INTERNATIONAL LAW PROHIBITS THE FIRST USE OF NUCLEAR WEAPONS

by

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There is fear of impending doom. In an atmosphere of severe tension and a feverish nuclear arms race, the axiom that nuclear war is unthinkable, is being revised. Specially designed and systematically produced nuclear weapons, it is formally announced, offer the possibility of waging and winning a « limited » nuclear war of « acceptable proportions .» The « option » for a first use of nuclear arms if « vital interests » are at stake, is being discussed. The elaborate system built by the international community after the horrors of Hitler's war, to save succeeding generations from the curse of war, seems in danger of collapse.

The United Nations General Assembly expressed (1) « *alarm* » about

> « the increased risk of catastrophe associated with... the adoption of the *new doctrine of limited or partial use of nuclear weapons* giving rise to the *illusions of the admissibility and acceptability of nuclear conflict.* »*

* Italics in this article are the author's.

(1) Resolution 35/152-B of 12 December 1980. For a brief discussion of it, see note 4 below.

The « new » doctrine is « limited » insofar as it no longer concentrates on nuclear attacks to destroy cities and kill civilians *per se.* In its most logical form, it envisages one overwhelming, preemptive stroke calculated to destroy the enemy's military capacities — especially his nuclear arms that are deeply buried in silos, but also his conventional arms, ammunition and supply depots, submarine bases, military and civilian command posts, as well as ammunition factories, petroleum refineries, communication facilities, etc. Since these targets are very numerous, dispersed over large areas, and often situated near cities, the consequences could equal those of the destruction of cities. The required simultaneous attack on the enemy's submarines dispersed in the oceans, would increase the radiation of the ocean waters.

On the other end of the spectrum, the « limited » strategy would initially aim at only some selected targets and afterwards only if necessary, gradually escalate, until the enemy surrenders. Since this would for an uncertain period leave him means for reprisal, he would, unless he gives up, presumably feel compelled to use his remaining nuclear arsenal immediately and with full force, before it might be destroyed. An unlimited nuclear war would still occur.

The situation has intensified the efforts of counter-movements. Warnings by statesmen, by medical authorities, by physicists (including co-architects of the first atomic bombs), by ecologists and other scientists, religious leaders and, not last, prominent military figures are proliferating. (2)

Characteristically, those who are appalled by the trend toward disaster, bewail the absence of an international agreement that should long ago have outlawed nuclear war; and urge the making of such a Treaty. It is widely believed that the Law — on which all civilization depends — has so far been unable to protect the civilization that has brought forth nuclear weapons. Yet, the pact to ban nuclear war, is manifestly not on the horizon. Must, then, nuclear war — the « option » to trigger it, be considered as somehow legitimate ? It seems a melancholy picture. The question is, whether it is justified.

FIRST NUCLEAR STRIKE IS FORBIDDEN BY EXISTING INTERNATIONAL LAW

It is the thesis of this paper that a first nuclear strike is forbidden by already existing international law. The world need not wait in frustration for the day, which may never come, when a universally binding treaty wil *specifically* forbid a first nuclear strike. Although any such treaty does not exist, a first nuclear strike is outlawed by the letter and spirit of treaties that *do* exist. **

(2) To illustrate : « The idea that a nuclear war can be « limited » to military targets and « won » by the better-prepared side has been glibly spread in recent years (and led to) weapons programs and targeting doctrines based on such concepts. » (« Diagnosing Nuclear War », *New York Times,* April 13, 1981). In reply, the editorial refers to the warnings by American physicians, joined by Mr. Leonid Brezhnev's cardiologist Dr. Yi Chazov, against such « mythology » of a « winnable limited » nuclear war, and of the impossibility for medical science « to save enough people to preserve a meaningful society ».

The Federation of American Scientists (F.A.S.) estimates on the basis of studies, that a Soviet attack limited to the 1,053 missile silos in the U.S.A. would cause between 5 and 20 million deaths; and an American attack limited to the known Soviet missile sites (which are closer to populated areas than the American ones) between 20 and 30 million deaths. *(F.A.S. Public Interest Report,* Feb. 1981, p. 10/1.)

But the view that a « controlled » nuclear exchange would unavoidably escalate into general nuclear war is shared « by a large majority of senior statesmen and military leaders... As inevitable consequence, the holocaust would come, the organized societies would cease to exist... » (George S. Kistiakowsky, science advisor to three U.S. Presidents, « Can a Limited Nuclear War be Won ? » in : *The Defense Monitor,* (Washington D.C.) X/2, 1981, p. 3/4). Similary, Lord Zuckermann, former Chief Scientific Adviser to the British Government, in *The Times,* London, 21 Jan. 1980. — After « a so-called limited counterforce exchange... the only victor (would be) the radiation-resistant cockroaches ». (Professor Bernard Feld, « A Policy of Doom », *New York Times,* Aug. 19, 1980). The Pugwash group of distinguished scientists from East and West declared at their meeting in Geneva in December 1980 that « 'Limited war' strategies were making nuclear war more likely, with an almost certainty that such war would escalate to worldwide destruction, and ' winnability ' of nuclear war is a profoundly dangerous illusion. » (*Bulletin of the Atomic Scientists* (Chicago), Feb. 1981, p. 5.)

** A separate treaty banning any first nuclear strike would constitute a solemn *reconfirmation* of its prohibition, an *additional* pledge not to violate that prohibition, and as such be desirable: but it would *not* newly *establish* its prohibition.

The thesis does not deny that if a nation commits the illegality — does make a first nuclear strike — a nuclear response in reprisal (self-defense) (3) is permissible. But it implies that the overwhelming arguments which forbid a first nuclear strike, forbid a nuclear response to a *non*-nuclear military attack (and all the more, as is sometimes asserted, to situations *other* than military attack which any nation might consider *dangerous to its interests),* precisely because nuclear warfare, in view of its intrinsically illegal character, is forbidden.

NUCLEAR WAR HAS NOS RATIONAL WAR AIM ; ITS AIM IS DESTRUCTION

By its very technology, *nuclear war destroys the concept, the definition of war* —namely, organized violence between military forces. Times of old may have considered it permissible to sack and burn down enemy cities after conquest; this has long since been uncontrovertibly forbidden. It is still true that innocent civilians are bound to suffer in war, but that suffering was to be carefully limited — in the interest of attacker and attacked alike — especially in the great codifications of the law of war, the Hague Regulations of 1907 and the Geneva Conventions of 1949 (see below) — all hammered out with the participation and approval of military leaders. As absolutely least, it must be remembered that killings, rape and enslavement after battle were outrages committed by *humans.* But the chaos and despair, the mountains of dead and dying, the famine and contamination of the soil, the genetic disasters that may last for unknown generations, the fouling of air and water for nobody knows how long, caused by nuclear war, would be due to natural forces *ungovernable by humans.* In a true sense, nuclear war would constitute an ultimate abdication by man as a species.

