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At times it seems incredible that now, almost half a century after the development of nuclear weapons and their deliberate and premeditated use to obliterate entire cities and their defenseless people, concern about the very survival of human society has finally reached the point that thousands, indeed millions, of people all over the world are uniting in an effort to stave off the nuclear apocalypse. It appears, after all, that we have not grown accustomed to living with the nuclear threat hanging over all our heads — and with good reason.

The threat is, in many ways, more ominous than it has ever been. Despite the tentative and hopeful beginnings by the two superpowers to move in the direction of the control and elimination of nuclear weaponry, as represented by the recent signing of the INF Treaty,¹ the nuclear arms race continues apace. In the councils of government, and in the public news media throughout the capitals of the world we hear voices raised demanding the “modernization” of our nuclear arsenals, and the development of entirely new and more deadly weapons systems which will render far more efficient the delivery of death and destruction upon a distant foe.

In analyzing our current predicament, Michael Renner, writing in the World Watch Paper 89, entitled *National Security: The Economic and Environmental Dimensions*, has written:

In addition to an enormous array of conventional arms held by nearly every country is an arsenal of about 50,000 nuclear warheads controlled by a relatively small number of states. Modern military technology has dramatically increased the destructive power of these weapons, the range and speed of their delivery vehicles, and the sophistication of their targeting technologies. In less than thirty minutes, a single U.S. ten-warhead MX strategic missile or its Soviet counterpart can deliver a destructive force equivalent to more than 200 Hiroshima bombs to within ninety meters of a target 11,000 kilometers away.²

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1. Union of Soviet Socialist Republics - United States: Treaty on the Elimination of their Intermediate-Range and Shorter-Range Missiles, *done at Washington*, December 8, 1987; reprinted in 27 I.L.M. 84 (1988) [hereinafter INF].

2. Renner, *National Security: The Economic and Environmental Dimensions*, WORLD WATCH PAPER 89 (1989).

Ruth Leger Sivard has devoted decades of research to collecting and organizing an authoritative accounting of the world's military expenditures, together with a comparison of those expenditures our governments have been willing to make on social programs for the betterment of the lives of their own people. She has written in her most recent annual report, *World Military and Social Expenditures*, 1987-88: "Every hamlet has been brought within the orbit of conflict, every inhabitant made a potential victim of random annihilation. Militarization presumably designed to insulate and protect the nation state has in fact united the world's population in a precarious mutual vulnerability."³

Every public opinion poll, every example of sociological research aimed at measuring public attitudes towards the proliferation of these weapons, has produced the same results: in overwhelming majorities, the people of the world want to be rid of this menace to themselves and to their grandchildren. Yet our governments continue to produce and deploy these diabolical weapons and to train people to use them. Ordinary people fully appreciate the fact that the survival of the human species — as represented by the survival of their own progeny — is infinitely more important than any of the political or economic quarrels that would compel the statesmen of the world to even threaten the use of nuclear attack.

But now, finally, even the statesmen are beginning to face some of the fundamental facts, among them that a nuclear war cannot be won and must never be fought. Both President Reagan and General Secretary Gorbachev have publicly acknowledged this critically important truth in almost identical phrases.

McGeorge Bundy, special assistant for national security to both Presidents Kennedy and Johnson, a Cold Warrior of international renown, wrote just a few weeks ago in the pages of the *New York Times*:

Most important of all, the last years have brought a new recognition, on both sides, of the fundamental reality that, in the future as in the past, the two superpowers will remain in a condition of mutual vulnerability that makes the avoidance of war between them an absolutely primary common interest The new American Administration shares with Gorbachev not only a commitment to superpower peace, but an immediate and politically compelling requirement to make reductions in its levels of defense spending.⁴

Those are the important truths which governments have been brought to recognize: the arms race, especially the nuclear arms race, is futile in terms of achieving real national security; it renders us more vulnerable to the very dangers we sought to avoid; and it is a hideous and unbearable waste of resources so desperately needed for other purposes. The top political leadership of the two superpowers, and of the other nations around the world, openly profess their understanding of these

3. R.L. SIVARD, *WORLD MILITARY AND SOCIAL EXPENDITURES* 1987-88 (1988).

4. Bundy, *Ending the Common Danger*, *New York Times*, Aug. 20, 1989, at 54, col. 1.

truths and yet the war machine grinds on. Why?

