

FORDHAM INTERNATIONAL LAW JOURNAL

VOLUME 45

MAY 2022

SPECIAL EDITION

PROCEEDINGS OF CONFERENCE

NUCLEAR WEAPONS AND INTERNATIONAL LAW 2020

NOVEMBER 12, 2020

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SPECIAL ONLINE EDITION

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NOTE FROM THE SENIOR ARTICLES EDITOR

When we learned of the November 12, 2020 program on Nuclear Weapons and International Law, sponsored by the International Section of the New York State Bar Association and co-sponsored by the Fordham Center on National Security and other leading groups, and reviewed the depth and scope of the conference, we immediately saw the imperative for this Special Online Edition.

The *Fordham International Law Journal* did not extensively edit the proceedings of the conference produced below, and there are no citations within it. Our goal was to reflect as accurately as possible the compelling discussions and presentations from this conference. Please refer to the Relevant Resources page below for more information on nuclear weapons and the law, as well as the speakers and organizations involved with this conference.

With thanks to Professor John D. Feerick, Dean Emeritus, Fordham Law School, and Professor Charles J. Moxley, Jr., we present this Special Edition, with the hope that it will contribute to critical thinking and action in this crucial legal area.

Alex Ryshina
Fordham University School of Law, Class of 2022
Senior Articles Editor
Fordham International Law Journal

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AGENDA

*The International Section of the New York State Bar Association
is proud to sponsor*

NUCLEAR WEAPONS AND INTERNATIONAL LAW

IN THE CONTEMPORARY ERA

Thursday, November 12, 2020

9:00 a.m. – 6:00 p.m. via Zoom

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Global Security Institute*

AGENDA

- 9:00 a.m. – 9:30 a.m. Introduction**
Prof. Charles J. Moxley, Jr., Professor (Adj.),
Fordham Law School; Chair, Moxley ADR LLC
- Prof. John D. Feerick**, Professor and Dean
Emeritus, Fordham Law School

Scott M. Karson, President, New York State Bar Association

Edward K. Lenci, Partner, Hinshaw & Culbertson LLP (NYC); Chair-Elect, International Section of the New York State Bar Association

Ariana N. Smith, Executive Director, Lawyers Committee on Nuclear Policy

Jonathan Granoff, President, Global Security Institute; Senior Advisor, Permanent Secretariat of the World Summits of Nobel Peace Laureates

9:30 a.m. – 10:50 a.m.

Panel 1: Overview: Nuclear Weapons Risks, Consequences and Responses

Addresses the facts, policies, and history as to nuclear weapons and the consequent risks.

MODERATOR:

Prof. Charles J. Moxley, Jr.

SPEAKERS:

Prof. Osamu Arakaki, Professor of Law, International Christian University, Japan

Hans M. Kristensen, Director, Nuclear Information Project, Federation of American Scientists

Prof. Scott Sagan, Caroline S.G. Munro Professor of Political Science, Stanford University, and Senior Fellow, Freeman Spogli Institute for International Studies

11:00 a.m. – 11:30 a.m.

Keynote Address

Izumi Nakamitsu, UN Under-Secretary-General and High Representative for Disarmament Affairs

Introduction by **Ariana N. Smith**

11:30 a.m. – 12:20 p.m.

Panel 2: The Role of the United Nations

Addresses the multi-faceted role of the United Nations in relation to nuclear weapons, including the Secretary-General's 2018 disarmament agenda, Securing Our Common Future; International Court of Justice cases; the 2017 adoption of the Treaty on the Prohibition of Nuclear Weapons; a 2018 comment of the UN Human Rights Committee; and functions of the UN General Assembly and the Conference on Disarmament.

MODERATOR:

Ariana N. Smith

PANEL:

Hon. Izumi Nakamitsu

Dr. John Burroughs, Senior Analyst, Lawyers Committee on Nuclear Policy

Allison Pytlak, Programme Manager, Reaching Critical Will, Women's International League for Peace and Freedom

AFTERNOON PROGRAM

Remarks

Patricia Lee Refo, President, American Bar Association

A Special Conversation on Responding to the Greatest Threats to Humanity

Hon. Jerry Brown, Former Governor, State of California; Executive Chairman, Bulletin of the Atomic Scientists, and Jonathan Granoff

1:20 p.m. – 2:40 p.m. Panel 3: The International Treaty Regime Applicable to Nuclear Weapons and Further Treaties That Have Been Proposed

Addresses treaties, norms, policies, and practices concerning nuclear weapons.

