



LAWYERS FOR SOCIAL RESPONSIBILITY

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International Law – Making it Work

The following is a speech delivered by David Wright.

Introduction

I want to begin with a brief overview of international law to set my later comments in context and hopefully allow you to fully appreciate the significance of the decision in the nuclear weapons case.

International law

International law has two main areas:

Private international law – rules which apply to persons (or states) engaged in private transactions involving two or more legal units (provinces or nations) – aka “conflict of laws” rules.

Public international law – principles and rules which started out in 16th century Europe designed to govern relations between sovereign nations. Its beginnings coincided with the emergence of nation states.

My comments tonight focus only on public international law.

Like other law, public international law evolved slowly and until recently bore the title of “the law of nations.” Its original “base” was political – emerging ideas on the sovereignty of independent states sufficed for the diplomatic purposes for which the law was then required – war and peace.

Later “foundations” were philosophically rooted in the law of nature, drawing strength from the schools of “divine order” and “universal reason.” This approach enabled writers of the time to bring some order to the confused mass of local customs and bilateral treaties which by then existed.

Later, positivist thought strengthened the concept of state sovereignty and the notion that legal obligations

between nations are based on consent. Both these ideas are still in vogue but are being challenged.

Today article 38 of the statute of the international court of justice provides that the court shall apply:

1. A. International conventions.... Recognized by the contesting states.
- B. International custom....
- C. General principles of law recognized by civilized nations.
- D. Judicial decisions and teachings of the most highly qualified publicists of the various nations...

2. Section 2 provides that the above provisions “shall not prejudice the power of the court to decide a case “ex aequo et bono,” if the parties agree thereto.” (i.e., the court has some freedom to consider principles of equity as part of international law.)

With adoption of the covenant of the league of nations international law formally applied to all states. After decolonization under an auspices it spanned the globe.

International law has thus gone from an essentially European base to worldwide jurisdiction in just 75 years.

Not only has it broadened its reach, it has dramatically expanded its scope so that now, quoting Wilfred Jenks, “it represents the common law of mankind in an early stage of Development.” The law governing relations between states being only one major division of many.

In my view some of the most significant developments in international law in this century have taken place in the area of human rights. Under international law the individual now possesses legal rights independently of, and even against, that individual’s national state.

Since 1945, the entry into the international legal system of so many new states with varied cultural, political and legal backgrounds has had a profound effect on international law, enormously increasing the difficulties of administration. The new states are also challenging the validity of some of its underlying concepts and principles. This presents us with a whole range of new possibilities and possi-



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ble new allies in our struggle to bring peace and justice to this planet.

So what are the problems and solutions?

There is a good deal of skepticism concerning the possibility or practicality of making international law work. Some skepticism stems from perceptions not keeping up with incredibly rapid change in this area, much cynicism from major democratic nations refusing to be bound by ICJ decisions.

One of our jobs is to change this sad state of affairs.

It is inevitable that differences will arise between people of different backgrounds. Old wrongs need righting. Limited resources must be equitably shared. We must have a means to resolve our differences without resort to war. In this age of nuclear, biological, chemical and ever-evolving weapon and delivery systems of mass destruction we have no other rational choice – we must make international law work ... or perish.

The solutions are relatively simple. Their establishment and implementation are proving difficult. We are fiercely protective of justice for ourselves but seem at times reluctant to share it with others. Einstein said we had to change our way of thinking. Caldicott said we had to change the priorities of our lives.

They were both right.

Don't miss our next issue of the newsletter, when we conclude David Wright's speech.

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Editor: Dorothy Jean O'Donnell
email: djod@uniserve.com

Typesetting, Design & Layout:
Chameleon Publishing &
Graphics Ltd.

