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Taking the Law Seriously: The Imperative Need for a Nuclear Weapons Convention

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Abstract

Jonathan Swift famously said, "Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through." Swift was no doubt referring to the propensity of the law to shrink from prosecuting the lords of the realm, while going vigorously after smaller fry. But his aphorism applies equally to issues: the more portentous the issue, the less likely it is to yield to legal restraints. This is evidenced by such lawless pronouncements as "international law is not a suicide pact" or, more recently, "I believe that all nations-strong and weak alike-must adhere to standards that govern the use of force. I-like any head of state-reserve the right to act unilaterally if necessary to defend my nation." It follows that a compilation of a large volume of laws, treaties, regulations, and resolutions, no matter how thorough and exhaustive, from which the illegality of the threat and use of nuclear weapons can be deduced, will not necessarily bring about a nuclear-weapons-free world. Indeed, the main article recognizes this dilemma by describing the negative position of the United States, which may be characterized as "desperately seeking Lotus." What is needed, therefore, is a clear, absolute, and enforceable mandate, akin to the biological and chemical weapons conventions. It is this logic that has led to movement for a nuclear weapons convention. This Essay will briefly describe the movement for a model nuclear-weapons convention ("MNWC" or "Convention") in Part I and outline its contents and discuss some issues that it raises in Part II.

TAKING THE LAW SERIOUSLY: THE IMPERATIVE NEED FOR A NUCLEAR WEAPONS CONVENTION

*Peter Weiss **

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INTRODUCTION: WHY A NUCLEAR WEAPONS CONVENTION?

The main article in this symposium¹ makes a strong case for the illegality of nuclear weapons under international humanitarian law and the rules governing the conduct of the armed forces of the United States. Indeed, one may say that the case is compelling, but then the question arises, whom does it compel? Evidently not the governments of the five “official” nuclear weapons powers—China, France, Russia, the United Kingdom, and the United States—nor the four “unofficial” ones—India, Israel, Pakistan, and North Korea, not to mention

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1. Charles J. Moxley Jr., John Burroughs & Jonathan Granoff, *Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty*, 34 *FORDHAM INT’L L.J.* 595 (2011).

others that may be working on acquiring or developing nuclear weapons (e.g., Iran).²

Jonathan Swift famously said, “Laws are like cobwebs, which may catch small flies, but let wasps and hornets break through.”³ Swift was no doubt referring to the propensity of the law to shrink from prosecuting the lords of the realm, while going vigorously after smaller fry. But his aphorism applies equally to issues: the more portentous the issue, the less likely it is to yield to legal restraints. This is evidenced by such lawless pronouncements as “international law is not a suicide pact”⁴ or, more recently, “I believe that all nations—strong and weak alike—must adhere to standards that govern the use of force. I—like any head of state—reserve the right to act unilaterally if necessary to defend my nation.”⁵ It follows that a compilation of a large volume of laws, treaties, regulations, and resolutions, no matter how thorough and exhaustive, from which the illegality of the threat and use of nuclear weapons can be deduced, will not necessarily bring about a nuclear-weapons-free world. Indeed, the main article recognizes this dilemma by describing the negative position of the United States, which may be characterized as “desperately seeking *Lotus*.”⁶ What is needed, therefore, is a clear, absolute, and enforceable mandate, akin to the biological⁷ and chemical⁸ weapons conventions. It is this logic

2. *Nuclear Weapons: Who Has What at a Glance*, ARMS CONTROL ASSOC., <http://www.armscontrol.org/factsheets/Nuclearweaponswhohaswhat> (last visited Jan. 16, 2010).

3. JOHN BARTLETT, *FAMILIAR QUOTATIONS: A COLLECTION OF PASSAGES, PHRASES AND PROVERBS TRACED TO THEIR SOURCES IN ANCIENT AND MODERN LITERATURE* 338b (Emily Morison Black ed., Little, Brown and Co. 1968) (1882).

4. JEANE J. KIRKPATRICK, *1 LEGITIMACY AND FORCE: POLITICAL AND MORAL DIMENSIONS* 429 (1988). Kirkpatrick was the US Ambassador to the United Nations from 1981 to 1985. *Id.* at xv.

5. Barack Obama, U.S. President, Nobel Lecture (Dec. 10, 2009) (transcript available at http://nobelprize.org/nobel_prizes/peace/laureates/2009/obamalecture_en.html). In accordance with current US policy, the President was presumably also referring to preemptive war, which is of highly doubtful legality under international law.