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(3) The « inherent » right of individual and collective self-defense against armed attack guaranteed in Art. 51 of the United Nations Charter is in the nature of a reprisal : it is an *exception* (the only exception) from the Charter's general *prohibition* of « the threat or use of force » by all Members in their international relations. In other words, threat or use of force in self-defense does *not* invalidate the Charter's overriding prohibition — not only of war, but of any threat or use of force; it merely acknowledges that in answer to the grave illegality of an armed attack occurring, self-defense must be, exceptionally, permitted. This aversion to war — the essence of the present world order — requires a *restrictive* interpretation of the rules *permitting* violence during hostilities, and a *wide* interpretation of those aimed at *limiting* such violence.

Furthermore, since strategic planning concentrates on almost *instantaneous* nuclear reprisal, it is crucially important to emphasize that any nuclear reprisal would only be permissible (and logical under the deterrence doctrine) if it responds to a nuclear attack that was *deliberately intented by a properly authorized governmental authority.* Such first attack, it is generally admitted bomb(s) would be suicidal folly, even if it was meant to open only an allegedly « limited » nuclear war. There is a vastly higher probability that the arrival of the first nuclear bomb(s) resulted from a technological malfunction, a misunderstood instruction, an unauthorized command, a subordinate's panic, a terrorist's wish to embroil outside states in mutual suicide like scorpions in a bottle.

No such mishap would constitute a *true* first nuclear strike. None would, of course, legitimize a nuclear reprisal.

Aristotle's unsurpassed definition of the purpose of war — « the aim of all war is peace » — describes the fundamentally dialectic quality of conflict. It underlines that war is an *interruption,* a temporary replacement of the normal, or the explosion of a gradually developed disequilibrium, that must result in a new normalcy. It implies what was later on so often stressed, namely, that war is impermissible unless it will predictably result in a better situation than the one before it. In any case, war « makes sense » only if at least the victor will be better off than before. Even at its crudest, war's legitimization can only be the expectation, the theoretical possibility, of *victory.* Nuclear war, as has been said so often, cannot hold out any such hope.

On a down-to-earth level, Aristotle's dictum also describes the overall philosophy of the 20th century law of war, namely, that within a relatively short historical perspective, every war will *end.* Hence, war must be conducted — and this is a paramount aim of the law on war — with the *post*war situation in mind. It must not lead to a disorganization so great as to ruin even the defeated. The essentials of civilization must be salvaged, also for the defeated and in the subsequent interest of the victor. The enemies must respect each other. The fabric of society must not be destroyed. Quite unsentimentally, States must not forget in the heat of battle — and much less in their planning — that afterwards they will need each other, that new constellations will arise, even new alliances between recent enemies will be formed.

All this seems to be forgotten by the obsessional planning and preparation for nuclear war. Even without a nuclear war having actually occurred, its fallout has poisoned the thought of man. Nuclear war would be a thing of its own, a cataclysm that could no longer be considered an « instrument of national policy » — the war banned by the 1928 Briand-Kellogg Pact.

Nuclear war condemns itself by the fact that it would not be fought for any rational, positive war aim. The attacker, and thereupon presumably the attacked, would aim exclusively at each other's physical devastation.

Even before the prohibition of aggressive war, wars were undertaken for some rational war aim, primarily territorial conquest. Even Hitler's war aim (apart from his genocidal, racist and ideological war aims) was to conquer territories — Alsace-Lorraine, the Ukraine, and so on. This he calculated to be worth the death of a few million Germans. His war of naked conquest was an immense crime against the attacked peoples and his own people, but in a criminal sense still « rational ». In the present debate about the threatening nuclear war, territorial claims are not mentioned. The debate centers literally around the question, how one's own side could be *less completely destroyed* than the opponent. Even any expectation of an ideological gain is bizarre : would the surviving Russians embrace capitalism, or the surviving Americans embrace communism ? Or would any problem that plagues the international community be solved, rather than be made immensely worse and more explosive ? Would the present world instability that is rightly decried (and largely caused by the nuclear war preparations) be cured ?

In fact, once the irrationality of the aim of a Superpower nuclear war is perceived, the impermissibility of triggering such a war (or any nuclear war against or between other States, in view of the high probability that it would also involve the Superpowers) seems already proven. Imperfect as the international order may be, it does not condone such irrationality. But there is an array of other weighty points, each of which shows the impermissibility of a first nuclear strike.

NUCLEAR WAR WOULD PREVENT OBEDIENCE TO FUNDAMENTAL RULES CONCERNING THE CONDUCT OF HOSTILITIES

It is an axiom of any law, and common sense, that a *general* prohibition of a *type* of action prohibits any *specific* action falling under that type, also if that specific action is not specifically prohibited. If murder is generally forbidden, murder by a knife is forbidden, even if no specifie prohibition of murder by knifing exists.

The fundamental Principles and Rules of warfare are contained in the Regulations annexed to the Hague Convention IV on « the Laws and Customs of War on Land » (for short : « Hague Regulations IV ») of 1907. They are uncontrovertibly still in force (see below).

The Regulations' Section on the conduct of « Hostilities » opens with an *overall guiding* Principle :

> « Art. 22. The right of belligerents to adopt means of injuring the enemy is not unlimited. » (In the only authentic, French version, : « Les belligérants n'ont pas un droit illimité quant au choix des moyens de nuire à l'ennemi. »)

This is of special significance for the nuclear age. It issues at the outset an overarching command for the conduct of belligerents; namely, that not everything which is *technically* possible, is allowed in hostilities; the limits of permissible violence are *not* set by technological potentialities, but by the sum-total of general and specific rules established by the international community in their mutual interest.

