps within the framework of the United Nations, some perhaps outside that framework.[19] They of course do not exhaust the institutional policy options that might be recommended.

1. *Establish an international arms control and disarmament verification agency* which, through "open skies" satellite observation, seismic and atmospheric surveillance, and on-site inspection, could supplement national means of verification and be capable of transnational monitoring of world military capabilities and move ments.[20] Such an agency, with a membership comprising non-nuclear as well as nuclear weapons states, would enhance the work of the International Atomic Energy Agency (IAEA) inasmuch as it would (a) oversee the implementation of arms control and arms reduction agreements; (b) provide an impartial means of detecting and guarding against the secret testing and production of nuclear weapons and other weapons of mass destruction, including chemical and biological weapons; (c) discourage provocative military build ups and maneuvers; and (d) otherwise acquire the vital experience and reliability needed if arms reductions are ever to proceed very far. As a means of achieving genuine effectiveness, it also would be expected to establish regional oversight boards with authority to conduct on-site inspections of any and all weapons-capable facilities at the request of any state party or qualified nongovernmental organization.

2. *Create an international defense technology development agency*, at least during the transition to general and complete disarmament, to foster joint research, by multilateral teams of scientists, of genuinely defensive (and cost-effective) technologies — *e.g.*, surveillance satellites, seismological verification, radar systems, submarine-tracking systems, and even sophisticated defensive weapons as remotely piloted vehicles (RPVs) and precision-guided munitions (PGMs)[21]— that, when integrated into intelligent defensive schemes, can make conventional invasion difficult or impossible and

simultaneously be far less expensive than the armored vehicles, aircraft, and surface ships they are designed to destroy.[22] An agency of this kind would provide former nuclear and other powers, especially Third World countries, with the opportunity to facilitate and share defense research and technology on a more or less equal footing without imperiling such instruments as the ABM Treaty[23] or otherwise exacerbating the arms race. Also, it could reduce inclinations to surprise perceived foes with new and threatening weapons developments and thereby help build confidence among potentially explosive inter-state relationships.

3. *Create risk-reduction opportunities and capabilities* by establishing, for example: (a) a joint inter-state consultation commission with a permanent staff composed of the nationals of disputing parties (among others) capable of handling actual and potential conflicts by way of routine review rather than the usual procedure of consulting only in extraordinary circumstances; (b) a joint inter-state negotiating commission composed of nationals from each side of a conflict, working together to find a solution acceptable to all concerned; (c) regional mediation, conciliation, and arbitration panels composed of persons of recognized competence and fair-mindedness, with authority to investigate and seek the resolution of conflicts and disputes otherwise capable of culminating in hostilities. Where these "local remedies" do not succeed, then appeal should be had to the International Court of Justice or some other permanently constituted tribunal for final and binding resolution of the disputes in question. The common primary purpose of these risk-reduction remedies would be to facilitate communication between contending parties to avert the possibility of war through miscalculation or misperception.

4. *Create an international "weapons into plowshares" agency* through which the conversion of national arms industries to socially redemptive production could be facilitated and a concrete connection between those who spend resources on armaments and those in economic and technological need could be fruitfully established — clearly an initiative of great importance to depressed and beleaguered economies worldwide. The overriding purpose of such an agency, which among other things could help bring labor unions and industrial management together in common enterprise, would be to encourage a comprehensive process of reconstruction and renewal conducive to the establishment of a genuinely productive and

equitable world economy. This, in turn, would greatly reduce the likelihood that nations would do military battle with one another.

5. *Create permanent global or regional police forces* consisting of persons recruited individually instead of from national military contingents (as in past U.N. peacekeeping experience), each with loyalty to world or regional rather than national authorities. Such forces would be relatively free from divided loyalties and from the possibility of sudden, unanticipated recall or withdrawal by national governments (as has happened with *ad hoc* U.N. forces in the Middle East, for example). As a consequence, they would be more readily available, more subject to efficient coordination, and thus more effective overall. As such, better positioned to establish useful precedents over time, they would constitute a further significant step in assuring a successful security system not dependent on nuclear weapons. Of course, appropriate precautions would have to be taken to guard the guardians.

6. *Create a permanent international criminal court* with compulsory jurisdiction specifically over war crimes, crimes against the peace, and crimes against humanity, accessible by multilateral intergovernmental organizations, nongovernmental entities, and qualified individuals, as well as by states.[24]

In addition to these six institutional initiatives one should mention, of course, the need for United Nations reform, particularly in relation to the antiquated, anachronistic composition of the Security Council, which has primary responsibility for the maintenance of international peace and security. The failure so far to ensure more equitable Third World representation among the Council's permanent members (say, Brazil, Egypt, India, Indonesia, or Nigeria), plus the absence among the permanent members of economically powerful Germany and Japan, raise fundamental questions about the determination and orchestration, not to mention the moral premise and juridical legitimacy, of the U.N.'s peace and security operations. Given the current climate of increased respect for and support of the United Nations, the issue seems ripe for serious and responsible attention.