6. The *Lotus* case is a much cited and much criticized decision, holding that “[t]he rules of law binding upon States . . . emanate from their own free will as expressed in conventions or by usages generally accepted as expressing principles of law.” S.S. “*Lotus*” (Fr. v. Turk.) 1927 P.C.I.J. (ser. A) No. 10, at 18 (Sept. 7) (emphasis added).

7. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, Apr. 10, 1972, 26 U.S.T. 583, 1015 U.N.T.S. 163.

that has led to movement for a nuclear weapons convention. This Essay will briefly describe the movement for a model nuclear-weapons convention (“MNWC” or “Convention”) in Part I and outline its contents and discuss some issues that it raises in Part II.

I. A BRIEF HISTORY OF THE MOVEMENT FOR A NUCLEAR WEAPONS CONVENTION

In 1996, prompted by the International Court of Justice’s advisory opinion in *Legality of Threat or Use of Nuclear Weapons*,⁹ the Lawyers Committee on Nuclear Policy (“LCNP”),¹⁰ in collaboration with the International Association of Lawyers against Nuclear Arms (“IALANA”),¹¹ International Physicians for the Prevention of Nuclear War (“IPPNW”),¹² and the International Network of Engineers and Scientists against Proliferation (“INESAP”)¹³ convened a working group charged with drafting a Model Nuclear Weapons Convention (“MNWC”). The lawyers, doctors, scientists, and others comprising the group met repeatedly over a period of several months. Their purpose was not to produce a document that could per se become a treaty, but to demonstrate that, despite the complexity of the subject, a treaty was feasible. Hence the discussions were not simply focused on optimal outcomes, but included sometimes heated game playing between advocates and others taking the roles of skeptics and naysayers.

The working group released the MNWC in April 1997 and, at the request of Costa Rica, it became United Nations (“UN”) Document A/C.1/52/7 and was made available to all United

8. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Jan. 13, 1993, S. Treaty Doc. No. 103-21 (1993), 1974 U.N.T.S. 45.

9. *Legality of Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶ 103 (July 8).

10. THE LAWYERS COMMITTEE ON NUCLEAR POLICY INC., <http://www.lcnp.org> (last visited Jan. 26, 2011).

11. THE INTERNATIONAL ASSOCIATION OF LAWYERS AGAINST NUCLEAR ARMS, <http://www.ialana.net> (last visited Jan. 26, 2011).

12. INTERNATIONAL PHYSICIANS FOR THE PREVENTION OF NUCLEAR WAR, <http://www.ippnw.org> (last visited Jan. 26, 2011).

13. INTERNATIONAL NETWORK OF ENGINEERS AND SCIENTISTS AGAINST PROLIFERATION, <http://www.inesap.org> (last visited Jan. 26, 2011).

Nations (“UN”) members in the six official language of the UN.¹⁴ It stirred a great deal of interest, not only among UN member countries, but also throughout civil society. From that point onward it generated a constant and swelling flow of calls for the enactment of a nuclear weapons convention from government and military officials (mostly retired),¹⁵ diplomats,¹⁶ academics, Nobel laureates,¹⁷ mayors,¹⁸ parliamentarians,¹⁹ and civil society organizations.²⁰ UN Secretary-General Ban Ki-moon endorsed

14. Chargé d'affaires a.i. of the Permanent Mission of Costa Rica to the U.N., Letter dated Oct. 31, 1997 from the Chargé d'affaires a.i. of the Permanent Mission of Costa Rica to the United Nations addressed to the Secretary-General, U.N. Doc. A/C.1/52/7 (Nov. 17, 1997).

15. Many former high-level governmental officials and military officers are supporters of Global Zero, which calls for achievement of a global agreement on elimination of nuclear weapons. See *Who Is for Zero*, GLOBAL ZERO, <http://www.globalzero.org/en/who> (last visited Jan. 26, 2011). For an additional example, see *Statement by Civil Leaders Calling for Negotiations on the Elimination of Nuclear Weapons*, PARLIAMENTARIANS FOR NUCLEAR NON-PROLIFERATION AND DISARMAMENT (Aug. 6, 1998), <http://www.gsinsitute.org/pnnd/CivilLeadersStatement.htm> (including Jimmy Carter, Mikhail Gorbachev, Admiral Noel Gayler, and Oscar Arias as signatories).