The overriding Principle is elaborated by more specific rules. The following are particularly noteworthy, so far as nuclear warfare is concerned :

> 1. « ... it is especially forbidden (il est notamment interdit)... to destroy... the enemy's property (des propriétés ennemies), unless such destruction... be imperatively demanded by the necessities of war (sauf les cas où ces destructions... seraient impérieusement commandées par les nécessités de la guerre). » (Art. 23 (g))

« Property », here means any property, movable or immovable, public or private, from a single object to an entire city. This prohibition of *indiscriminate destruction* has been reconfirmed by the 1949 Geneva Conventions, and by the Protocols intended to update the 1907 and 1949 treaties, agreed upon after years of deliberation, under the auspices of the International Committee of the Red Cross, in 1977. If then it is « especially » forbidden (and hence constitutes a specially grave war crime) to destroy indiscriminately, say, a

single building by machine gun fire, then the unavoidably indiscriminate destruction and contamination of entire areas by nuclear weapons is forbidden by that fundamental rule.

> 2. « The attack, or bombardment, *by whatever means* (par quelque moyen que ce soit) of towns, villages, dwellings (habitations), or buildings (bâtiments) which are *undefended* is prohibited. » (Art. 25)

Here is another very far-reaching restriction. During World War II, Rome and Paris were declared undefended (« open ») cities and thereby saved from destruction. Could now either Superpower declare its own cities to be open cities, and to this extent disarm its nuclear adversary ? Would this protect such cities against the radioactive fallout resulting from nuclear attack on *defended* places ? (Civil defense arrangements such as air raid shelters do not make a city a defended city.)

> 3. « The officer in command of an attacking force must, before commencing a bombardment, except in case of assault, do all in his power to *warn* the authorities. » (Le commandant des troupes assaillantes, avant d'entreprendre le bombardement, et sauf le cas d'attaque à vive force, devra faire tout ce qui dépend de lui pour en avertir les autorités.) (Art. 26)

The provision applies to bombardments of places militarily *defended* by the enemy; *un*defended places may not be bombed, as seen, with or without advance warning.

4. The permissible bombardment of *defended* places is further restricted by Art. 27 :

> « In sieges and bombardments all necessary measures must be taken to spare, as far as possible, buildings dedicated to religion, art, science or charitable purposes, historie monuments, hospitals, and places where the sick and wounded are collected, provided they are not being used at the time for military purposes. (Dans les sièges et bombardements, toutes les mesures nécessaires doivent être prises pour épargner, autant que possible, les édifices consacrés aux cultes, aux arts, aux sciences et à la bienfaisance, les monuments historiques, les hôpitaux et les lieux de rassemblement de malades et de blessés, à condition qu'ils ne soient pas employés en même temps à un but militaire.) »

This rule was for certain particularly deserving categories of persons transformed into an *absolute* prohibition (not only, as Art. 27 of Hague Regulations IV says, « as far as possible ») by the 1949 Geneva Convention on the Protection of Civilians in Time of War :

> « Civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may *in no circumstances* be the object of attack, but shall *at all times* be respected and protected by the Parties to the conflict. » (Art. 18,1)
> and :
> « Convoys of vehicles or hospital trains on land or especially protected vessels on sea, conveying wounded and sick civilians, the infirm and maternity cases, shall be respected and protected in the same manner as the hospitals provided for in Art. 18. » (Art. 21)

Hence, also such transports may *«in no circumstances »* be the object of attack, but must *«at all times* be respected and protected ».

Evidently none of these rules concerning the conduct of hostilities, on which the lives of millions might depend, could be observed in nuclear warfare. (4) In short, nuclear warfare would by its nature, *unavoidably,* result in war crimes on an enormous scale.

Further provisions of the universally binding law on the conduct of hostilities could be cited to the same effect. They are contained in the 1907 Hague Regulations IV which, as seen, include basic restrictions concerning attack and bombardment « *by whatever means* » — hence, also from the air — as well as analogous rules concerning naval warfare; and especially in the 1949 Geneva Convention on the Protection of Civilians in Time of War.

It may be added that most States issue Manuals for their armed forces, which cite and explain the international rules of warfare. For example, the U.S. Department of the Army Field Manual 27-10 of 18 July 1956, presently in force, incorporates and explains the 1907 Hague Regulation IV and the 1949 Geneva Conventions, and orders that « the treaty provisions quoted herein will be strictly observed and enforced by United States forces ». (Art. 7 of the Manual).

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4. The argument that the use of nuclear weapons would, « as a general rule at least, violate existing international law, has been put forth by a majority of authors making express statements on the subject... Most of the authors advocating the illegality of nuclear weapons at the same time deny such sweeping exceptions as military necessity and self-defense », except in reprisal to previous use of nuclear weapons by the enemy. The minority « tend to deny the existence of a firmly established rule prohibiting the use of nuclear weapons *per se* ». On the other hand, « Some authors, however, deny that nuclear weapons may be used (even) by way of *reprisal* »(Allan Sosas, « International Law and the Use of Nuclear Weapons » in : *Essays in Honour of Erik Castrèn,* Helsinki : Finnish Branch of the International Law Association, 1979, pp. 73-95, at 77/78.

In order to evaluate the minority views, the specifie conditions under which some lawyers consider nuclear weapons use permissible, and their factual assumptions, would have to be examined. For example, Lauterpacht would have allowed it « against an enemy who violates rules of the law of war on a scale so vast as to put himself altogether outside the orbit of considerations of humanity and compassion.... as a deterrent instrument of punishment », and still believed that atomic weapons could be used in a manner that would spare non-combatants and « be limited to military objectives proper ». (*International Law,* II, 1952, p. 350/1).

In any case, differences of opinion among lawyers must be excepted, just as, say some physicians consider nuclear war as medically not disastrous, and some defense experts consider it winnable. In the light of the legal order the world community has written for itself, the arguments against the permissibility of a first nuclear strike appear to be fundamentally stronger than those in favor of it; if taken together, as they must be, with all other so persuasive arguments against nuclear war, the ever more ominous preparations for the catastrophy cannot be pursued with good conscience.

Analysis of the Resolutions of the U.N.General Assembly on the topic « Non-use of nuclear weapons and prevention of nuclear war » would also require a separate study, which would have to examine the voting record (including the reasons for negative votes and abstentions, such as the desire to « link » the prohibition of the use of nuclear weapons to a reduction of *conventional* weapons and military forces; disagreement on procedual matters; etc.). (For all « Disarmament Resolutions » adopted since 1946 see Official Records of the General Assembly, 10th Special Session, Suppl. No. 1 (AS-10-10-1), vol II, doc A/AC, 187/29, and doc. A/AC, 206/3, of 24 April 1981).