Procedural Policy Initiatives

A global security system that forswears reliance upon nuclear weapons can provide no security at all without clearly established and respected

procedures for both peacemaking and peacekeeping. If inter-state disputes can be settled by peaceful means and kept from degenerating into armed hostilities, they are unlikely to escalate into threats to the peace or acts of aggression and war. It is true that efforts to keep the peace under the aegis of the United Nations and to achieve dispute settlement through international tribunals, arbitration, and similar peaceful means have not always been encouraging, arguably not during the 1990-1991 Persian Gulf crisis (in which, in my view, a pattern of barely polite tolerance for the United Nations and its legal requirements was manifest) [25] and certainly not during the internecine conflict that has raged in the post-Cold War Balkans. But established and respected procedures for multilateral peacekeeping and for the mediation, conciliation, arbitration, and adjudication of international disputes, preferably within the framework of the United Nations but desirably also at the regional level, would seem nevertheless necessary even if not sufficient for the maintenance of world peace and security, as surely the disintegration of Yugoslavia, the ethnic rivalries in Nagorno-Karabakh, and a genocidal civil war in Cambodia make evident. Without active participation in peaceful efforts at mutual accommodation, there is little likelihood of achieving the stability and harmony that a world free of nuclear and other weapons of mass destruction would require.

Thus, the following modest procedural initiatives would seem necessary and useful (especially at the early stages of international accommodation and nuclear disarmament).

1. Improvement of U.N. Peacekeeping Opportunities and Capabilities

United Nations peacekeeping opportunities and capabilities can be improved by:[26]

a. *guaranteeing military units* (land, sea, and air) on a more or less permanent standby basis (as envisaged in U.N. Charter Article 43), trained for peacekeeping by the member states in the course of their militaries' basic training and on the basis of expertise and additional training provided by an appropriate U.N. agency;

b. *regularly stockpiling military equipment and supplies* needed to enhance the U.N.'s capacity to undertake peacekeeping operations on short notice;

c. *facilitating automatic peacekeeping action* on the basis of predetermined levels of crisis or thresholds of conflict, thus avoiding the obstructions posed by the exercise of the Security Council veto;

d. *assuring peacekeeping finances* on an automatic basis, thus again avoiding the obstructions posed by the exercise of the Security Council veto;

e. *ensuring access to conflict areas* without requiring the initial or continuing permission of the conflicting parties; and

f. *tying U.N. peacekeeping to peacemaking* (*i.e.*, pacific settlement) to ensure that the merits of any given dispute will receive the attention that is needed to achieve long-term stability in the troubled area.

2. Improvement of U.N. and Other Peacemaking Opportunities and Capabilities

United Nations peacemaking opportunities and capabilities can be improved by: [27]

a. *enhancing and making greater use of U.N. dispute settlement mechanisms*, including the good offices of the Secretary General, most of which have been rarely if ever used;

b. *encouraging increased consent to mediation, conciliation, arbitration, and adjudication* through

(i) guarantees limiting the scope of the third-party judgment to the determination of the doctrines, principles, and rules that could guide the parties in approaching settlement, and

(ii) greater use of technically non-binding advisory opinions;

c. *increasing reliance on private persons and nongovernmental organizations (NGOs) as neutral intermediaries* (thereby helping to avoid escalating arguments into full-scale inter-state disputes) in pre-dispute consultations, in post-dispute negotiated settlements, and before international tribunals for the purpose of clarifying a customary law norm or a clause in an international agreement;

d. *convening periodic regional conferences on security and cooperation* similar to the one launched in Helsinki for Europe in 1975 to reflect the

priorities and circumstances of the separate regions and, with help from the U.N. Secretariat, to serve the essential decision function of appraisal and recommendation not only on matters relating directly to international security but on economic, social, and cultural matters upon which international security commonly depends; and

e. adopting a code of international peacemaking procedures (drawn from a variety of existing instruments) that would allow governmental officials to develop confidence in available procedures and that states could accept as binding upon them in whole or in part.