16. Such as UN officials, Sergio Duarte, UN High Representative on Disarmament, and Romeo Dallaire, former Commander of UN Forces in Rwanda. See Marian Hobbs et al., *Parliamentarians and a Nuclear Weapons Convention*, PNND NOTES (Parliamentarians for Nuclear Non-Proliferation and Disarmament, Wellington, New Zealand) 2008, at 13, 14, available at <http://www.gsinsitute.org/pnnd/pubs/PNNDCoPresNWC.pdf>.

17. For a statement of Nobel peace laureates supporting negotiation of a convention, see *Breaking Down Walls for a World with Peace and Justice, Summit Final Statement*, WORLD SUMMIT OF NOBEL PEACE LAUREATES (Nov. 11, 2009), <http://www.nobelforpeace-summits.org/final-conference-statement-10th-world-summit-2>.

18. For example, Tadatoshi Akiba, Mayor of Hiroshima, Japan and President of Mayors for Peace. Mayors for Peace is an association of more than 4000 cities around the world that calls for the abolition of nuclear weapons through a global agreement. See MAYORS FOR PEACE, <http://www.mayorsforpeace.org/english/index.html> (last visited Jan. 26, 2011).

19. For example, members of the European Parliament, Michel Rocard, former Prime Minister of France, and Jena Luc Dehaene, former Prime Minister of Belgium. For additional information, see *Members of the European Parliament Launch Support for a Total Ban on Nuclear Weapons: Marking the 40th Anniversary of the Nuclear Non-Proliferation Treaty*, PARLIAMENTARIANS FOR NUCLEAR NON-PROLIFERATION AND DISARMAMENT (July 1, 2008), http://www.gsinsitute.org/pnnd/archives/07_01_08_PR_EP.html. Regarding national parliaments, see, e.g., *Parliamentary Resolutions Supporting a Nuclear Weapons Convention*, PARLIAMENTARIANS FOR NUCLEAR NON-PROLIFERATION AND DISARMAMENT, http://www.gsinsitute.org/pnnd/docs/NWC_parliamentary_resolutions.pdf (last visited Jan. 26, 2011).

20. Civil-society initiatives in support of a nuclear weapons convention include, among others, the Abolition 2000 Global Network to Eliminate Nuclear Weapons, the International Campaign to Abolish Nuclear Weapons, and the Middle Powers Initiative.

the MNWC in 2008.²¹ On the occasion of the quinquennial Nuclear Non-Proliferation Treaty²² (“NPT”) Review Conference in May 2010, twenty-eight countries specifically referred to a nuclear weapons convention, and the Non-Aligned Movement, representing 116 countries, strongly supported a time-bound framework for abolition, including a convention.²³ Altogether, more than 130 states supported a convention at the conference.²⁴ In December 2009, 124 governments, including China, India, and Pakistan, voted for a resolution in the United Nations General Assembly²⁵ calling on states to immediately commence “multilateral negotiations leading to an early conclusion of a *nuclear weapons convention* prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination.”²⁶

II. *THE MODEL NUCLEAR WEAPONS CONVENTION*

A revised version of the Model Nuclear Weapons Convention (“Convention”) was published in 2007.²⁷ In launching it as a UN document, the two sponsoring countries,

21. Ban Ki-moon, U.N. Secretary-General, Address to the East-West Institute: The United Nations and Security in a Nuclear-Weapon-Free World, (Oct. 24, 2008) (transcript available at <http://www.un.org/News/Press/docs/2008/sgsm11881.doc.htm>) (“I urge all NPT [Treaty on the Non-Proliferation of Nuclear Weapons] parties, in particular the nuclear-weapon States, to fulfil [sic] their obligation under the Treaty to undertake negotiations on effective measures leading to nuclear disarmament. They could pursue this goal by agreement on a framework of separate, mutually reinforcing instruments. Or they could consider negotiating a nuclear-weapons convention, backed by a strong system of verification, as has long been proposed at the United Nations. Upon the request of Costa Rica and Malaysia, I have circulated to all United Nations Member States a draft of such a convention, which offers a good point of departure.”).