It seems to me that the momentum behind the arms race all over the globe is generated by the widely held, deeply ingrained conviction, that is more psychological than rational, that our hopes for peace and personal security rest upon superior strength, in this instance, military force. We have been accustomed, in international relations, to demanding that our military leaders prepare themselves and the nation to protect us against the designs or assaults of any alien force.

Military leaders, being by nature and training conservative, in that they seek to avoid surprise and unanticipated dangers, prepare their plans with a worst case scenario as the problem to be dealt with. In their efforts to persuade a reluctant populace, and the government, to make available the resources necessary to meet this theoretical threat, they warn the nation of all the possible dangers that might conceivably threaten them, however improbable. In the course of the policy discussion, the projections of possible dangers become transformed into the solemn prediction of actual dangers — and the public perception of reality becomes distorted. In other words, our political and military leadership frequently exaggerate the danger in order to frighten, not their adversaries, who presumably know the truth of the situation, but their own people.

Fear generates more fear, on all sides, until rival nations reach a level of almost chronic hysteria. The seminars and conversations held in recent months between Soviet and American political and military leaders about what really happened twenty-five years ago during the Cuban missile crisis, when the world came as close as it has ever been to the edge of the nuclear abyss, have been very instructive. Both sides have discovered they very badly misunderstood the actions and intentions of the other, and they grossly misjudged the forces and capabilities of the other. Imagine, the world for three days stood at the brink of Armageddon by accident!

Now, almost half a century after Los Alamos and Hiroshima, we find ourselves in a far more perilous dilemma. Still, our scientists and technicians are urged on to the development of more destructive and more costly weapons, and our people, shivering in dread of what is to come, are importuned by their governments to sacrifice ever more of their resources in order to fuel this insane contest which is justified on the basis of fears that we have deliberately created.

One may very well acknowledge that there exists, and will continue to exist, misunderstandings, rivalries, tensions, friction between nations and peoples — but nothing that could justify the destruction of civilized society on a global scale. The lack of proportion between the perceived problems and the proffered remedy is so grotesque as to defy human understanding. The situation is, in the strictest meaning of the terms, unreasonable and irrational.

What this represents is the absurd extreme of the notion that the

way to resolve conflict is by the application of brute force. Lawyers, men and women, who respect the processes of law know that there is another and a better way. It lies in the direction of seeking justice for all parties in a conflict, rather than attempting to establish the domination of one adversary over the other. That effort — to establish the rule of law, and the processes necessary to its operation — constitutes the history of the long and painful ascent of humanity from barbarism to civilized society.

The slogans and buzz-words used in the course of the debate about the path to be followed to peace and security are very revealing. One phrase is, "peace through strength," which encapsulates the theory that personal or national security lies in the ability to dominate by force any adversary. This has been the mind-set of most of the political leadership of most of the nations of the world since World War II, and for most societies, reaching back into the mists of time.

This continues to be a strong influence in the affairs of nations which simply proves the wisdom of Einstein's famous, if widely ignored, observation when he considered the long range implications for humanity of the new source of energy which he had helped to deliver to mankind. "Everything is utterly changed," he said, "except our way of thinking about such matters, and so we drift toward unparalleled catastrophe."

The fact is that we have amassed these enormous arsenals of nuclear weapons, quite capable of obliterating human existence on this planet, and both sides now recognize the fundamental fact that these instruments of destruction are not weapons, as we normally use the term, because we dare not use them. We dare not use them against each other for fear of massive retaliation. This situation is referred to as the balance of terror and declared to be a state of peace. Cold War is not peace, it is war.

The further fact is that nations possessing nuclear weapons have been unable, or unwilling, to use them even against adversaries who lacked them. Thus, both of the superpowers have in recent times withdrawn from military engagements with weaker, non-nuclear foes without resorting to the ultimate weapon. In other words, the Soviet Union and the United States have accepted what once would have been thought of as a humiliating military defeat in Afghanistan and Vietnam without resorting to the use of what has been advertised as the ultimate weapon, the source of our security. And still, while we have conclusively demonstrated the utter uselessness of nuclear weapons against any foe, weak or strong, we continue to build more. No wonder we frighten our children.