NUCLEAR WAR WOULD PREVENT THE CARRYING OUT OF POST-BATTLE OBLIGATIONS OF THE BELLIGERENTS

There are harrowing prospects for the situation that will unavoidably arise after a nuclear « battle » in an ongoing war. Who will take care of the survivors ? Who will repair the contaminated water system, the ruined communications system ? Who will prevent famine ?

Here is further proof that nuclear war cannot be conducted with obedience to fundamental rules to existing international treaty law. Strangely, this aspect has been neglected also by the opponents of nuclear warfare.

The law of war is well aware of the fact that in war the belligerents will, depending on the changing fortunes of war, temporarily lose control of parts or even (as occured in World War II) the whole of their respective territories. From this moment on, the legitimate government can no longer take care of its people, and the enemy, regularly now in occupation of that territory, becomes *responsible* for the inhabitants. The rules describing these responsibilities (as laid down in a separate Section of the 1907 Hague Regulations) include the principle that the occupant

> « shall take all the measures in his power to *restore and ensure, as far as possible, public order and safety* (prendra toutes les mesures qui dépendent de lui en vue de rétablir et d'assurer, autant qu'il est possible, l'ordre et la vie publics)... » (Art. 43) (5)

Here, it suffices to refer to the most recent Resolution, of 12 Dec. 1980 (35/152 D), partly quoted at the beginning of this essay. Therein, the Assembly states to be also « Alarmed by the threat to the *survival of mankind* and to *the life-sustaining systems* (the air, the waters, the animal and plant life of the earth) *posed by nuclear weapons and by their use inherent in concepts of deterrence* »; then refers to the need of *nuclear disarmament* (« Convinced that nuclear disarmament is essential for the prevention of nuclear war »); and « Declares *once again* that :

> « (a) The *use* of nuclear weapons would be a violation of the Charter of the United Nations, and *a crime against humanity;* » but continues :
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> « (b) The *use or threat* of nuclear weapons *should therefore be prohibited,* pending (meaning : even before, and in expectation of) nuclear disarmament. »

Do these statements contradict each other, as the first declares that the use of nuclear weapons constitutes already now (*without* a future treaty) an international *crime,* while the second still demands the prohibition (evidently by a future treaty) of their « threat or use » ? A closer look dissolves the contradiction. The progress expected from a future treaty would be the prohibition, not only of nuclear *use* (which is already criminal) but also of nuclear *threats.* But logically, the future treaty would prohibit nuclear use, too. This would be a — certainly desirable — *reconfirmation* of an already existing prohibition. The Resolution was adopted by a vote of 112 States, including China, in favor; 19, including NATO members, against; and 14, including Warsaw Pact members, abstaining. (It will be noted that the Resolution, by calling « *The* use of nuclear weapons » an international crime, allows the conclusion that not only a *first* use, but also nuclear reprisal in *response* to a first strike, is forbidden. This is difficult to accept, especially for nuclear-weapons states, and incidentally, not claimed in the present essay.)

5. In elaboration of this basic principle, the Hague Regulations stipulate :

> « Family honor and rights, the lives of persons, and private property, as well as religious conviction and practice (« l'exercice des cultes ») must be respected. » (Art. 46.)

The rules concerning belligerent occupation are at least as important as are those dealing with the conduct of hostilities. For, « temporary » occupation may, as World War II also showed, last for years during which populations are at the mercy of the enemy occupant; between 1939 and 1945, the foreign civilians under German occupation numbered well over 100 million; and in a Superpower nuclear war, the number of people who may be deprived of protection by their own government may be vastly greater, depending upon the involvement of allies and military bases in various parts of the world; and it may take a very long time until the respective legitimate governments could provide a modicum of « public order and safety ».

In view of the disregard by the Third Reich of the obligations of the occupant and the resulting immense suffering, the 1949 Geneva Convention for the Protection of Civilians in Time of War made the obligations laid down in the 1907 Hague Regulations much more detailed and exacting. To illustrate :

> « To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring and maintaining ...the medical and hospital establishments and services, public health and hygiene in the occupied territory, with particular reference to... the prophylactic and preventive measures necessary to combat the spread of contagious diseases and epidemics... » (Art. 56)
>
> « The Occupying Power shall... accept consignments of books and articles required for religious needs and shall facilitate their distribution » (Art. 58)
>
> It shall facilitate « relief schemes », « in particular... consignments of foodstuffs, medical supplies and clothing » by third States and « impartial humanitarian organizations », and « shall permit the free passage of these consigments and shall guarantee their protection ». (Art. 59)

The Convention contains detailed rules concerning the occupant's duties to assure proper functioning of the judicial system (Art. 66 ff.); etc.

Evidently the enemy occupant, during or after a nuclear war, could not carry out these obligations. Neither Superpower could, for example, in the words of Art. 56 of the Geneva 1949 Civilian Convention, to any extent « ensure and maintain the medical and hospital establishments » for the injured and radiated people thousands of kilometers away, or take there « the prophylactic and preventive measures necessary to combat the spread of contagious disease and epidemics ».

In fact, there will be no occupation during a nuclear war. As U.S. Secretary of Defense Harold Brown observed in his 1980 report, « successive

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This succinct rule alone imposes on the enemy who has made it impossible for the legitimate government to function, a vast range of obligations and prohibitions in order to preserve the physical and spiritual existence of the population, and private property in occupied territory.

And the rule is followed by further restrictions on the enemy as regards the preservation of *State* property : « public buildings, real estate (immeubles), forests and agricultural estates (exploitations agricoles) » — the occupant « must safeguard the capital (les fonds) of these properties » — as well as « the property of *municipalities* » and the property « of institutions *dedicated to religion, charity and education, the arts and sciences* »;»; and the protection the enemy must give to « historic monuments » and « works of art and science ». (Art. 55 and 56.)

bombardments delivered by long-range missiles and bombers are capable of destroying targets and producing large amounts of lethal radiation, but quite incapable of holding or occupying territory ».

Nor would the « victor » *after* a nuclear war be able to do what the anti-Axis allies did as humanitarian and legal duty, but also in well-understood self-interest, after the conclusion of World War II when they took large, systematic and costly measures first to prevent famine, epidemics and anarchy in the defeated countries and then gradually to enable them to recover.