MODERATOR:

Jonathan Granoff

SPEAKERS:

Hon. Dr. Christopher Ashley Ford, U.S. Ambassador, Assistant Secretary for International Security and Nonproliferation, U.S. Department of State

Hon. Thomas Graham, Jr., Former Special Representative for Arms Control, Nonproliferation and Disarmament; Former General Counsel, Arms Control and Disarmament Agency

Dr. Gloria C. Duffy, President and CEO, The Commonwealth Club of California; former Deputy Assistant Secretary of Defense

2:50 p.m. – 4:10 p.m. Panel 4: International Law and Threat and Use of Nuclear Weapons

Addresses the legal status of use and threat of use of nuclear weapons under the international law of armed conflict (international humanitarian law) and the UN Charter, with reference to law of war manuals of the U.S. armed services, commentaries of the International Committee of the Red Cross, and other sources.

MODERATOR:

Dr. John Burroughs

PANEL:

Prof. David A. Koplow, Professor, Georgetown University Law Center; Former Special Counsel for Arms Control to the General Counsel of the U.S. Department of Defense

Kathleen Lawand, Strategic Adviser to Director of International Law and Policy, International Committee of the Red Cross (ICRC); Former Head of Arms Unit, ICRC

Prof. Charles J. Moxley, Jr.

4:10 p.m. – 6:00 p.m. Panel 5: Approaches for Advancing the Rule of Law and Morality as Concerns Nuclear Weapons
Addresses approaches for advancing the rule of law and morality as concerns nuclear weapons, including considerations as to litigation, defense of protesters, shareholders litigation, shareholders resolutions, FOIA requests, civic advocacy, universal jurisdiction, election of proactive prosecutors, civil engagement, the work of major faith groups, and other approaches.

MODERATOR:

Prof. Charles J. Moxley, Jr.

PANEL:

Laurie Ashton, Of Counsel, Keller Rohrback; Member of Legal Team for the Marshall Islands in Its Nuclear Disarmament Cases in the International Court of Justice; Counsel for Marshall Islands in Its Nuclear Disarmament Case in the Ninth Circuit Court of Appeals

Jacqueline Cabasso, Executive Director, Western States Legal Foundation; North American Coordinator, Mayors for Peace

Rev. Drew Christiansen, S.J., Ph. D., Distinguished Professor of Ethics and Human Development, Walsh School of Foreign Service, and Senior Fellow, Berkley Center for Religion, Peace and World Affairs, Georgetown University

Tom Z. Collina, Director of Policy, Ploughshares Fund, and Co-author, with William J. Perry, *The Button: The New Nuclear Arms Race and Presidential Power from Truman to Trump* (BenBella Books, 2020)

Audrey Kitagawa, Chair of the Board of Trustees of the Parliament of the World's Religions

INTRODUCTION

John D. Feerick

The *Fordham International Law Journal* has long enjoyed publishing articles about global peace. This Special Online Edition of the *Journal* will rank among its most important given the rising threat of nuclear weapons. This edition of the *Journal* is a transcript of the conference held by the International Section of the New York State Bar Association on November 12, 2020, titled “Nuclear Weapons and International Law 2020.” Charles Moxley, a lawyer who has taught a course on nuclear weapons at Fordham Law School since 2003 and authored a leading treatise on the subject, now in its second edition, played a major role in assembling the faculty and speakers for the Conference. The keynote speaker was Izumi Nakamitsu, UN Under-Secretary-General and High Representative for Disarmament Affairs. Jerry Brown, former Governor of California and Executive Chairman of the Bulletin of the Atomic Scientists, and Jonathan Granoff, President of the Global Security Institute, also engaged in a conversation on responding to this profound threat to humanity: nuclear weapons.

The importance of this subject matter has led Fordham University to commit itself to a working group of universities seeking nuclear arms control and abolition. Additionally, Fordham Law School has established a National Security Center under the leadership of Karen Greenberg.

The emphasis on the rule of law as an essential link in securing freedom resonates throughout the transcript, as do the potential threats that nuclear weapons pose to our existence as a civilization. The rising costs associated with nuclear weapons modernization diminishes the availability of funds to address the alarming poverty within nations and society at large. It also challenges nations to build safety nets in anticipation of having to respond to a nuclear attack. The Twenty Fifth Amendment of the US Constitution, a subject of my own background, was greatly influenced by such weaponry. On January 28, 1965, President Lyndon Johnson sent a message to Congress supporting such an

amendment, stating: "It is not necessary to conjure the nightmare of nuclear holocaust or other national catastrophe to identify these omissions as chasms of chaos into which normal human frailties might plunge us at any time." Former Senator Birch Bayh and Representative Emanuel Celler, key framers of the Amendment, spoke often of the nuclear threat. Indeed, some members of Congress wanted to see more detail concerning a nuclear war. Thanks to the *Fordham International Law Journal*, this publication provides an indispensable resource for considering the vital issues involved with the threat and use of nuclear weapons.