3. *Improvement of Opportunities and Capabilities for Legal Challenges to Coercive Foreign Policies*

Opportunities and capabilities for legal challenges to coercive foreign policies can be improved by:

a. *enhancing the role of the International Court of Justice* relative to threats to the peace, breaches of the peace, and acts of aggression, through, for example,

(i) expanded acceptance of the Court's compulsory jurisdiction and greater use of its advisory jurisdiction relative to actual or potential hostilities between states;

(ii) broadened standing to petition the Court to permit access by qualified nongovernmental organizations; and

(iii) increased appeal to the Court's specialized "chamber procedure" in respect of inter-state conflicts unresolved by more local remedies;

b. facilitating application of the international law of peace in domestic courts through, for example, the reduction of barriers to "legal standing" on the part of private litigants especially and the narrowing of doctrines of non-justiciability (e.g., the "political question," "act of state," and "sovereign immunity" doctrines) to encourage public accountability in the statist conduct of foreign policy.

Of course, all of these and similar procedural initiatives have their share of difficulties: winning the confidence of contentious sovereign powers; achieving genuine neutrality in disputes; maintaining effective communication; overcoming legal and political isolationism; and so forth. Nevertheless,

all are worthwhile initiatives to pursue because the alternatives are worse and they enhance at least the prospects for international peace and security.

* * *

THUS IT IS EVIDENT that there exist a number of possible *legal* initiatives that could contribute effectively to a nuclear-weapons-free global security system. But only, as previously indicated, as part of an integrated plan that consists of political, economic, military, and technological as well as legal elements, holistically conceived and interdependently implemented.

In this latter connection, it bears emphasis that all of the above recommendations are the logical outgrowth of a lexicology that defines non-nuclear security — personal, national, and international — almost exclusively in terms of the absence of war or the threat of war. As a consequence, they bespeak the norms, institutions, and procedures that facilitate the prevention or elimination of *military* confrontation and conflict. And yet, as became increasingly clear from the worldwide economic and environmental pressures of the 1970s and 1980s, a definition of security informed preeminently by concern for military risks and encounters is not adequately responsive to the full range of threats to our personal, national, and international security that we now encounter and are likely to encounter in the 1990s and the years after 2000 as well.

In other words, achieving true global security will require not only a drastic circumscription of nuclear and, more generally, militarist tendencies, but also the progressive development of those norms, institutions, and procedures that can assist the promotion and protection of social justice, economic well-being, and ecological sustainability on a worldwide scale. It is social injustice, economic malaise, and environmental decline that lead, independently and interdependently, to frustration, conflict, and oftentimes violence. The evidence is all around us. Therefore, a non-nuclear global security system is unlikely to succeed if it is not marked also by a broad and deep commitment to the widespread realization of fundamental human rights and freedoms, to the wholesale eradication of grinding poverty and economic dependency, and to the unwavering stewardship of our earth-space environment as a total living organism, meant to be cherished rather than squandered.

IV.

But how do we get from here to there? Knowing our destination and

knowing how to get there are not the same thing.

In this regard, one can be brief. The process by which we achieve a nuclear-free world or, better yet, general and complete disarmament linked to some form of "common" or "comprehensive" security, has been indicated to us already.

I have in mind the Joint Statement of Agreed Principles for Disarmament Negotiations submitted to the United Nations General Assembly on September 25, 1961 by John J. McCloy, on behalf of the United States, and Valerian A. Zorin, on behalf of the Soviet Union.[28] Popularly known as "the McCloy-Zorin Agreement," it called for an internationally acceptable program of general and complete disarmament that would lead to the eventual dissolution of national armed forces beyond what is necessary to maintain internal order, the creation of a standing U.N. peacekeeping force, and the establishment of effective and reliable mechanisms for the peaceful settlement of international disputes in accordance with the Charter of the United Nations. Adopted unanimously by the General Assembly, it also called for multilateral negotiations, the implementation of the negotiated disarmament program in an agreed sequence of stages, procedures that would prevent any state or group of states from gaining a military advantage, and guarantees of strict and effective international control to ensure, in the words of Principle 6, "firm assurance that all parties are honouring their obligations."

Today, some thirty years later, the McCloy-Zorin Agreement seems no less apt. By proclaiming the goal of general and complete disarmament, including the elimination of all weapons of mass destruction, it rejects outright the strategy of nuclear deterrence (minimum or otherwise). By calling for staged and balanced negotiations secured by effective means of multilateral inspection and verification, it dismisses the misguided proposition that a "minimum deterrence" regime, possibly necessary as a policy of transition, requires vast expenditures in the name of some illusory technological defense. And by embracing measures to strengthen international institutions aimed at preventing war and promoting peace, it endorses the truism that a truly peaceful and just world order depends in the end on the conscious and conscientious building of cooperative norms, institutions, and procedures alternative to the threats and counter-threats that underlie the Cold War doctrine of nuclear deterrence, not to mention the "global cop" schemes that depend on it.