Letter and spirit of the law of war make it untenable to argue that, when the legitimate government loses control over its territory as a result of nuclear warfare, the nuclear weapon-user is exempted from all obligations imposed upon him, and permitted to abandon the survivors to their own misery. There is no inkling of such exemption in the 1907 Hague Regulations or the 1949 Geneva Conventions or the 1977 Protocols which intend to update the 1907 and 1949 Conventions. On the contrary, these instruments of the nuclear age underscore the continued validity of the older regulations and strengthen them. *The invader who invades with nuclear missiles instead of with foot soldiers* is, indeed, *physically incapable of taking care of the invaded territory, as obliged by the law of war. The conclusion can only be that he must not use that method of invasion.*

NUCLEAR WAR WOULD MAKE IT IMPOSSIBLE TO RESPECT THE RIGHTS OF NEUTRAL STATES

Still another nefarious — and also rarely emphasized — effect of nuclear warfare would be the impossibility of obeying one of the most basic and time-honoured demands of the world order, namely, to respect the rights of neutral States which are summarized in the axiom, « The territory of neutral Powers is *inviolable* ». (Art. 1 of Hague Convention V of 1907).

The inviolability applies not only to permanently neutralized countries, like Switzerland and Austria. It applies equally to any State that decides — perhaps as late as at the start of a war between others — to stay out of it, or that decides, even during a war in which it at first participated, to change to neutral status.

Winds do not stop at frontiers. The consequences of radioactive fallout on the people and territory of neutral States could be as bad as those on States against which the nuclear weapons were directed. And the fallout can reach also neutrals on far-away continents. The predictable fate of the neutrals *alone* prohibits nuclear war.

THE DANGER OF ACCIDENTAL, UNINTENDED NUCLEAR WAR

It is widely believed that there exists a virtual guarantee against nuclear war : The power to trigger it lies exclusively with the head of State (Com-

mander-in-Chief) who will be sane and conscientious enough not to « push the button ».

The consolation is not reliable. The awesome power has been *delegated* in three ways :

1) As a result of the geographically widespread responsibilities assumed by the Superpowers, and especially the United States — and as result of a mentality which always assumes the possibility of a sudden nuclear attack by the other side — the power to decide on the use of nuclear weapons has been *delegated,* as far as is known, to military commanders in various parts of the world, including commanders of submarines. The identity of these men and the extent of their power are kept strictly secret. They must also be assumed to act responsibly in a crisis; but the fact is that the prerogative to trigger nuclear war has not remained limited to a single, identifiable, constitutionally determined authority. (6)

2) An even greater, because continuous, danger to world peace consists in what could be called *involuntary* or *unintended delegation of power* to a vastly larger number of persons than those to whom the power has been specifically delegated. They include personnel with access to nuclear weapons and release facilities; the pilots who fly nuclear-armed bombers and may misunderstand the instructions radioed to them; and especially the personnel who have to evaluate computer reports, to code, decode and translate messages, and to interpret satellite photos, radar emissions, intelligence reports, intercepted exchanges between other States, and the like. These are the persons on whom the top decision-makers must *rely* in order to make their own fateful decisions, perhaps in a matter of minutes. Although these lower-rank persons may also be assumed to act in good faith, there is an alarming possibility that their work may be faulty.

3) Actually, the top decision-makers as well as their subordinate information-feeders have *delegated the power of human judgment to machines.* They all have to rely on ever more complex, and hence ever more fallible, automation and computers. In final analysis, these robots are the decision-makers — another aspect of the dehumanization that has been caused by the nuclear war syndrome. The preparations for nuclear war expose civilization to annihilation through technological failure.

In 1979/80, there were four reported cases in which such failures erroneously indicated that Soviet nuclear weapons were on the way towards the

6. Already almost two decades ago, when the much fewer nuclear weapons were less widely dispersed in the world, when outer space was not yet used for war preparations, and the « option » doctrine of first nuclear strike was not publicy discussed, a leading game theoretician insisted that in order to deal rationally with a nuclear crisis, at least two absolute guarantees would have to exist : that all military commands can be reached under all circumstances by the supreme authority; and that complete, unambiguous control over all nuclear weapons be assured. He concluded that neither of these minimum conditions could then, or in the future, be fulfilled. To start or to threaten nuclear war would be an irrational gamble with the very existence of nations. The only way to beat hell, is not to engage in such a gamble. (Oscar Morgenstern, « How to Plan to Beat Hell » in : *Fortune* Magazine, Jan. 1963.)

United States. Had the errors not been found out in a matter of minutes, each could have caused an unintended superpower nuclear war.

Two of those incidents occurred within a few days, on 3 June and 6 June 1980. This led to a careful investigation by a Committee of the U.S. House of Representatives, which gave the following picture : Warning sensors on outer space satellites, as well as radar and other devices are continually searching for Soviet land-based or submarine-based ballistic missiles that might be launched against the U.S.A. If the officers on duty at the Supreme Air Command (SAC) receive such indications, they have, as precautionary measures, to alert U.S. nuclear forces in different parts of the world, and order the crews to the airplanes and to start the engines, so as to be ready for further instructions. This procedure, the SAC officers had to follow on those occasions, although « they recognized that the data was ambiguous and was most likely false. » (7) The suspicion was confirmed within a « very short time » (three minutes, as reported, *e.g.,* in The New York Times of 8th June 1980) before the order for immediate nuclear reprisal attack might have been issued by higher authorities. According to testimony given to the Committee by a high Defense Department official, one of these two false alarms could have resulted from the fact that.

> « a little plug-in circuit (in the computer) worked its way loose somehow in vibration » or from « some dirt or something that had lodged (in the computer). »

Asked about a guarantee against similar ominous incidents in the future, the witness replied : «There is no guarantee that there won't be some other kind of computer error, but we can guarantee that this particular thing will not happen again. » (8)

The other false computer alarm in early June 1980, it turned out, was not caused by computer error. In that case, its announcement of approaching Soviet missiles was technically correct. This is what happened : in order to test the computer's reliability, American personnel had themselves fed the computer *simulated* data showing a Soviet attack. The computer reacted to these fictional data as instructed, but the personnel who received the computer's fictional message were unaware of the exercise and considered that message as indicating a real attack. (9)

A separate investigation of these two accidents, undertaken by two members of the U.S. Senate also showed that the nation's warning system against nuclear surprise attack « is a highly technical and complex system spread around the world and into outer space. It is a system which must be prepared to deal with uncertainties because they will occur, whether caused by physical phenomena similar to launch of missiles, misinterpretation of actual detection of missile launch, or simple failure within the vast array of com-

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7. « *Strategic Warning System False Alerts.* » Hearing before the Committe on Armed Services, House of Representatives (H.A.S.C. No. 96-471), June 1980, p. 2.