John D. Feerick
Professor and Dean Emeritus
Fordham Law School

INTRODUCTION

Charles J. Moxley, Jr.

On behalf of Jonathan Granoff, John Burroughs, Ed Lenci, and myself, as the organizers of the conference on Nuclear Weapons and International Law that is the subject of this Special Online Edition, I am delighted to offer this Introduction.

Nuclear weapons pose an existential threat to human survival. The United States and Russia alone have over 11,000 nuclear weapons, thousands of which are deployed, many on hair-trigger alert. This is enough to destroy the world many times over. Given the destructiveness of such weapons and the potential for nuclear winter, whereby huge volumes of smoke, dirt, and debris from nuclear detonations blot out the sun, destroying agriculture over wide expanses of the earth, even a limited nuclear war between India and Pakistan could cause *billions* of casualties.

Strategic policies for the use of nuclear weapons—deterrence, mutual assured destruction, extended deterrence, preemptive use, and all the rest—embody plans by the nine nuclear weapons states potentially to use nuclear weapons in the volatile circumstances of war where rationality and restraint would likely have been left behind.

Examples abound of circumstances in which the United States and the Soviet Union/Russia and other nuclear weapons states have come close to actually using nuclear weapons, either intentionally or based on human or equipment failure. As I write this, Ukraine is defending itself against Russia, and NATO forces are on alert. The ever-present risk of conflicts among states are immeasurably heightened when the states have nuclear weapons.

Nuclear weapons, like so many other things in contemporary life, are subject to computer controls. We are reminded daily of challenges to cyber security—the inevitable vulnerability of electronic systems to hacking, with the scope of such vulnerability only increasing as artificial intelligence, including autonomous weapons systems, are integrated into military planning.

Yet, the nuclear weapons regime is managed, maintained, and affirmatively espoused by many thoughtful and responsible civilian and military leaders, scientists, policy-makers, and others in the United States and throughout the world. How can all of this be? How can so many intelligent, knowledgeable, and, in many instances, well-intentioned leaders, not to mention huge numbers of people through whom they act, permit this self-inflicted existential threat to human life and civilization to continue?

And where is the public? Unlike during the Cold War, when public awareness and concern about the risks posed by nuclear weapons was acute, how have we come to the contemporary lack of focus or concern about these risks, even as the risks have greatly increased in today's multi-polar world without the controls the United States and the Soviet Union largely wielded on their aligned nations during the Cold War?

Other pressing issues—global warming, the pandemic, challenges to democracy, poverty, hunger, income inequality—proliferate, yet none of these challenges threatens the instantaneous destruction of human life. Nuclear weapons could instantly end civilization at any moment, whether by human intention or error or equipment failure.

Again, how can this be? Are we, given our inherent limitations as humans—vulnerability to tribalism, shortsightedness, aggressiveness, greed, irrationality, and all the rest—are we unable to address and overcome the risks posed by nuclear weapons?

Such questions were the focus of the extraordinary convocation of international, government, technical, policy, and legal experts on the subject of Nuclear Weapons and International Law that is the focus of this Special Edition of the *Fordham International Law Journal* (the "FILJ").

Books, articles, blogs, and conferences addressing technical and policy issues as to nuclear weapons abound. Some say that the policy of nuclear deterrence is a good thing and prevented a hot war between the United States and the Soviet Union during the Cold War, and continues to protect the world from large scale war. Others believe deterrence is a disaster waiting to happen—that it has been largely luck, so far, that has prevented nuclear war.

This Special Edition and the underlying conference address these issues as to perceived risks and, in the view of some, net advantages of nuclear weapons.

We start first with a systematic review of the facts as to nuclear weapons and the policies of nuclear weapons states concerning the possible use of such weapons. In this opening part of the discussion, we are examining the facts that are the basis for the legal analysis. Through presentations by leading experts in the field, we examine what nuclear weapons are and the likely consequences of their use.