Except to identify more precisely the content and to update the timetable of the McCloy-Zorin program for general and complete disarmament, does

really much more need to be said? Is it not clear already that if we are serious about world peace we must sooner or later and at the very least: (1) stop the production of all nuclear, chemical, bacteriological, and other weapons of mass destruction; (2) regulate missile technology to prevent the delivery of mass destruction weapons; (3) disband armed forces and other military institutions beyond what is necessary to maintain internal order; and (4) commit to a worldwide program of economic conversion that will guarantee jobs on the way to general and complete disarmament? Of course, it is common sense that we assess the merits and demerits of the principal arms control and arms reduction measures we have instituted since 1961 and that still are relevant as stabilizing and transitional options in the quest for peace in the 1990s;[29] likewise such initiatives as were recommended by former President Gorbachev on October 5, 1991 in response to President Bush's Oval Office address of September 27: proposals for deep cuts in strategic forces; the withdrawal of airborne tactical weapons along with ground-based and sea-based weapons; a moratorium on nuclear testing that would simultaneously conform to solemn commitments already made and facilitate a permanent comprehensive test ban; an end to the production of fissionable materials; and a global commitment to at least a no-first-use policy.[30] And it is appropriate, too, that we negotiate a 10- to 15-year timetable for these and kindred proposals that proceeds in stages rather than all at once — for example, a demonstration of solemn legal commitment on the part of all states to the rejection of all nuclear testing (maybe even the use or threat of use of nuclear weapons and other weapons of mass destruction) by, say, 1995, the fiftieth anniversary of Hiroshima-Nagasaki; and the abolition of all nuclear, chemical, bacteriological, and other weapons of mass destruction, as well as the abolition of the production of all fissile material, by the year 2000.

But surely it is unnecessary to delay taking the first critical steps on the grounds that we have yet to identify the process by which they may be realized. The McCloy-Zorin Agreement has signaled the principled way for us already: multilateral negotiations, an agreed sequence of programmatic stages, equal treatment, and effective interim coordinating and verification controls. We do not require yet another conference to determine the size and shape of the negotiating table. What we need is to reject politics as usual and to join with Bertrand Russell and Albert Einstein, remembering our humanity and forgetting the rest.[31]

V.

Thus, contrary to Gertrude Stein, there is a "there;" and, thanks to McCloy-Zorin, there is a way to get from here to "there." And to these ends, there is vast room for citizen initiative and resolve, both domestic and

international.

It is essential to bear in mind, however, that, on final analysis, it is not treaties and charters prescribing specific norms, institutions, and procedures that will guarantee an enduring condition of peace among nations. It is, rather, the ingrained assumptions and habits of men and women everywhere, above all men and women in government and other arenas of social responsibility, that ultimately will be determinative in this regard. And if an international security system that consciously abjures reliance upon nuclear weapons is to succeed, then these assumptions and habits will have to move beyond the present, singular focus on *national* security to the wider notion of *global* security, now made mandatory by economic and environmental strains that increasingly are transcending national frontiers and eroding the sacred boundaries of national sovereignty. The entire human race — not one territorial constituent of it — must become the conscious beneficiary of all alternative security initiatives. A sense of species solidarity and a concern for all peoples, not just the ruling elites, must underwrite all proposals for alternative security as we proceed, in the words of Jesuit philosopher Pierre Teilhard de Chardin, in "the planetization of Mankind."[32]

Have we the acumen and the political will to seize the day before it is too late? That is the real issue in these and all related discussions at the present time. If so, then a new international security is a serious possibility. If not — I leave that to your imagination. Bear in mind, however, as William Butler Yeats warned at an earlier critical time of world order challenge, that "there is no longer a virtuous nation, and [that] the best of us live by candlelight."[33]

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NOTES

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1. As quoted in Thomas L. Friedman, *Soviet Disarray: Noting Uncertainty in New Union, Washington Takes Cautious Path*, N.Y. Times, Dec. 10,1991, at A1, col. 4.

2. *See* the Joint Understanding Between the President of the United States and the President of the Russian Federation of June 16-17,1992, ARMS CONTROL TODAY 33 (June 1992). The recently signed START Treaty, or Treaty on the Reduction and Limitation of Strategic Offensive Arms, of July 31,1991, was to bring both sides down to below 9,000 strategic warheads.