22. Treaty on the Non-Proliferation of Nuclear Weapons, July 1, 1968, 21 U.S.T. 483, 729 U.N.T.S. 161.

23. See TIM WRIGHT, INT’L CAMPAIGN TO ABOLISH NUCLEAR WEAPONS, NON-PROLIFERATION TREATY REVIEW CONFERENCE 2010: TOWARD NUCLEAR ABOLITION 2, 6 (2010), available at http://icanw.org/files/RevCon2010_1.pdf.

24. Tim Wright, *Growing Support for a Nuclear Abolition Treaty*, DISARMAMENT TIMES, Summer 2010, at 6, available at <http://disarm.igc.org/images/PDF/dt.2010.2.pdf>.

25. U.N. GAOR, 64th Sess., 55th plen. mtg., U.N. Doc. A/64/PV.55, at 23–24 (Dec. 2, 2009).

26. G.A. Res. 64/55, ¶ 2, U.N. Doc. A/RES/64/55, at 3 (Dec. 2, 2009) (emphasis in original).

27. Model Nuclear Weapons Convention, in letter dated Dec. 17, 2007 from the Permanent Reps. of Costa Rica and Malaysia to the United Nations addressed to the Secretary-General, Annex, U.N. Doc. A/62/650 (Jan. 18, 2008) [hereinafter MNWC].

Costa Rica and Malaysia, stated, "This revised model takes into account relevant technical, legal and political developments since 1997. . . . It is submitted as a work in progress setting forth legal, technical and political elements for the establishment and maintenance of a nuclear-weapon-free world."²⁸

The crux of the current version of the MNWC is Article I, General Obligations, which prohibits the development, testing, production, stockpiling, transfer, funding, use, and threat of use of nuclear weapons.²⁹ Subsequent articles require states party to the Convention to declare all nuclear weapons, nuclear material, nuclear facilities, and nuclear weapons delivery vehicles they possess or control, and their locations.³⁰ The Convention also requires the elimination of all nuclear weapons, nuclear weapons components, and nuclear weapons delivery vehicles in five phases, ending no later than fifteen years from its entry into force.³¹

The MNWC provides for an elaborate system of verification, including data sharing agreements, open skies, a registry, international monitoring, on-site inspections, and, as a novel contribution to disarmament practice, "citizen and non-governmental reporting and protection."³² The Convention calls for national implementation procedures, including the enactment of necessary legislation³³ and, importantly, for the criminal prosecution of violators of the Convention.³⁴ The MNWC foresees the establishment of an "Agency for the Prohibition of Nuclear Weapons," with a Conference of the States Parties, an Executive Council, and a Technical Secretariat.³⁵ There is also an Optional Protocol Concerning the Compulsory Settlement of Disputes and an Optional Protocol Concerning Energy Assistance.³⁶ Entry into force would occur 180 days after all nuclear weapons states, all states outside the NPT with nuclear weapons programs, and at least forty other

28. *Id.*

29. *Id.* art. I.

30. *Id.* art. III.

31. *Id.* art. IV.

32. *Id.* art. V.

33. *Id.* art. VI.

34. *Id.* art. VII.

35. *Id.* art. VIII.

36. *Id.* at 72.

states with nuclear reactors or nuclear programs have deposited their instruments of ratification.³⁷ Once it enters into force, the duration of the Convention would be indefinite and withdrawal would not be permitted.³⁸

The above is merely a cursory summary of the MNWC's highlights. The full text covers nineteen sections, each with multiple paragraphs and subparagraphs.³⁹ Any document of this complexity is bound to raise many questions of legal sufficiency and political reality. The drafters of the current version have recognized this by placing certain elements in brackets, as an indication that they themselves had difficulty agreeing on definite numbers or clauses. However, commendably, they have done more: they have accompanied the text with discussions of issues raised by the entire text, as well as specifically by certain sections or paragraphs. Some of these discussions of issues will be presented below.⁴⁰

A. *Article IV Phases for Implementation*

While affirming and reaffirming their commitment to an “ultimate” nuclear-weapon-free world, the nuclear weapon states, and the United States in particular, have maintained their staunch opposition to a time-bound approach to achieving this objective. Ellen Tauscher, the US Under Secretary for Arms Control and International Security, has gone so far as to say:

Nuclear disarmament is not the Holy Grail. It's only worth pursuing in so far as it increases our national security. I believe that the journey on the road to zero is perhaps more important than the goal itself. It's those concrete steps that we take that will enhance the national security of the United States and make the world a more stable place.⁴¹

37. *Id.* art. XV.

38. *Id.* art. XVIII.