Hans M. Kristensen, Director of the National Information Project, Federation of American Scientists, describes the basic facts and policies concerning nuclear weapons across the nine nuclear weapons states, describing how the weapons and related policies have evolved over the years. Stanford University Professor Scott Sagan describes the United States' nuclear weapons policies, strategies, and planning, and the heightened speed and accuracy of contemporary nuclear weapons. Professor Sagan describes the US military's focus, through JAG officers, on compliance with the law of armed conflict and addresses issues as to the compliance of nuclear weapons with that body of law. Professor Osamu Arakaki of the International Christian University in Japan describes the effects of the United States' nuclear bombings of Hiroshima and Nagasaki, describing those effects as they continue in the population even to contemporary times.

Hon. Izumi Nakamitsu, United Nations Under-Secretary-General and High Representative for Disarmament Affairs next provides the Keynote Address, describing initiatives by the United Nations to address nuclear weapons risks. High Representative Nakamitsu describes policy and legal imperatives that require the world and individual states to take steps to address such risks. Ms. Nakamitsu particularly emphasizes the importance of law in addressing risks posed by nuclear weapons.

Dr. John Burroughs, Senior Analyst for the Lawyers Committee on Nuclear Policy ("LCNP"), and Allison Pytlak, Programme Manager of Reaching Critical Will, Women's International League for Peace and Freedom, in a discussion moderated by LCNP Executive Director Ariana M. Smith, discuss with High Representative Nakamitsu efforts by the United Nations

and various states and non-governmental organizations (NGOs) to address risks posed by nuclear weapons.

Hon. Jerry Brown, Former California Governor and now Executive Chairman of the Bulletin of the Atomic Scientists, in dialogue with Jonathan Granoff, President, Global Security Institute, describes the human imperative that we address the risks posed by nuclear weapons and suggests ways in which we can do so. Governor Brown and Jonathan Granoff provide a sense of hope that we are capable of addressing—and overcoming—these risks.

We next look at efforts by the international community over the years to enter into international treaties to address nuclear weapons risks, including through a wide range of arms control treaties and related initiatives, and at the approach of the United States as to such matters. Dr. Christopher Ashley Ford, U.S. Ambassador, Assistant Secretary of State for International Security and Non-Proliferation, describes what he sees as a wide range of challenges to our security that we face in the world, including particularly from Russia and China, and expresses skepticism that talk of banning nuclear weapons is the solution. Dr. Ford provides his perspective that a world in which nuclear weapons had been banned would not necessarily be safer than the contemporary nuclear weapons world. He further describes ways in which he believes the current situation as to nuclear weapons, particularly as concerns Russia, could be improved.

Dr. Gloria C. Duffy, former U.S. Deputy Assistant Secretary of Defense, elaborates on efforts by the United States to address concerns and risks as to nuclear weapons. Dr. Duffy describes numerous extraordinary efforts the United States engaged in with great success with the successors to the Soviet Union, dismantling thousands of nuclear weapons and other weapons of mass destruction from the former Soviet Union. Dr. Duffy further describes fascinating success the United States has had with dispute resolution approaches built into arms control agreements to address concerns as to compliance.

Hon. Thomas Graham, Jr., former U.S. Special Representative for Arms Control, Non-Proliferation and Disarmament; former General Counsel, Arms Control and Disarmament Agency, describes a wide range of arms control and other treaties to which the United States is party and their role in addressing nuclear

weapons risks, with particular emphasis on the importance of the Nuclear Nonproliferation Treaty (“NPT”). Ambassador describes numerous additional steps that, in his view, would be helpful in this area and areas in which we have been backtracking and need re-engagement.

Having examined facts and policies concerning nuclear weapons, the UN perspective, and the international treaty regime applicable to nuclear weapons, we now turn to the second overall focus of this Special Edition and of the conference: Does there exist a body of international law that governs the threat and use of nuclear weapons? If so, what is that law? Where does it come from? Is it recognized by the United States and other nuclear weapons states? Does it really constitute law?

Georgetown Law Professor David A. Koplow, Former Special Counsel for Arms Control to the General Counsel of the U.S. Department of Defense, describes the current state of this body of law from the perspective of the ICJ’s 1996 *Nuclear Weapons Advisory Opinion*. He elaborates on the ICJ’s finding that nuclear weapons are scarcely reconcilable with the fundamental principles of international humanitarian law, but criticizes the court for failing to come to grips with the application of such law to low-yield nuclear weapons and to potential uses of nuclear weapons by a state in extreme circumstances of self-defense.