3. *See* the Joint Understanding Between the President of the United States and the President of the Russian Federation of June 16-17, 1992, *supra* note 1, together with the letters to President Bush from Chairman of the Belarusan Parliament Stanislav Shuskevich, Ukrainian President Leonid Kravchuk, and Kazakh President Nursultan Nazarbayev of May 20,1992, May 7,1992, and May 19, 1992, respectively, ARMS CONTROL TODAY 35-36 (June 1992). According to news accounts, a total of 104 SS-18 and SS-24 ballistic missiles carrying 1,040 nuclear warheads were deployed in Kazakhstan as of February 1992, and 248 SS-24, SS-25, and SS-19 such missiles with 1,312 strategic warheads were deployed in Belarus and Ukraine as of that time. *See, e.g.*, R. Jeffrey Smith, *Russia To Be Sole Nuclear Republic; Other Ex-Soviet States Agree to Destruction of Strategic Missiles*, Wash. Post Feb. 6,1992, at §1, A

4. *See* Artide V of the Protocol to the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Reduction and Limitation of Strategic Offensive Arms of May 23,1992, ARMS CONTROL TODAY 34 (June 1992), together with the Written Statement by the Russian Site at the Signing of the Protocol to the START Treaty on 23 May 1992 in Lisbon, id at 36. The Treaty on the Non-Proliferation of Nuclear Weapons of July 1,1968 may be found at 21 UST 483, TIAS No. 6839, 729 UNTS 161, *reprinted in* 7 Int'l Legal Mats. 811(1968).

5. The number of military and civilian personnel employed in the former Soviet military-industrial complex is subject to wide estimation. According to Viktor N. Milchailov, Director of the nuclear military program of the former Soviet Union, roughly 100,000 persons were thus employed. *See* Thomas L Friedman, U.S. to *Offer Plan to Keep Scientists at Work in Russia*, N.Y. Times, Feb. 8, 1992, at §1, p. 1, col. 6. According to Robert M. Gates, Director of the U.S. Central Intelligence Agency, the number is closer to 900,000. *See* Elaine Sciolino, *Soviet Brain Drain Poses Atomic Risk U.S. Report Warns*, N.Y. Times, Jan. 1,1992, at §1, p. 1, col. 4.

6. Thus was President Yeltsin's proposal for a "zero alert" and a revival of the 1946 Baruch Plan dismissed as "not too much of a stretch" to the wholesale removal of the world's nuclear arsenals. *As quoted in* Michael Parks, *Russia Urges End of Nuclear Arms Alerts*, L A. Times, Feb. 13, 1992, at A10, col. 1. The 1946 Baruch Plan, named after its proponent, American financier and Presidential advisor Bernard Baruch,

called for a United Nations body with a monopoly on atomic weapons and nuclear power, a call that was then rejected by the Soviet Union.

7. *See* Patrick E. Tyler, *U.S. Strategy Plan Calls for Insuring No Rivals Develop*, N.Y. Times, Mar. 8, 1992, at A1, col. 6; *Excerpts from Pentagon's Plan: "Prevent Re-Emergence of a New Rival" id.* at A4, cols. 1-5. My point is not that the money (equal to US $1,650,437.37 for every day of every year since the birth of Jesus Christ) actually will be appropriated. It is, rather, that it takes a twisted mindset to dream up such schemes.

8. For a list of these agreements and arrangements, see *infra* note 29.

9. *See* ALTERNATIVE SECURITY: LIVING WITHOUT NUCLEAR DETERRENCE 78 (B. Weston ed. & contrib. 1990) (hereinafter "ALTERNATIVE SECURITY").

10. *See* Weston, *Law and Alternative Security: Toward a Just World Peace*, in ALTERNATIVE SECURITY, at 78. The ensuing discussion is abridged and revised from this essay. Readers wishing greater detail should consult the original essay and the larger collection from which it is derived. Such consultation is desirable because it will underscore the fact that there is no such thing as a strictly *legal* alternative or set of alternatives to nuclear deterrence. Legal initiatives are important, but only as part of a larger integrated plan.