8. « Strategie Warning System... », *l.c.,* p. 4-5.

9. « *Strategic Warning System...* », *l.c.,* p. 8.

puter and communication equipment. » In other words, the complex devices located around the world and in outer space must be expected sometimes to send false alarms for three reasons : they may detect an innocent physical phenomenon that to them seems the launching of a missile, they may correctly detect such launching but misinterpret it as directed towards the United States; or in the large mass of computers, radio equipment, etc. ordinary errors will remain inevitable. Hence, they concluded, the hope lies in *human beings,* to detect the mistakes of sensors, computers and other inanimate objects : False alerts « will occur and we must rely on the collective judgment of the *people* manning the system to recognize and deal correctly with false alarms... » (10)

But reliance on human beings is also problematical. This is shown in official statistics. The U.S. Department of Defense operates a special screening program, known as Personnel Reliability Program, which is designed to « remove from nuclear duies » those members of the Armed Forces who are found to be *« unreliable or potentially unreliable »* (« persons whose reliability, trustworthiness and dependability become inconsistent with the standards »). Altogether 119,541 persons with « direct access to nuclear weapons, direct responsibilities in the nuclear release process, or both » were tested in 1975, and 115,767 in 1976. As result, 5,128 were removed from these positions in 1975, and 4,966 in 1976.

The main reasons, as stated in the official statistics, were « significant physical, mental or character trait or aberrant behavior, medically substantiated as prejudicial to reliable performance » (1,219 persons removed in 1975, and 1,238 in 1976); and « drug abuse » (1,970 persons removed in 1975, and 1,474 in 1976). Other reasons for removal were in 1975 (1976 figures in brackets) : « alcohol abuse » : in 169 (184) cases; « court-martial or civil convictions of a serious nature » : 345 (388) cases; « negligence or delinquency in performance of duty » : in 703 (737) cases; « behavior or actions contemptuous of the law » : in 722 (945) cases. (11)

It is inevitable that in a complex machine, some small part would get loose, or even a little dirt cause it to malfunction; it is *not* inevitable, but depends on

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10. « *Recent False Alerts from the Nation's Missile Attack Warning System.* » Report of Senator Gary Hart and Senator Barry Goldwater to the Committee on Armed Services, U.S. Senate, Oct. 9, 1980, p. 12-13.

11. Source : House of Representatives, Committee on Appropriations, Subcommittee on Military Construction, *Hearings on Military Construction Appropriations for 1979,* cited by Lloyd J. Dumas, « Human Fallibility and Weapons » in : *Bulletin of the Atomic Scientists* (Chicago), Nov. 1980, p. 16.

The fact that every year some 5,000 persons have to be removed from nuclear duties for being unreliable, is all the more disquieting because, as Professor Dumas, a member of the Nuclear Weapons Control Steering Committee of the American Association for the Advancement of Science, underscores, they can only be disqualified *after,* and not before their assignment to nuclear duties; for, unsatisfactory behavior is often the result of the « near maddening conditions of isolation, boredom and frustration », of stress and monotony, under which these duties have to be performed, for example, in the prison-like hardened missile silos. He agrees with another expert on the topic, that human errors account for more failures of major weapons and

humans, whether such trivia, or some person's oversight in a panic situation, or drug abuse and other established unreliability of any of *thousands* of individuals, *could become the cause for nuclear war.* It sounds pedantic to point out that this state of affairs is incompatible with a world order in which, as the United Nations Charter says, the peoples can live together in peace as good neighbours.

THE DICTATES OF THE PUBLIC CONSCIENCE PROHIBIT A FIRST NUCLEAR STRIKE

Each of the points raised — and, all the more, their cumulative impact — compels the conclusion that any first nuclear strike is implicity banned by the law of war and would constitute the gravest violation of that law, the gravest war crime possible.

But let us assume *arguendo,* and although this would contradict logic and common sense, that one fact alone could undo each and all of these considerations-namely, that there exists no *explicit* prohibition against, no international treaty *specifically* banning a first nuclear strike.

This argument has been answered by the basic treaty on the law of war, the Hague Regulations themselves.

According to the ambitious plan of its drafters, the Regulations were to clarify *all* aspects of war. But their deliberations forced them to realize that this was impossible : future developments of war methods and technology could not be foreseen. Yet, for this very reason, they considered it imperative *not* to leave the door completely open to those unknowable developments, as this could virtually destroy the fundamental code on which they were agreeing. Hence, they inserted into the code the following overall rule : (Preamble to Hague Regulations IV):

> « ... in cases *not* included in the Regulations... the *inhabitants and the belligerents* remain under the protection and the rule of the principles of the law of nations, as they result from the *usages established among civilized peoples, the law of humanity* and *the dictates of the public conscience* ». (... dans les cas non compris dans les dispositions réglementaires... les populations et les belligérants restent sous la sauvegarde et sous l'empire des principes du droit des gens, tels qu'ils résultent des usages établis entre nations civilisées, des lois de l'humanité, et des exigences de la conscience publique.)

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space vehicles, than mechanical, electrical and structural failures combined. « One can only speculate » — Dumas adds — « on the extent of such problems in the Soviet military, but there is no reason to believe that it is significantly less. » (*l.c.,* pp. 15-20). In an earlier analysis, he mentioned that « some 1,247 NATO personnel associated with nuclear weapons were removed for similar reasons between 1971 and mid-1973. » (Lloyd J. Dumas, « Systems Reliability and National Insecurity » in : *Papers of the Peace Science Society-International,* vol. 25, 1975, reproduced in : « *First Use of Nuclear Weapons : Preserving Responsible Control.* » (Hearings before the Subcommittee on International Security and Scientific Affairs of the Committee on International Relations, House of Representatives, 1976, pp. 199-211, at p. 209.)

This overall provision is unambiguous. It could save mankind. If methods and technologies of war *not* specifically forbidden by existing rules are in contrast to civilized practices, to the laws of humanity, to the dictates of the public conscience, then they *are* forbidden by these overriding standards. Neither civilians nor combattants must be exposed to methods of warfare that are repugnant to these standards, which are recognized as the ultimate arbiter in case of doubt. The loophole, that nuclear warfare could conceivably be justifiable because of the alleged absence of any written treaty prohibition, is closed. The basic clause, a *specific* written treaty provision, says so. For there can be no doubt that the conscience of the peoples of the world condemns the use of nuclear weapons.