Kathleen Lawand, Strategic Adviser to Director of International Law and Policy of the International Committee of the Red Cross (ICRC), describes the extensive protection international humanitarian law provides to civilians, combatants, and the environment, grounding her discussion in ICRC’s numerous studies and analyses of the matter. Ms. Lawand describes the continuing work the ICRC is doing now, even some seventy-five years after the bombings of Hiroshima and Nagasaki, caring for survivors of those attacks still suffering from their effects. Ms. Lawand further provides her view as to the significance of the 2017 Treaty on the Prohibition of Nuclear Weapons.

As a member of this panel, I provide a broad description of international humanitarian law applicable to the threat and use of nuclear weapons, focusing on such rules as those of distinction, proportionality, and necessity, and the corollary requirement of controllability and the rule of precaution. The discussion also extends to the area of risk analysis—rules and principles of

international law that set limits on the lawfulness of the imposition of risk on others through the threat and use of nuclear weapons. I point out that for the restraints set by international law on nuclear weapons to be meaningful, they need to be imposed in advance, before such weapons are used—and hence need to be imposed in light of the risk that any particular threat or use of nuclear weapons would potentially cause unlawful effects.

The discussion then turns to the question: What is the potential legal jeopardy to nuclear weapons states and individuals through whom they act, if they fail to maintain adequate security over their nuclear weapons, potentially causing unintended consequences, whether because of human or equipment error or terrorists or other bad actors getting access to the weapons? This issue is seen as a significant one, in light of the many known instances in which the United States, the Soviet Union/Russia, and other nuclear weapons states have come close to actually using nuclear weapons based upon mistakes as to what appear to be incoming nuclear strikes or upon other human or equipment error.

Dr. John Burroughs moderates this panel, further providing his own perspectives on requirements of international law that apply to the threat and use of nuclear weapons.

Having seen that there is, indeed, a robust body of international law that governs the lawfulness of the threat and use of nuclear weapons and that this body of law is recognized by the United States and other nuclear weapons states, we now come to the inevitable “so what” point. What difference does it make? Is there any way to obtain the enforcement of international law in this regard? Does the law in this area make any difference?

This is the focus of the next and last panel of the day, a panel made up of individuals who have made considerable efforts over many years to address nuclear weapons risks through litigation, politics, lobbying, civil disobedience, writing, lecturing, and preaching.

California-based attorney Laurie Ashton describes a wide range of potential cases that can be brought in domestic courts around the world and in international courts. Ms. Ashton recently served as one of the attorneys for the Marshall Islands in cases it brought in US federal court and in the International Court of Justice, alleging non-compliance by the United States and other

nuclear weapons states under the NPT, and other requirements of international law to negotiate nuclear disarmament.

Jacqueline Cabasso, Executive Director of the Western States Legal Foundation, describes her decades of experience raising nuclear weapons issues in the courts, through public interest groups, and in the streets, and the effectiveness of such approaches.

Georgetown Professor Rev. Drew Christianen, S.J., describes his extensive experience addressing nuclear weapons and related issues domestically and internationally. He describes efforts by religious groups, including the Catholic Church, and leading universities, to raise public consciousness in the area.

Tom Z. Collina, Director of Policy at the Ploughshares Fund and co-author of a leading book in the field, addresses prospects of advancing concerns as to nuclear weapons through political initiatives and governmental action, including within the Biden Administration.

Audrey Kitagawa, Chair of the Board of Trustees of the Parliament of the World's Religions, describes efforts by various religious groups throughout the world to address concerns as to nuclear weapons and the human imperative that such efforts continue and build.

There ensues a broad discussion among members of the panel and other participants as to whether, and the extent to which, international law has the potential to enable the world to effectively address and curtail risks posed by nuclear weapons.

This question is the central focus of this *FILJ* Special Edition: What is the role of law in addressing the existential risks nuclear weapons pose to human life and civilization? Might law be the way out? This Special Edition provides all of us with a basis to evaluate these questions and consider steps forward.

Charles J. Moxley, Jr.
Professor (Adj.)
Fordham Law School

INTRODUCTION

*Drew Christiansen, S.J., Ph.D.**

As I write, Russian Federation President Vladimir Putin has launched an aggressive war against Ukraine and threatened to use Russia's nuclear arsenal against any nation that ventures to help the Ukrainians defend their homeland. The threat is ominous, for it breaks the post-WWII nuclear taboo. Mr. Putin seems unhinged, deluded by his own lies about Russo-Ukrainian history and intent on the violent imposition of a revanchist Russian empire on his neighbors.