11. It is true, of course, that not all legal scholars agree with this finding. *See, e.g.*, Almond, *Deterrence and A Policy-Oriented Perspective on the Legality of Nuclear Weapons*, in NUCLEAR WEAPONS AND LAW 75 (A. Miller & M. Feinreider eds. 1984); Moore, *Nuclear Weapons and the Law: Enhancing Strategic Stability*, *id* at 51; Reisman, *Deterrence and International Law*, *id.* at 129. *See also* Lisle, Remarks: Nuclear Weapons — *A Conservative Approach to Treaty Interpretation*, 9 BROOKLYN J. INT'L L. 275 (1983); Rostow, *Is There a Legal Basis for Nuclear Deterrence Theory and Policy?*, in LAWYERS AND THE NUCLEAR DEBATE — PROCEEDINGS OF THE CANADIAN CONFERENCE ON NUCLEAR WEAPONS AND THE LAW 175 (M. Cohen & M. Gouin eds. 1988). However, the preponderance of scholarly opinion on the use and threat of use of nuclear weapons clearly favors this view. *See, e.g.*, Weston, *Nuclear Weapons Versus International Law: A Contextual Reassessment*, 28 MCGILL L. J. 542 (1983). *See also* C. BUILDER & M. GRAUBARD, THE INTERNATIONAL LAW OF ARMED CONFLICT: IMPLICATIONS FOR THE CONCEPT OF ASSURED DESTRUCTION (Rand Publication Series R-28044 FF, 1982); F. KALSHOVEN, CONSTRAINTS ON THE WAGING OF WAR (1987); E. MEYROWITZ, PROHIBITION OF NUCLEAR WEAPONS: THE RELEVANCE OF INTERNATIONAL LAW (1990); B. RÖLING, THE IMPACT OF NUCLEAR WEAPONS ON INTERNATIONAL RELATIONS AND INTERNATIONAL LAW (Polemological Institute of the University Of Groningen, 1982); G. SCHWARZENBERGER, THE LEGALITY OF NUCLEAR WEAPONS (1958); N. SINGH, NUCLEAR WEAPONS AND INTERNATIONAL LAW (1959); J. SPAIGHT, THE ATOMIC PROBLEM (1948); C. WEERAMANTRY, NUCLEAR WEAPONS AND SCIENTIFIC RESPONSIBILITY (1987); Arbess, *The International Law of Armed Conflict in Light of Contemporary Deterrence Strategies: Empty Promises or Meaningful Restraint?*, 30 MCGILL L. J. 89 (1984); Boyle, *The Relevance of International Law to the "Paradox" of Nuclear Deterrence*, 80 NW. U. L. REV. 1407 (1986); Brownlie, *Some Legal Aspects of the Use of Nuclear Weapons*, 14 INT'L & COMP. L. Q. 437 (1965); Castrén, *The Illegality of Nuclear Weapons*, 3 U. TOL. L. REV. 89 (1971); Corwin, *The Legality of Nuclear Arms Under International Law*, 5 DICKINSON J. INT'L L. 271 (1987); Falk, Meyrowitz &

Sanderson, *Nuclear Weapons and International Law*, 20 INDIAN J. INT'L L. 541 (1980); Fried, *International Law Prohibiting the First Use of Nuclear Weapons: Existing Prohibitions in International Law*, 12 BULL. PEACE PROPOSALS 21 (1981); Fried, *The Nuclear Collision Course: Can International Law be of Help?*, 14 DEN J. INT'L L. & POL'Y 97 (1985); Fujita, *First Use of Nuclear Weapons: Nuclear Strategy vs. International Law*, 3 KANSAI U. REV. L. & POL. 57 (1982); Fujita, *The Pre-Atomic Law of War and its Applicability to Nuclear Warfare*, 6 KANSAI U. REV. L. & POL. 7 (1985); Fujita, *Status of Nuclear Weapons in International Law*, 7 KANSAI U. REV. L. & POL. 1 (1986); Kennedy, *A Critique of United States Nuclear Deterrence Theory*, 9 BROOKLYN J. INT'L L. 35 (1983); Lippman, *Nuclear Weapons and International Law: Towards a Declaration on the Prevention and Punishment of the Crime of Nuclear Humanicide*, 8 LOY. L. A. INT'L & COMP. L. ANN 183 (1986); McGrath, *Nuclear Weapons: The Crisis of Conscience*, 107 MIL. L. REV. 191 (1985); H. Meyrowitz, *Les juristes devant l'arme nucléaire*, 67 REV. GEN. INT'L PUB. 820 (1963); Nanda, *Nuclear Weapons and the Right to Peace Under International Law: A Fundamental Challenge*, 9 BROOKLYN J. INT'L L. 283 (1982); Pogany, *Nuclear Weapons and Self-Defense in International Law: An Emerging Standard for a Nuclear Age*, 59 N.Y.U. L. REV..187 (1984); Polebaum, *National Self-Defense in International Law: An Emerging Standard for a Nuclear Age*, 59 N.Y.U. L. REV. 187 (1984); Ragone, *The Applicability of Military Necessity in the Nuclear Age*, 16 N.Y.U. J. INT'L & POL. 701 (1984); Rosas, *Negative Security and Non-Use of Nuclear Weapons*, 25 GERMAN Y. B. INT'L L. 199 (1982); Rubin, *Nuclear Weapons and International Law*, 8 FLETCHER FORUM 45 (1984). For a useful overview, see E. Meyrowitz, *The Opinions of Legal Scholars on the Legal Status of Nuclear Weapons*, 24 STAN. J. INT'L L. 111 (1987).