It is now evident that we have not been developing our military capabilities, but rather the nuclear powers have been working in concert to construct a global Doomsday Machine with many triggers which has no earthly use but which represents an intolerable threat to the survival of life of this planet. All of this has been done in the name of preserving peace. But peace is not what we have been seeking in this mad technological contest. Rather, each side has been searching for the scientific break-

through which would give them military superiority, and the means of dominating their foe. What both sides have been seeking — at least, until very recently — is not peace but triumph by force of arms, peace through strength.

We have sought not the reconciliation of differences and mutual respect between parties, which is the basis of true peace, but we have sought domination. Clearly, the reconciliation of differences is not to be found in an arms race, any more than the end of the arms race can be achieved by developing new generations of weaponry. More than forty years of experience have taught us that, if nothing else.

An arms race, with the attendant secrecy so necessary to securing an advantage over the adversary, simply serves to increase fear and suspicion on both sides, to exacerbate tensions, to distort reality, to engender a sort of international psychosis which renders impossible the search for mutual understanding and compromise. There, finally, is the word: compromise. As we are all aware, there are those on both sides (of this, or any other dispute) who will declare that it is impossible to compromise with evil; one cannot do business with the devil. If that be true in human and international relations, there is only one alternative: the domination of the evil by the good, by force if necessary. And it is that attitude which has brought us to our present impasse.

The search for common ground, leading to understanding and a lessening of tensions between nations, may not always be achieved through the sudden discovery of shared values, or goals, or ideologies, but may sometimes be discovered in the apprehension of a common danger, which overshadows what had earlier been thought to be the primary threat to national security or autonomy. The example of Western Europe after World War II may illustrate the point. For generations, indeed centuries, the peoples of Western Europe, motivated by nationalistic passion, by religious fanaticism, by economic interests, had grimly slaughtered each other, in what appeared to be an endless blood-bath, culminating in the two victors and vanquished alike, to the brink of total collapse and disintegration as organized societies. Then they discovered that what they shared was more important than what drove them apart, and what they shared was a common fear of the perceived threat of the conquest of Europe by Soviet armed aggression, or internal subversion. Measured against that menace, all of their former antagonisms and rivalries were substantially diminished, and they moved in the direction of developing a community of nations, operating under an expanding body of treaties and laws. With the virtual elimination of trade barriers between these formerly deadly enemies, scheduled to be accomplished in 1992, the European Community will enter a new phase of gestational development, and the notion that the member states are today, or in the future, capable of waging war on each other, as they had for so many centuries, is almost laughable.

A common danger which threatens all parties to a dispute, may well serve to put matters into a different perspective, where compromise and

adjustment of differences becomes not only relatively attractive but absolutely imperative. The dawning realization by the political leadership of both of the nuclear superpowers that they are truly sliding toward the edge of the nuclear abyss, and the further realization that the threatened extermination of the human species renders all other dangers relatively insignificant, become a common ground of understanding which makes possible a different sort of process. It is now possible to be pragmatists and realists in demanding the cessation of the arms race, the gradual dismantling of both conventional and nuclear forces, the opening of commercial relations and cultural exchanges, and the exploration of ways to extend by law and treaty the control of the nuclear threat among other nations who have, or are seeking, a nuclear weapons capability.

All of these developments involve an effort to reconcile differences by negotiation and agreement, rather than by military conquest, and they are thus truly peace-making, rather than war-making, activities. Many of these activities are the special province of lawyers, and all of those who believe in the rule of law rather than in the rule of naked force. The difference is very clear, and of absolute importance. Every move we make as a nation, every decision we make as a people, moves us in one direction or the other: either towards peace, or towards war. The notion that we can make progress towards peace by making or preparing for war, under the slogan of peace through strength, is a fraudulent proposition developed by militarists in all the nations to conceal from the people their real intention, which is not peace but domination.

The Lawyers' Committee on Nuclear Policy, in its Statement on the Illegality of Nuclear Warfare has very forcefully and persuasively made the case (which could be applied as well to a great deal of modern "conventional" weaponry as well as chemical and biological weapons) that:

The legality of nuclear weapons . . . cannot be judged solely by the existence or non-existence of a treaty rule specifically prohibiting or restricting their use. Any correct legal analysis must take into account all the recognized sources of international law — treaties, customs, general principles of law, judicial decisions and the "writings of the most qualified publicists." Of particular relevance to the legality of nuclear weapons are the many treaties and conventions which limit the use of any weapons in war, the traditional distinction between combatant and non-combatant, and the principles of humanity, including the prohibition of weapons and tactics that are especially cruel and cause unnecessary suffering.⁵