In the wake of the invasion and Mr. Putin's escalatory February 27 order placing his nuclear forces on alert, all bets are off on the renewal of nuclear arms control initiated last year with the extension of the New START Treaty. Already, following Putin's nuclear saber rattling, President Joe Biden announced on February 25 the United States' withdrawal from strategic stability talks intended to build on the New START renewal. He has wisely chosen, however, not to escalate in response to the February 27 Russian nuclear alert by placing US forces on similar standing.

INTERNATIONAL LAW, CIVIC AND RELIGIOUS ACTIVISM:

The 2020 NYSB Conference

The special 2020 seminar of the New York State Bar on law, nuclear arms control, and disarmament explored the web of laws of armed conflict, international humanitarian law, and arms control treaties that already (attempt to) constrain the proliferation and use of nuclear weapons. It also explored the uses of law by the victims of nuclear explosions and anti-nuclear activists to seek redress and to promote the elimination of nuclear weapons.

* Drew Christiansen, SJ is Distinguished Professor of Ethics and Human Development at Georgetown University and a senior fellow with the Berkley Center for Religion, Peace and World Affairs.

While earlier instruments like the Non-Proliferation Treaty was the work of diplomats and technical experts, in 2017 the collaboration of Nonnuclear Weapon States, International Humanitarian Lawyers, Civil Society and religious activists realized the most recent disarmament tool—the Treaty on Prohibition of Nuclear Weapons (“TPNW”). This collaboration was the fruit of a little-noticed advance in the functioning of UN diplomacy, whereby the UN General Assembly mandated a conference that, in turn, drafted and adopted the TPNW. In recent decades, “conference diplomacy” resulting in arms control treaties has contributed major advances in arms-control and human rights law, of which the TPNW is the latest and arguably the most significant.

Izumi Nakamitsu, the UN Under-Secretary-General and High Representative for Disarmament Affairs, explains in her remarks the roots of the nuclear disarmament regime in international law. She focused particularly on the NPT. She notes, however, the legal gap between the complete prohibition of other weapons of mass destruction, biological and chemical weapons, and the lagging movement toward total elimination of nuclear weapons. She observes, “There is still a considerable way to go.”

My colleague from the Georgetown University Law Center, David Koplow, focuses on another significant legal text, the 1996 advisory opinion of the International Court of Justice (“ICJ”). Professor Koplow observes, “The International Court of Justice is entitled to great deference and respect for the work they’ve done in this matter. Secondly, this decision is maddeningly incomplete, incoherent, internally contradictory, and confounding for further analysis.”

Particularly problematic for me as an ethicist is the ICJ’s determination that “there might be some scenarios in which the threat or use of nuclear weapons could be lawful despite the unusual effects and power that the weapons might have.” This exception is part of “the legal gap” the TPNW attempts to close. As Koplow concludes, rather than making exceptions for possible uses of nuclear weapons, “[w]e should seek to make the barriers against any use of any nuclear weapons as high as possible to preclude any possibility of any use of nuclear weapons.”

One of the distinctive contributions of the 2020 New York State Bar conference was an exposition of the ways activists have

utilized international law, including the ICJ opinion, in redressing the harms done by the use and development of nuclear weapons and in advancing the cause of disarmament. Laurie Ashton, a California attorney, and Jackie Cabasso of the Western States Legal Foundation provide a historical view of the effectiveness of legal remedies in anti-nuclear activism. While nuclear weapons states have not participated in multilateral nuclear disarmament negotiations since the 1990s, Ms. Ashton expresses the hope that “there will be a return to disarmament diplomacy. That’s because there’s no avoiding that nuclear weapons pose a threat to every nation and person on earth, and control and elimination of the weapons is necessary to ending that threat.”

From a 35-year-long career of anti-nuclear activism, Jackie Cabasso explains, “law is integral and . . . litigation and other forms of legal work and legal advocacy are most effective when coupled with a vibrant social movement that can help amplify the messaging.” Looking to the future, Cabasso urges folding nuclear disarmament into a multi-cause “multi-generational, multiracial, international moral fusion movement.”

AFTER UKRAINE

In view of Russia’s serial aggression against other former Soviet states, and what those attacks reveal about character of the anxious and aggressive tyrant who is waging a war of imperial conquest against Ukraine, two issues come to the forefront for legal consideration: (1) ending sole authority over the use of nuclear weapons, and (2) solidifying measures for nuclear abolition.

ENDING SOLE AUTHORITY

After Ukraine can we any longer have confidence at all that an autocrat who has attacked or supported separatist movements in four independent former Soviet states (Georgia, Azerbaijan, and Moldova as well as Ukraine) will restrain himself from initiating nuclear war? Can we any longer suppose that he is the “rational actor” conjured by game-theorists, who will be deterred by the threat of an overwhelming nuclear reprisal? The Russo-Ukraine War should force western arms controllers to abandon the notion of the “rational actor” as a dangerous academic fiction no longer applicable when faced with an isolated, irascible dictator.