The diplomats, jurists and generals who put that provision at the head, in the Preamble of the Regulations, included those from Czarist Russia (it was introduced by a famous Russian jurist, the Czarist Counsellor Fedor de Martens, and is known as the Martens Clause) as well as from Hohenzollern Germany, Hapsburg Austria, and the Sultan's Turkey who also agreed that it was in their self--interest to establish these limits to war.

The Clause adds substance to the Regulations' ground rule, namely, (Art. 22) that « the right of belligerents to adopt measures of injuring the enemy is *not unlimited* »; — it makes the dictates of the public conscience *obligatory by themselves, without* any need of being written down in treaties. (12) Since the Hague Regulations, of which the Clause is an integral part, have been so universally accepted that they have become generally binding customary law (meaning that they would remain in force for any State that would denounce them), no country can extricate itself from the demands of the Clause. The Clause was reconfirmed and strengthened, *after* the advent of the nuclear age, in the 1949 Geneva Conventions and the 1977 Protocols. It appears again in the new «Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects » of 10 October 1980, which refers to incendiary weapons (Napalm), certain fragmentation weapons, land mines, booby traps, and remote-control and time-delayed devices.

If, then, 20th century Conventions on the law of war, from 1907 to 1980, demand the triad of civilized conduct, the laws of humanity, and the demands of the public conscience, to be obeyed *over and above* specifie written rules, the law of war does merely what other branches of the law have done

12. The Martens Clause « is much more than a pious declaration. It is a general clause, making the usages established among civilized nations, the laws of humanity, and the dictates of the public conscience into the legal yardstick to be applied if and when the specific provisions of the (Hague) Convention IV and the Regulations attached to it do not cover specifie cases occuring in warfare, or concomitant to warfare ». (From the Judgment of the U.S. Nuernberg War Crimes Tribunal in the Krupp Case, 31 July 1948, *Trials of War Criminals before the* (U.S.) *Nuernberg Military Tribunals... Oct. 1946-April 1949,* Washington D.C., Vol. IX, 1950, p. 1343). For a wider discussion of the Martens Clause, see, e.g., John H.E. Fried, « The Electronic Battlefield and the Dictates of the Public Conscience », in *Revue Belge de Droit International,* 2/1972, 431-454, at 451-3.

since antiquity. Thus, Roman law demanded every head of a household to behave like a *bonus pater familias* — a respectable, right-thinking man of conscience; international and domestic commercial codes require observance of the standards of an « honest merchant », and the like. Legalistic manipulation cannot abrogate those standards. Notions of professional *honour* have played a similar highly important, self-restricting obligationary function.

It should be noted that the deterrence doctrine which has overshadowed the world for more than a generation, is *itself based on the abhorrence of war, and most particularly of nuclear war.* Deterrence was to be a sort of insurance policy, demanding ever more burdensome premiums, against what was *most feared and condemned,* namely, nuclear war. It was abhorrence of nuclear war, which made nuclear deterrence seem aceptable; and it was the resulting arms race, that sorcerer's apprentice, that in the interest of deterrence led to systematic preparations for such monstrosities as Mutual Assured Destruction (MAD), the destruction of hundreds of cities and towns, and the killing of many millions of people of *both* Superpowers (and most probably of other countries) because the fear of this catastrophe would prevent the catastrophe. Hence, this course — still said to be defensive — was seen as the smaller evil, preferable to the bigger evil of nuclear war. The inevitably ensuing escalation of these preparations in order to show the « credibility » of the will to use the weapons even at the price of assured suicide («*mutual* destruction »), was to « deter » the assumedly always looming attack. This was bound to become increasingly unmanageable, as it constantly feeds on the ever greater fear which it itself creates.

In a real sense, argumentation for the nuclear arms race has been, if made in good faith, perversely *identical* with, and if made in bad faith, an *abuse* of — *stolen from* the conscience of mankind.

Whether there will be nuclear war, will not be decided in legal seminars. It will ultimately be decided by the true conscience of the world; with all arguments of elementary rationality, morality, and self-interest on its side, it will prove stronger than the ghastly temptations of any type of nuclear war.

A FIRST NUCLEAR STRIKE WOULD PRECLUDE THE PEACE-PRESERVING AND WAR-LIMITING FUNCTIONS OF THE UNITED NATIONS

A final point concerns, not the law of war, but the prevention of war. The United Nations Security Council and General Assembly have on various occasions been able to stop *non*-nuclear hostilities before they developed into full-fledged and possibly spreading wars. Any first nuclear strike, followed as it would presumably be, by instantaneous nuclear reprisal, would make impossible the interposition of United Nations Peacekeeping Forces (which, for example, during the 1956 Suez Canal crisis stopped a war that involved

two major Powers and threatened to escalate into World War), the establishment of « demilitarized buffer zones » and « no man's » areas, the deployment of peace-observation teams, and other arrangements for disengagement of hostile forces, which prevented imminent or subsequent hostilities, or served as first steps toward the ending of hostilities (Indonesia, 1948; Jerusalem, 1948; Kashmir, 1949; Korea, 1953; Yemen, 1963; the Golan Heights, 1974; Sinai, 1974; Cyprus, 1975). Any such beneficial action (13) would be made impossible — would so-to-speak be vetoed — by a first nuclear strike. It would incapacitate the center-piece of the world order, namely, the carefully built-up machinery for the prevention (and, if prevention fails, the stopping) of armed conflict, and would exclude such obligatory efforts as negotiations, good offices, investigation, etc. just when they would be most urgently needed.

CONCLUSION ; THE PROHIBITION OF ANY FIRST USE OF NUCLEAR WEAPONS MUST BE ASSERTED, NOT AS GOAL FOR THE FUTURE BUT AS EXISTING FACT

Considering the issues at stake, and the persuasiveness of the evidence, it is a duty for the international law profession to insist that fundamental rules of existing international law prohibit any first nuclear strike.

The essential point is that this can, and must, be proclaimed here and now. No *further* treaty is required to establish the prohibition. This refutes the assumption that any State could conceivably be permitted to start a nuclear war on the pretext that no treaty specifically outlawing a first nuclear strike exists.

The propagation of this line of thought could not work miracles. But it can be very helpful. It could not coerce (and there is ultimately no coercion against nuclear war, except *more* nuclear war !), but it can persuade. It would isolate the desperadoes. The very notion that any government would be capable of triggering a holocaust by a first nuclear strike must come to be rejected as an immense *slander.*

As the illegality of a first nuclear strike becomes increasingly internalized in the minds of leaders and people, tension may gradually relax, and prospects for at first arms reductions and eventually bolder steps, may improve.