39. See MERAV DATAN ET AL., *SECURING OUR SURVIVAL: THE CASE FOR A NUCLEAR WEAPONS CONVENTION* (2007), available at <http://www.icanw.org/files/sos.pdf> (providing commentary and other background along with the full text).

40. The author of this Essay is one of the drafters of the original version and considers self-criticism a worthy endeavor.

41. Ellen Tauscher, Under Sec'y for Arms Control and Int'l Sec., U.S. Dep't of State, Speech to Global Zero Summit (Feb. 3, 2010), available at <http://www.state.gov/t/us/136425.htm>.

Not everyone in the administration is prepared to disavow the goal completely. President Obama, in his Prague speech, said it might not happen in his lifetime.⁴² US Secretary of State Hillary Clinton, perhaps in an ill-advised attempt at humor, said the following in addressing the State Department staffers who had worked on the New START agreement and the 2010 Nuclear Posture Review: "I am personally very grateful for everything you've done to move us toward our goal of a world someday, *in some century*, free of nuclear weapons, but along the way, making that world safer and safer and safer for our children and grandchildren."⁴³

The MNWC posits a maximum of fifteen years for reaching the holy grail of a nuclear-weapons-free world, but the five phase approach poses a number of problems. Each phase contains a number of specific mandates, including the following:

Phase One: All nuclear weapons and nuclear weapons delivery systems are to be de-alerted and disabled within one year after ratification.⁴⁴ Good, but this could still leave all nuclear weapons and delivery systems in existence. It has been estimated that the time required for their reassembly could be as little as a few hours.⁴⁵

Phase Two: All nuclear weapons are to be removed from deployment sites and delivery systems are to be placed in storage or dismantled within two years from ratification.⁴⁶ Fine, but this would merely extend the time needed to make them operational.

Phase Three: Five years after ratification, all nuclear weapons are to be destroyed, except up to 1000 each are to remain in the arsenals of Russia and the United States, and one hundred each in those of China, France, and the United Kingdom.⁴⁷

42. See Barack Obama, U.S. President, Remarks Delivered in Prague, Czech Republic (Apr. 5, 2009), (transcript available at http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered).

43. Hillary Clinton, U.S. Sec'y of State, Remarks to Members of the U.S. Delegation to the New START Negotiations and Nuclear Posture Review Department Staff (July 13, 2010), available at <http://www.state.gov/secretary/rm/2010/07/144577.htm> (emphasis added).

44. MNWC, *supra* note 27, art. IV(7).

45. See Bruce Blair, *Smaller and Safer: A New Plan for Nuclear Postures*, FOREIGN AFF., Sept.–Oct. 2010, at 9, 13.

46. MNWC, *supra* note 27, art. IV(8).

47. *Id.* art. IV(9).

Phase Four: No more than fifty warheads each for Russia and the United States, and ten each for China, France, and the United Kingdom shall remain ten years after ratification; all other nuclear weapons will be destroyed.⁴⁸ Phase Three and Four reflect a kind of mantra that has developed among “realist” abolitionists who see these numbers as a giant step toward the total elimination of nuclear weapons. But even the use of a tiny portion of these remaining arsenals could cause death and destruction on a scale that beggars the imagination.

Phase Five: All nuclear weapons finally are to be destroyed, fifteen years from ratification.⁴⁹

When these periods are added to the time it is likely to take to negotiate and bring about the entry into force of the Convention, one is looking at a very long stretch of time indeed, during which proliferation may add to the arsenals of non-NPT member states and may bring new states into the charmed circle of the nuclear-armed. Needless to say, realpolitik teaches that it may take that long, but should the planning for a nuclear weapon free world contemplate living in a nuclear weapon full world for fifteen, fifty, or a hundred years? Such a drawn out, step-by-step progression may turn out to be a progression to infinity, even if total abolition is called for at some point.

B. *Article VI. National Implementation Measures*

Article 26 of the Vienna Convention on the Law of Treaties enshrines the bedrock principle of the law of treaties: “*Pacta sunt servanda*”—Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”⁵⁰ This would seem to make national implementation measures unnecessary. However, this principle, bedrock or not, runs up against the division of the world into three broad categories of states according to their varying conceptions and practices concerning the relationship between international and domestic or municipal law: the so-called monist states, like France, Germany, and the Netherlands, in which international law is self-executing *ipso facto*; the so-called dualist states, like the United Kingdom

48. *Id.* art. IV(10).