If it was necessary in the United States under President Trump to reconsider sole authority for launching nuclear weapons, as Secretary Perry and Tom Collina proposed in their book, *The Button: The New Nuclear Arms Race and Presidential Authority from Truman to Trump*, how much more necessary is it with war-mongering autocrats like Mr. Putin or Kim Jong Un?

In the United States and other nuclear-armed electoral democracies, a first step will be eliminating sole authority along the lines Collina draws in his remarks. While even the Soviets seemed to have set up multiple key-turners in their nuclear command systems to prevent rogue launchings, we cannot reasonably expect that formal checks-and-balances in dictatorial regimes like Putin's Russia. During the Cold War, noncompliant Soviet launch officers like Stanislas Petrov and Vasili Arkhipov "saved the world" from nuclear annihilation. Russia's invasion of Ukraine, Putin's threat to employ nuclear weapons, and his distorted projection of Ukraine as a nuclear threat are all the more disturbing because Ukraine surrendered 1,400 warheads to Russia in 1994 in return for guarantees of Ukrainian sovereignty and territorial integrity.

It is worth noting that Ukraine is in this parlous situation, in part because in 2014, at the time of the seizure of Crimea, Luhansk, and Donetsk, the Obama administration in the United States and the Cameron government in the United Kingdom failed to vigorously pursue their countries' commitments under the 1994 Budapest Memorandum. That agreement committed the two countries, along with Russia, to stand by a nuclear-disarmed Ukraine if another state violated its sovereignty and integrity.

THE NECESSITY OF ABOLITION

After Ukraine, the cause of nuclear abolition has become an urgent priority for the international community. Under present conditions, abolition looks more necessary than ever. Following the judgments of George Schultz and his colleagues—William Perry, Henry Kissinger, and Sam Nunn—in favor of eliminating nuclear weapons, and more recently Pope Francis with his condemnation of the possession of nuclear weapons even for deterrence purposes, elimination of nuclear weapons makes more and more sense as a goal of international policy.

Regrettably, the invasion of Ukraine, following the failure of the Budapest Memorandum, also demonstrates the inherent instability of the Non-Proliferation Treaty as a bargain between nuclear and nonnuclear states. It has dramatically exposed the vulnerability of nonnuclear states to those that are nuclear-armed; and it has exposed the heightened potential to raise incentives for nuclear proliferation by aspirant nonnuclear states who fear the power of nuclear powers in their neighborhoods.

Putin's nuclear threats also aggravate the disincentives for nuclear powers to advance their own disarmament. In addition, Mr. Putin's nuclear threats highlight how conflicts between a nuclear power and a nonnuclear one may lead to confrontation between nuclear-armed states and alliances. Furthermore, under Russian nuclear doctrine, which permits the use of tactical nuclear weapons in the face of a significant military setback, the risk of the use of so-called low-yield nukes in Ukraine or neighboring NATO states aiding Ukraine also seems more likely.

NPT AND TPNW

Following the invasion of Ukraine, the upcoming NPT Review Conference, now scheduled for August and already fraught with knotty problems, will be all the more unlikely to find consensus. In particular, chances for making progress on commitments to disarmament under Article VI, a top priority for disarmament advocates, appears to have been greatly reduced by the Ukraine invasion. More worrisome still is the prospect that dissension between nuclear and nonnuclear states may lead to the dissolution of the treaty as a grand bargain between weapons-possessing and non-possessing states. The same consolidation of international opinion the Ukrainian crisis has promoted in NATO and the United Nations may also take place among the NPT's nonnuclear state parties. If the NPT fails because of the inbuilt inequality of states and the proven vulnerability of nonnuclear states to nuclear powers, then reasonableness of abolition may grow more evident to many, and the TPNW may become the primary international instrument for disarmament. Under such conditions, the alliance between nonnuclear states, civil society, and religion that brought the TPNW into existence will become more relevant than ever. In the interim, their goal should be to accelerate ratification among state signatories.

Though arms control is unimaginable without a defeated or exhausted Russia, or a deposed Putin, restoration of the Intermediate-Range Nuclear Forces (INF) Treaty and Treaty on Conventional Armed Forces in Europe (CFE) would be necessary interim steps to restoring nuclear sanity in Europe, but only if there is firm, measurable determination to make progress toward abolition. These and other interim measures ought to be part of a long-term program of abolition.