The response of the realists to this argument is that it amounts to so much legalistic quibbling and obfuscation which prevents us from facing squarely and dealing effectively with a clear and present danger to our national security: the threat of Soviet aggression. The fact is that in over-

5. THE LAWYERS' COMMITTEE ON NUCLEAR POLICY, STATEMENT ON THE ILLEGALITY OF NUCLEAR WARFARE (rev. 1988) [hereinafter Statement].

whelming numbers the people of the United States and the people of Europe reject the notion that the prospect of Soviet tanks rolling westward, or the launching of a preemptive Soviet nuclear strike, has anything to do with the reality of the world today.

It is not that the threat is not real, it is that the antidotes prescribed and employed by the realists over past decades have resulted in the waste of hundreds of billions of dollars that were badly needed to deal with real problems. The end result of their programs has been that we are in greater peril today than when they started. The waste continues despite some hopeful, tentative moves toward new directions and new policies, as in the case of the INF Treaty.⁶ The history of that forty years is not a record of achievement which entitles the realists to a vote of confidence, never mind entrusting them with the fate of the earth.

What, then, are the real threats to our security and well-being wherever on this earth we happen to live? We must realize, first of all, that the vast majority of the people on earth live in the presence of what to them are far more ominous and deadly threats, with which they feel equally incapable of coping, threats to their immediate existence, and that of their families, and their societies. War, as we know, was only one of the Four Horsemen of the Apocalypse.

Generally speaking, we and our families are reasonably secure against hunger and disease and various forms of enforced servitude, and so such threats to life and liberty and the pursuit of happiness do not seem very real to us. The experience of hundreds of millions of our fellow human beings around the globe is quite different: they live every day in the shadow of death, death which comes in forms against which they are utterly helpless. Their immediate concerns have little to do with intercontinental, nuclear-tipped missiles — but rather with how to get bread and clean water for their families, a bit of land to cultivate or shelter from the elements. It is certainly true that if Armageddon occurs, the poor and the rich will perish together, but for now it is a matter of perspective, and it is not reasonable to expect people to concern themselves with what seems to be remote dangers, when they are worrying about how to exist for another day, or another week.

We too, are afflicted with a similar myopia. We have begun to appreciate the dangers implicit in the nuclear arms race, but our concentration on that danger may have led us to ignore other threats which represent an equally great menace to the survival and security of the human species. These are the threats which are described with compelling force in the Report of the World Commission on Environment and Development (the Brundtland Commission).⁷

The Commission was established by, and reported to, the United Na-

6. See INF, *supra* note 1.

7. REPORT OF THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE (1987).

tions, and was made up of twenty-one distinguished citizens from nations all over the globe — foreign ministers, finance and planning officials, policy makers in agriculture, science and technology; many of them cabinet ministers, or senior economists in their own governments. They met together, held hearings on five continents, and compiled their report over the span of two years. As the title suggests, their subject matter encompassed the various aspects of the conflict between the efforts to engender the kind of economic growth which will enable us to feed, clothe, and shelter a world population which will double in the next thirty years, and the alarming evidence of extremely serious and menacing environmental degradation around the globe. This degradation takes many forms: the continuing pollution of air, water and soil on an increasing scale; the spread of the deserts and the loss of the rain forests; the depletion of the ozone layer; the gradual warming of the earth's atmosphere, the so-called "greenhouse effect;" the extinction of significant numbers of biological species; the constant threat of radioactive contamination of our biosphere; and just the sheer growth of the human population of the globe which puts ever increasing pressure on a relatively diminishing base of natural resources.

Without attempting to discuss in detail any of these phenomena, let it be said that the Commission solemnly warned the United Nations that these examples of environmental degradation, which now represent a clear and present danger to the survival of the human race, are the direct result, not of natural evolutionary forces, but of the decisions and actions of mankind itself.

The Commission identified two primary causes for the continued assault upon the global environment. The first cause, they declared, is the abject poverty of a significant portion of the human family, especially in the Third World which drives millions of people to a desperate struggle for survival at whatever cost to the environment. The second cause, equal to the first, is the heedless and reckless exploitation of the environment by the industrialized nations, armed with the enormous power of modern technology, and driven by the appetite for immediate profit at whatever long range cost to future generations — a form of economic warfare on the environment which characterizes so much of the activity of the industrialized world. Taken together, these two continuing assaults against our global environment represent a sort of all-out war of mankind against the fragile biosphere which is the very ground of our being.