Box 19, Site 4, R.R.1
Priddis, AB, T0L 1W0
(403) 931-4896; Fax: 931-4897
email: champub@istar.ca

We CAN Abolish Nuclear Bombs

by Joanna Santa Barbara
joanna@web.net

continued from our Fall/98 issue

There is another issue. Through paying attention to violence in the smallest social systems, the family, we have learned to understand the nature of an abusive relationship. An abusive relationship is not one where a woman or child is being hit or beaten every day. It may be one where the fist-in-the-face occurs quite occasionally but always remains a possibility. The rest of the time there may be smiles, gifts and pleasant behaviour; the fist-in-the-face is in the background. If provoked, the fist may crash on the table, meaning, comply or the fist-in-the-face is next. Now our efforts to diminish domestic violence have to do with delegitimizing this power relationship backed by violence. We regard it as unacceptable. We encourage the victims to regard it as unacceptable. Why should it be acceptable in larger social systems? Why is the international equivalent of the biggest fist-in-the-face the criterion of who has the most power in the international system – the permanent seats and veto power in the UN Security Council? Why is the U.S. President referred to, as he was by Chrétien recently, as “the leader of the world?” By what criterion? Elected? No. Moral leadership? No. Biggest fist-in-the-face, economically and militarily.

Now, many people don't like such relationships in small and large social systems. Some people don't consent to them. There's a difference. No woman likes being beaten, but some are conditioned to accept the power relationship. Most people dislike nuclear weapons and would like to get rid of them, but by default, consent to the power relationships and call this “realistic.” Others dissent, and express their dissent, and these are the ones who are changing the system.

Gandhi, of course, was the all-time model for not accepting, actively dissenting and struggling against oppressive power relationships. He held that it was immoral to accept and submit. You don't cooperate with

oppression. “Non-cooperation with evil is a sacred duty” said Gandhi. Nuclear weapons are “the ultimate evil” said the president of the World Court in 1996. I believe the distortion of relationships caused by the power of possessing Nuclear Weapons is evil, and submitting to this is evil.

The Canadian government cooperates. 93% of Canadians want nuclear weapons abolished, but the Canadian government cooperates, willingly in the Department of National Defence, ambivalently in the Department of Foreign Affairs. Although this government's election promise said, “A re-elected Liberal government will ... work vigorously to eliminate nuclear weapons from the planet,” every year in the UN Canada votes in Favour of eventually getting rid of them and against negotiating an agreement with a timetable to do so.

The Canadian government:

- considers its allies' nuclear umbrellas as part of its defence policy;
- will permit the deployment of nuclear-armed bombers and other nuclear forces in Canadian airfields during crises;
- provides airspace and low-level flight ranges for bomber training;
- hosts visits by nuclear-armed submarines;
- maintains communication sites for nuclear forces;
- produces and exports parts for nuclear bombers and submarines;
- politically and diplomatically supports U.S. and NATO (North Atlantic Treaty Organization) nuclear policies, which include possible first use of nuclear weapons

..... This, while over 90% of Canadians want them to take leadership in abolishing nuclear weapons.

Now, some very encouraging things are happening that may move us towards abolition of nuclear weapons. I'll speak first of international steps, the Canadian ones.

In the mid-90's, millions of ordinary people throughout the world signed statements that the use and threat of nuclear weapons was against the dictates of their consciences. This fed into the deliberations of the World Court which declared in 1996 that the use and threat of nuclear weapons was con-

trary to international law in almost every conceivable circumstance. The implication of this is that Canada is acting outside international law in cooperating with NATO nuclear policy and accepting coverage by the U.S. nuclear umbrella.

The Canberra Commission, brought together by the Australian government, reported in 1996 that abolition of nuclear weapons was not only feasible, but an urgent priority; it outlined the steps to achieve it, beginning with taking the weapons off alert, declaring "No First Use" and negotiating a phased, verifiable treaty.

This was followed by a cascade of declarations by prestigious and influential people – 61 general and admirals from around the globe (1996), the U.S. National Academy of Science (1997), 117 civilian leaders, including 47 past and present heads of state and prime ministers (1998), the U.S. Catholic Bishops, 19 Canadian church leaders.