RENEWED MOMENTUM

Reflecting back on Collina's hopes for the Biden Administration, the world is grateful for President Biden's renewal of New START and the promise to undertake strategic stability talks with Russia—a commitment from which he withdrew after the invasion of Ukraine. In the face of Mr. Putin's nuclear saber rattling, the US president has also demonstrated nuclear sanity, refusing to escalate the US nuclear stance in response to Putin's putting his nuclear forces on alert. At the same time, the future of US nuclear policy is unclear. The administration has yet to publish its Nuclear Posture Review, and the Ukraine crisis makes any shift toward disarmament much harder. Even low-hanging fruit, like eliminating the land-leg of the US triad, seems out of reach. Likewise, moving other nuclear powers and allies toward further disarmament has grown correspondingly more difficult. For those reasons, the kind of collaboration between non-nuclear states, civil society, and religion that resulted in the TPNW is all the more necessary.

TWO PRACTICAL INITIATIVES

In a practical fruit of the 2020 conference, thanks to Charlie Moxley and Dean John Feerick, Fordham University has joined the Catholic Peacebuilding Network's Project on Re-engaging the Catholic Community in Nuclear Disarmament, under the leadership of David Gibson and Fr. Tom Massaro, S. J., for which CPN is very grateful. A major part of that engagement is the training in online seminars of a new generation of arms controllers from across the world. Participants include students and faculty from East and Southeast Asia, Oceania and Africa as well as from Europe and North America.

Under the pall the Ukraine invasion has placed on nuclear disarmament, the alliance between civil society, religion, and humanitarian law is key to propelling the world to nuclear abolition.

In January 2023, Georgetown University Press will publish *Forbidden: Receiving and Implementing Pope Francis' Condemnation of Nuclear Weapons*. Intended to make the papal teaching "church-wide and parish-deep," the book contains contributions by moral theologians, political scientists, professors of military science, veteran arms controllers, lawmakers, international lawyers and others. It documents the evolution of church teaching from conditioned acceptance of deterrence under Pope Saint John Paul II to condemnation of the possession and threat to use (deterrence) by Pope Francis.

More importantly, *Forbidden* provides multiple approaches to those in the nuclear establishment for responding conscientiously to Pope Francis' condemnation. It also presents resources for a range of pastoral workers, from bishops to catechists, to share today's church teaching and to assist their congregations and individual men and women of faith in discerning their duties toward nuclear disarmament. It also offers suggestions for Catholic lay movements to mobilize on behalf of nuclear abolition.

In his encyclical letter, *Fratelli Tutti* ("Brothers and Sisters All"), Pope Francis made the case for global governance in response to the multiple world-threatening problems we now face from climate change to the pandemic. Of nuclear weapons, he wrote:

International peace and stability cannot be based on a false sense of security, on the threat of mutual destruction or total annihilation, or on simply maintaining a balance of power . . . In this context, the ultimate goal of the total elimination of nuclear weapons becomes both a challenge and a moral and humanitarian imperative

Forbidden is a contribution to the Catholic response to that challenge. It is an array of moral and pastoral strategies for meeting the imperative of abolition. My hope is that it will make the Catholic participation in the alliance between law, civil society, and religion a robust one in the years ahead.

IN MEMORIAM

Just days after Rev. Drew Christiansen wrote his Introduction to this Special Edition, he passed away, after a lifetime of inspiring and leading impactful efforts towards nuclear disarmament, non-violence, and just peacemaking. Fr. Drew's particularized alarm about the seriousness of the challenges to human life and civilization we face today with the invasion of Ukraine are a wake-up call, if one is needed, as to the urgency of our making progress towards nuclear disarmament and abolition. His belief that we can build on the Treaty on the Prohibition of Nuclear Weapons (TPNW) and reinvigorate the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) inspires confidence that we can find ways forward to meet the existential challenges we face.

Fr. Christiansen, as a professor at Georgetown's School of Foreign Service and in other senior positions at Georgetown University and previously at Notre Dame and its Kroc Institute of International Peace Studies, as a founder of the Catholic Peacebuilding Network, as a consultant to the Vatican on nuclear weapons issues, and as a prolific author and editor will be long remembered by those who had the privilege of knowing and working with him. He personified commitment to the dignity of human life and values of international law and a responsible and nourishing international order. We can be inspired by Fr. Drew's memory as we try to contribute to the goals of nuclear disarmament, non-violence, and just peacemaking that inspired his life and work.

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