Again, without going into the details, it is clear that environmental scientists from every nation are becoming increasingly alarmed by the data which their research yields and by the apparent incomprehension or indifference of the people of the world, and their governments, to the warnings which they have been voicing.

Just last month, at a meeting attended by a dozen of the most prestigious and respected members of the Soviet scientific community, and by almost 200 American scientists, the conferees insisted that their governments recognize and react to the evidence accumulating on every side.

Academician Ronald Sagdayev, until recently the Director of the Soviet Space Research Program, declared to the conference that "the issue of global survival should be elevated to the level of nuclear survival."

In a joint letter, signed and issued at the conclusion of the conference, the attenders urged Presidents Bush and Gorbachev to form "an environmental security alliance" to deal with these environmental threats, and that urgent appeal highlights the special dimensions and character of the dilemma which confronts the people of the world.⁸

One cannot examine the problems associated with the global environment very long without being compelled to recognize certain facts, which must be acknowledged before any effective remedial action can be undertaken.

First, no nation on earth, however economically or militarily powerful, can isolate itself from the effects of the environmental degradation of the globe. We will all pay the price in terms of a serious reduction in the quality of life and perhaps in the extinction of life itself.

Second, no nation acting alone, or in concert with a few other nations, can effectively deal with these problems. Their solution is going to require a level of international, global cooperation, and a coordinated effort that is absolutely unprecedented in human history. It is evident, for instance, that these problems and their successful solution render obsolete the traditional notions of national sovereignty. No nation, it is now generally agreed, has the sovereign right to conduct its affairs in a way which endangers the well-being of other people and societies beyond its borders. A recent example of this relatively new perception of international responsibility and accountability for the protection of the global environment was the reaction of people and governments all over the world to the nuclear accident at Chernobyl.

Finally, dealing effectively with these problems, protecting the common good of all humanity and of generations unborn, is going to require a new recognition of the role of law and the legal process in the affairs of men.

Clearly, the environmental problems which menace the globe will not yield to the application of military might. Air and water pollution cannot be checked by a nuclear missile strike. In fact, it quickly becomes evident that militarism, involving the massive diversion of a nation's resources — economic, scientific and human — to the production and deployment of destructive weaponry, and the obsession with secrecy with its concomitant element, are a large part of the problem, not the solution.

Clearly, we stand on the threshold of a new era in human affairs, an era which was perhaps prophetically envisioned by Einstein, in which arms races and war are understood to be, not the instruments of our security, but just one more problem to be disposed of in order to get to the

8. Statement, *supra* note 5.

more important work of developing and protecting our world for future generations.

This is the work of men and women who believe in the efficacy of law and of legal procedure; who are devoted to the peaceful reconciliation of differences between individuals and nations; and who are knowledgeable in the science of constitutional structure, legislation, litigation, mediation, arbitration and client counselling — all the wares and skills of the lawyer.

Theirs must be a central role in the emergence of this new world, not just because of their experience in these matters and their knowledge of law in its historical context, but because of their demonstrated faith in the possibility of achieving for all of humanity a life of peace and justice.

We all recognize that while the lawyer is bound by a special relationship to a client — whether the client be a person, a corporation or a state — the lawyer first owes an even greater obligation to the common good, to the welfare of all and to the rule of law itself.

The Statement of the Lawyers' Committee on Nuclear Policy makes the point most compellingly:

The law in all its majesty would not, by itself, have brought an end to the divine right of kings, slavery, child labor, exclusive male suffrage, racial discrimination or the Vietnam War, but social progress with respect to these and many other issues would not have occurred without the intervention of legal principles in the political debate, or the confirmation of changing values in the form of legal principles. So too, in the context of the nuclear [or environmental] dilemma, lawyers and legal principles should lead the way in forging consensus, this time among peoples divided by religion and background, yet united by common interest in continued survival and international order.⁹

No one expects the lawyers of the world to solve any one of these problems by their solitary efforts, but it is more widely recognized than you might believe that ultimate success in this struggle for the future security and well being of humanity will be rendered virtually impossible without your continued dedication and zeal, and the commitment of your talents and energies to the building of the kind of world we all want for all of our children, and for generations yet to come.

9. *Id.*