12. Many of the ideas enumerated here are derived from Falk, *Toward a Legal Regime for Nuclear Weapons*, 28 MCGILL L. J. 519, 537-38 (1983).

13. *Supra* note 4.

14. Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems, May 26,1972, 23 UST 3435, TIAS No.7503, 944 UNTS 13, *reprinted in* 11 ILM 784 (1972).

15. Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods and Warfare, Feb. 8,1928, 26 UST 571, TIAS No. 8061, 94 LNTS 65.

16. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction, Apr. 10,1972, 26 UST 583, TIAS No. 8062.

17. A chemical weapons disarmament treaty was completed by 39 nations on September 3, 1992. The treaty is scheduled to be opened for signatures in early 1993. *See* Grier, Peter, "After a Decade of Talking, 39 Nations Finish Work on Chemical Weapons Treaty," *Christian Science Monitor*, September 2, 1992 and "Curbing Chemical Warfare," editorial in *Christian Science Monitor*, September 10, 1992.

18. The U.S. use of the United Nations during the Persian Gulf crisis of 1990-1991 reflected in my view a perversion of right process and was not genuinely multilateral. *See* Weston, *Security Council Resolution 678 and Persian Gulf Decision-Making: Precarious Legitimacy*, 85 Am. J. Int'l L. 516 (1991).

19. For the first two proposals enumerated here I am indebted in part to Arbess and Epstein, *Disarmament Role for the United Nations?*, 41 BULL. ATOMIC SCIENTISTS 26, 28 (May 1985).

20. Such an agency — an international satellite monitoring agency (ISMA) — was proposed by a special United Nations commission in 1982 to monitor arms control agreements and perform related other functions. While the plan was ultimately blocked by the superpowers, interest in variations on it have grown ever since.

21. To wit, accurate, target-seeking weapons launched from ground-based artillery systems or aircraft.

22. Several plans of this type were at one time suggested for the conventional defense of Western Europe.

23. *Supra note 14*.

24. The need for an international judicial body to try violations of international criminal law, either as a chamber of the International Court of Justice or as an independent entity, has been recognized for years. *See*, e.g., the Draft Statute for an International Criminal Court prepared under the auspices of the U.N. Commission on International Criminal Jurisdiction in 1953, UN GAOR, 9th Sess., Supp. No. 12, at Annex p. 23, UN Doc. A/2645 (1954).

25. *See* my essay cited in note 18, *supra*.

26. Some of the ideas enumerated here are derived from the *Report of the Independent Commission on Disarmament and Security Issues: Common Security — A Program for Disarmament*, also known as the "Palme Commission Report," U.N. Doc. A/CN.10/38 (1983).

27. The ideas enumerated here are derived in part from Sohn, *Peaceful Settlement of Disputes and International Security*, a "preliminary draft" of an unpublished manuscript submitted to the Independent Commission on World Security Alternatives.

28. "Joint Statement of Agreed Principles for Disarmament Negotiations," *U.S.-U.S.S.R Report to the General Assembly*, U.N. Doc. A/4879, *reprinted in* 45 DEP'T. STATE BULL. 589-90 (Oct. 9, 1961).

29. *See, e.g.*, the Antarctic Treaty, December 1,1959,12 UST 794, TIAS No. 4780, 402 UNTS 71; the Memorandum of Understanding Between the United States and the Union of Soviet Socialist Republics Regarding the Establishment of a Direct Communication Link ("the Hot Line Agreement"), June 20, 1963, 14 UST 825, TIAS No. 5362, 472 UNTS 163; the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water ("the Partial Test Ban Treaty"), August 5, 1963, 14 UST 1313, TIAS No. 5433, 480 UNTS 43; *reprinted in* 2 ILM 889 (1963); the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies ("the Outer Space Treaty"), January 27,1967,18 UST 2410, TIAS No. 6347, 610 UNTS 205, *reprinted in* 6 ILM 386 (1967); the Treaty for the Prohibition of