49. *Id.* art. IV(11).

50. Vienna Convention on the Law of Treaties art. 26, May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 679.

and other members of the Commonwealth of Nations, in which treaties, conventions, and other multistate agreements have no force in domestic law in the absence of enabling legislation; and hybrid states like the United States, in which some such agreements are considered self-executing and others not, depending on their specificity or, some would say, on the composition of the Supreme Court at a given moment. Thus, the requirement in Article VI(1) that each party “shall . . . adopt the necessary legislative measures to implement its obligations under this Convention”⁵¹ may be going too far, although the universal enactment of such legislation would be desirable if it could be accomplished without imposing further delays on the achievement of the Convention’s goal.

C. *Article VII. Rights and Obligations of Persons*

Reading Article I.A.1.a and Article I.B.5.a together, it would be a crime to use or threaten to use nuclear weapons. But as of when? If from the coming into force of the Convention, why leave some of them in the possession of nuclear weapon states for another fifteen years, or whatever number is agreed for Phase Five? As for VII.A.1 and 2, these clauses provide for surrendering persons accused of committing crimes to the International Criminal Court (“ICC”) under certain circumstances. But what if the ICC is not willing to accept them, or if the crime, as defined in Section I, is not within its jurisdiction? Do they go scot-free? This lacuna could be remedied by writing an extended principle of universal jurisdiction into the Convention, i.e., a person accused of a crime under I.B. should be subject to the jurisdiction of any state party to the Convention if he or she is not tried in the state in which the crime was committed or in a state in which the person is found, provided the latter state is willing to extradite the person to the third party state willing and able to prosecute. Finally, VII.13 authorizes “the agency” to exempt from prosecution a person who admits a violation before being notified thereof by the agency. This would invest the agency with judicial, or at least prosecutorial, power, which would be rather unusual.

51. MNWC, *supra* note 27, art. VI(1).

D. *Article VIII Agency*

Quaere whether it is a good idea to call for the establishment of a new agency “to achieve the object and purpose of this convention” at a time when a significant section of public opinion throughout the world is sick of over-regulation and when there is an agency already in place, the charter of which could be expanded to include the function of overseeing the path to nuclear zero. Although the International Atomic Energy Agency has the dual purpose of preventing the proliferation of nuclear weapons and providing NPT member states with technology for peaceful uses of nuclear energy, the former would overlap with the functions of the new agency and the latter would not necessarily interfere with the former. And though a nuclear weapons-free-world would be easier to reach if “peaceful” nuclear energy were also consigned to the wastebasket of history, the other side of the coin is that if this were made a condition for a nuclear weapons convention, it would make agreement on a convention infinitely more difficult to achieve.

CONCLUSION

The preceding discussion may lead some readers to the conclusion that the governments that pay lip service to a vision, but do precious little to implement it, have a point: it is too complicated, it will take too long, conditions are not ripe, etc. But this author’s purpose is just the opposite: the Model Nuclear Weapons Convention is a bold, imaginative initiative designed to show that if diplomats and bureaucrats will not tackle the job, civil society will, as it has done with the mine-ban treaty⁵² and the cluster-bomb treaty.⁵³ The flaws in the Convention, if that is what they are, are all the more reason to begin, not in due course, but in the immediate present,⁵⁴ the serious work of creating a

52. Convention on the Prohibition of the Use, Stockpiling, Production, and Transfer of Anti-Personnel Mines and on Their Destruction, Sept. 18, 1997, 2056 U.N.T.S. 211.

53. Convention on Cluster Munitions, Dec. 3, 2008, 48 I.L.M. 357.

54. On December 8, 2010, the General Assembly of the United Nations, by a vote of 133 in favor, 28 against, and 23 abstentions, adopted Resolution 65/76, which calls upon all states “immediately” to commence “multilateral negotiations leading to an early conclusion of a nuclear weapons convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination.” U.N. Doc. A/RES/65/75 (Jan. 13, 2011).

document that, in the words of President Kennedy, will lift the sword of Damocles⁵⁵ from the entire human race.

55. John F. Kennedy, U.S. President, Address before the General Assembly of the United Nations (Sept. 25, 1961), (transcript available at <http://www.jfklibrary.org/Research/Ready-Reference/JFK-Speeches/Address-Before-the-General-Assembly-of-the-United-Nations-September-25-1961.aspx>).