It could be objected that the acknowledgment of the prohibition of the first use of nuclear weapons *still does not outlaw nuclear war altogether.* The objection is, realistically speaking, unfounded. For, if the first use prohibition is *obeyed* — if there is no first nuclear strike — then the question of a nuclear reprisal does not arise : there will be no nuclear war. If the first use prohibi-

13. For an analysis of these illustrative cases, see Sydney Bailey, « Non-Military Areas in United Nations Practice », in : *American Journal of International Law,* 74/1, 1980, pp. 499-524.

tion were *disobeyed,* then, it is true, mutual disaster might take its unfathomable course. In either case, the result would be the same as under a treaty outlawing nuclear war altogether.

POSTCRIPT : HAS THE ADVENT OF NUCLEAR WEAPONS MADE THE LAW OF WAR OBSOLETE ?

It is sometimes asserted that the advent of nuclear weapons has made the Law of War « obsolete ». The argument is untenable for several reasons :

i) No government has formally set forth the argument. For example, a publication of the U.S. Department of the Air Force, dated 19 November 1976 which « concentrates on current law» says in its chapter on « Aerial Bombardment »about the 1907 Hague Regulations :

> « The Hague Regulations not only bind states which have agreed to them, such as the United States, but also reflect *customary rules* binding on *all nations* and *all armed forces* in international conflicts. The Hague Regulations are *not historical curiosities but remain viable, active and enforceable standards* for combatants. » (« *International Law - The Conduct of Armed Conflict and Air Operations* », AFP 110-31, Chapter 1, p. 1; Chapter 5, p. 1). These instructions also discuss in detail the provisions of the 1907 Hague Regulations cited in the present article.

ii) In any case, no government or group of governments could (wether by formal announcement or tacitly) free itself from treaty obligations which have become universally binding customary rules. To argue otherwise, would be to argue the end of any world order. In essence, it would be analogous to the Hitler doctrine — that his country had the right sovereignly to disregard the basic, generally accepted standards of international behavior.

It is true that treaty and customary rules can be *abrogated* by a *new* custom, namely, in the words of one authority, « when *a clear and continuous habit* of doing certain actions » has developed and been gradually accepted as legitimate by the international community; or as another authority put it, through « *a general practice accepted as law* ». The unique first use of two atomic bombs in 1945 does not constitute such « clear and continuous habit » or « general practice ».

The *1965 International Red Cross Conference,* in order to dispel any conceivable doubt as to whether the general principles of the law of war apply to nuclear and similar weapons, resolved :

> « *The general principles of the Law of War apply to nuclear and similar weapons.» (14)*

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14. Resolution XXVIII, *Protection of Civilian Populations against the Dangers of Indiscriminate Warfare.* International Conference of the Red Cross, *Resolutions.* (Vienna, 1965), p. 22.

An analogous Resolution (which instead of referring specifically to nuclear weapons, speaks of « all weapons of mass destruction ») was adopted by the 1969 Edinborough session of the Institute of International Law (see *Annuaire de l'Institut de Droit International,* 1969, vol. 53, Tome II, p. 375) :

iii) International law (just as the domestic law of all countries) *itself* prescribes the rules by which existing law can be changed or abrogated. None of these rules permit the conclusion that the advent of nuclear weapons somehow automatically abrogated the law, whose abolition would endanger the human race.

iv) As briefly shown, the pre-nuclear law of war was *confirmed* and strengthened, as a result of detailed debates, long *after* the advent of the atomic bomb, in the four 1949 Geneva Conventions. All four of them start with the over-all principle that they are to be « respect(ed)... *in all circumstances* ». (15) (common Art. 1) If these 1949 Conventions had intended to be inapplicable to nuclear warfare, they would, by elementary rules of interpretation and common sense, have had to stipulate so, explicitly and unambiguously. They do not so stipulate. It is an insult to the governments of the world which signed and ratified those Conventions, to assume that they « forgot » the existence of nuclear weapons, or were so devious and suicidal as to *conceal* their intent of permitting themselves (and, hence, their future potential *adversaries !*) to *break* the rules they had just agreed upon, in the most horrible method of warfare.

v) It is scurrilous to argue that it is still *forbidden* to kill a single innocent enemy civilian with a *bayonet,* or wantonly to destroy a *single* building on enemy territory by *machine-gun* fire — but that it is *legitimate* to kill *millions* of enemy non-combatants and wantonly to destroy entire enemy cities, regions and perhaps countries (including cities, areas or the entire surface of *neutral* States) by *nuclear* weapons.

vi) In short, there has not been, and there is no claim to have been, a consent of the world community to abolish the fundamental rules of warfare in order to legitimize nuclear war (that is, to ligitimize a first nuclear strike — which then would, indeed, legitimize a nuclear *counter*-strike, to be followed by a nuclear counter-counter-strike,...). It offends elementary logic, and every nation's and every person's right to survival, to assume that *permission*

« *Existing international law prohibits* the use of all weapons which, by their nature, affect indiscriminately both military objectives and non-military objects, or both armed forces and civilian populations. In particular, it prohibits the use of weapons the destructive effect of which is so great that it cannot be limited to specifie military objectives or is otherwise uncontrollable (self-generating weapons), as well as of « blind » weapons. »

15. The International Committee of the Red Cross (ICRC) comments on this provision : « Its prominent position at the beginning of each of the 1949 Conventions gives it increased importance...Article 1 is no mere empty form of words, but has been deliberately invested with *imperative* force. It *must be taken in its literal meaning.* » *(The Geneva Conventions of 12 August 1949, Commentary,* Vol. IV, Geneva : ICRC, 1958, p. 15, 17)

A study by the director of the ICRC shows that of the 135 States which by 31 Dec. 1975 were Parties to these Conventions, 21 accepted them with some reservations, which he quotes verbatim. None of them refer to nuclear weapons. (Claude Pilloud, « Les Réserves aux Conventions de Genève de 1949 » in : *Revue Internationale de la Croix Rouge,* Mars 1976, pp. 131-149, and Avril 1976, pp. 195-221).

for such pandemonium has been « tacitly » sneaked upon the peoples of the world.

It is not « idealistic » but completely realistic, to insist that without obedience to the law — above all, obedience to the rules that forbid or limit the use of force, neither a domestic society nor the world society can exist. Never has this been as starkly true as in the nuclear age.

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