Nuclear Weapons in Latin America ("the Treaty of Tlatelolco"), February 14,1967, 634 UNTS 281, *reprinted in* 6 ILM 521 (1967); the Treaty on the Non-Proliferation of Nuclear Weapons ("the NPT"), *supra* note 4; the Treaty on the Prohibition of the Emplacement of Nuclear Weapons and Other Weapons of Mass Destruction on the Seabed and the Ocean Floor and in the Subsoil Thereof ("the Seabed Arms Control Treaty"), February 11,1971, 23 UST 701, TIAS No. 7337, 955 UNTS 115, *reprinted in* 10 ILM 146 (1971); the Agreement on Measures to Reduce the Risk of Outbreak of Nuclear War Between the United States and the Union of Soviet Socialist Republics ("the Accident Measures Agreement"), September 30,1971, 22 UST 1590, TIAS No. 7186, 807 UNTS 57, *reprinted in* 10 ILM 1173 (1971); the Agreement Between the United States of America and the Union of Soviet Socialist Republics on Measures to Improve the USA-USSR Direct Communications Link ("the Hot Line Modernization Agreement"), September 30,1971, 22 UST 1598, TIAS No. 7187, 806 UNTS 402, *reprinted in* 10 ILM 1174 (1971); the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, April 10,1972, 26 UST 583, TIAS No. 8062,1015 UNTS 163, *reprinted in* 11 ILM 310 (1972); the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Anti-Ballistic Missile Systems ("the ABM Treaty"), *supra* note 14; the Interim Agreement Between the United States of America and the Union of Soviet Socialist Republics on Certain Measures with Respect to the Limitation of Strategic Offensive Arms, May 26,1972, 23 UST 3462, TIAS No. 7504, 94 UNTS 3, *reprinted in* 11 ILM 791 (1972); the Declaration of Basic Principles of Relations Between the United States of America and the Union of Soviet Socialist Republics, May 29,1972, 66 DEP'T STATE BULL. 898 (1972); the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Underground Nuclear Weapon Tests, July 12,1974, 71 DEP'T STATE BULL. 217 (1974); the Limitations on Anti-Ballistic Missile Systems Treaty Protocol, July 3,1974, 27 UST 1645, TIAS No. 8276; the Joint Statement on the Limitation of Strategic Offensive Arms ("the Vladivostok Agreement"), April 29,1974, 70 DEP'T STATE BULL. 677 (1974); the Final Act of the Conference on Security and Cooperation in Europe ("the Helsinki Accords"), August 1,1975, DEP'T STATE PUB. No. 8826 (Gen. Foreign Pol'y Ser. 298), *reprinted in* 14 ILM 1292 (1975); and the Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Limitation of Strategic Offensive Arms and Protocol Thereto ("the SALT II Treaty"), June 18,1979, S. Exec. Doc. Y, 96th Cong, 1st Sess. 37 (1979); Agreement Governing the Activities of States on the Moon and Other Celestial Bodies ("the Moon Treaty"), December 5, 1979, UNG A. Res. 34/68 (XXXIV), 34 UN GAOR, Supp. (NO. 46) 77, UN Doc. A/34/664 Annexes (1979), *reprinted in* 18 ILM 1434 (1979); Treaty Between the United States of America and the Union of Soviet Socialist Republics on the Elimination of Their Intermediate-Range and Shorter-Range Missiles ("INF Treaty"), December 8,1987, DEP'T STATE PUB. No. 9555 (December 1987), *reprinted in* 27 ILM 90 (1988). All of the foregoing agreements are reprinted in whole or in part in *International Law and World Order: Desk Set of Basic Documents* (B. Weston ed., forthcoming from United Nations Publications in 1993); also in *Basic Documents in International Law and World Order* (R. Falk & A. D'Amato eds., 2nd ed. 1990).

30. *See* Serge Schmemann, *Gorbachev Matches U.S. on Nuclear Cuts and Goes Further on Strategic Warheads*, N.Y. Times, Oct. 6, 1991, §1, pt. 1, p. 1, col. 6.

31. The reference is to the Russell-Einstein Manifesto that appeared in the N.Y. Times on July 10, 1955. It was reprinted in leaflet form in the United States by the War Resisters' League and may also be found in EINSTEIN ON PEACE 632 (O. Nathan & H. Norden eds., 1968). Declared Russell and Einstein:

> There lies before us, if we choose, continual progress in happiness, knowledge and wisdom. Shall we, instead, choose death, because we cannot forget our quarrels? We appeal, as human beings: Remember your humanity and forget the rest. If you can do so, the way lies open to a new paradise; if you cannot, there lies before you the risk of universal death.

32. P. Teilhard de Chardin, FUTURE OF MAN 115 (Norman Denny transl. 1964).

33. THE LETTERS OF W. B. YEATS 691 (A. Wade ed. 1954).

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