In June this year, David Andrews, Foreign Minister of Ireland, drafted a statement now known as the "New Agenda Declaration" and publicly endorsed by the foreign ministers of Brazil, Egypt, Mexico, New Zealand, Slovenia, South Africa, and Sweden. It declares impatience with the resistance of the nuclear powers in acting on their promise in the Non-Proliferation Treaty to swiftly move to abolish nuclear weapons. It urges them to get on with it. The foreign minister of Japan has declared a similar intention.

A few weeks ago at the summit of the Non-Aligned Movement in Durban, country after country declared the urgency of abolishing nuclear weapons, the need for a time-bound treaty, the importance of diverting the money used for instruments of human destruction forwards funding human needs, and the risks of the unravelling of the Non-Proliferation Treaty if nothing were done.

The Middle Powers Initiative was started in Canada by former Ambassador for Disarmament, new Senator, Doug Roche. It complements the New Agenda initiative and is now an international movement. The Citizens' role throughout the world, as in Canada, is to demand that leaders do what people want and get rid

of nuclear weapons. Get out of the abusive relationship. For Canada, we must get out from under the lethal "nuclear umbrella."

Good things in Canada: The Standing Committee on Foreign Affairs and International Trade has been reviewing Canada's nuclear weapons policy. Please write to them now as they prepare to write their report. Address letters to the Committee's Chair, Bill Graham, Parliament Buildings, Ottawa, K1A 0A6. No stamp required. When the report comes out in the next few months, react. Write to Axworthy. Write to newspapers.

We have a foreign minister, Lloyd Axworthy, who is sympathetic to the abolition of nuclear weapons. What he says he needs is a more vociferous public, not just one who records 93% on a public opinion poll as wanting Canada to take a lead in abolishing nuclear weapons, but who says it louder, clearer, as we have done today. So write to Lloyd Axworthy, same address, and tell him: "Canadians say, NO NUKES!"

What else can you do?

Speak to your Member of Parliament. You may find how difficult it is to leave an abusive relationship. "We wouldn't want to signal lack of confidence in the U.S.," said one to me recently.

Write letters to newspapers.

Raise the issue with friends, colleagues, at church.

Suggest Remembrance Day at your children's school deal with rid-

ding the world of this worst of all war risks.

Best of all, join one of the groups speaking out clearly that we do not consent to nuclear weapons threatening the future of millions of worthy living beings, we do not consent to a world dominated by nuclear weapons states.

If you are a scientist, join Canadian Pugwash or Science for Peace; if you a lawyer, join Lawyers for Social Responsibility; physicians or health workers join Physicians for Global Survival (PGS); women, join Voice of Women; veterans, join Veterans against Nuclear Arms (VANA); students, join Student Pugwash, just beginning at McMaster University. If you're at school and need help in forming a Student Pugwash, ask me. Project Ploughshares and World Federalists are for everyone. Support the knowledge and research centres peace Research Institute of Dundas, and Centre for Peace Studies at McMaster University.

We can abolish nuclear weapons!
Tell them: Canadians say, NO NUKES!

Get the warheads off the delivery vehicles before the year 2000.

Canadians say, NO NUKES!

Get out from under the nuclear umbrella!

Canadians say, NO NUKES!

Start negotiating a Convention to abolish nuclear weapons.

Canadians say, NO NUKES!

Joanna Santa Barbara (905) 529-9951
email: joanna@web.net

Message from the International Forum for Solidarity of DPRK

The following is a message from the International Forum for Solidarity, a Vienna-based regional anti-imperialist platform.

Proclamation of Solidarity

More than 50 years have passed since the U.S. occupied the southern part of the Korean peninsula and so artificially divided Korea.

This division of Korea is a product of the imperialistic policy in the Asian-Pacific area and still endangers the maintenance of peace in this region.

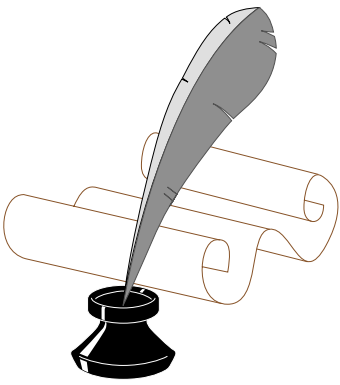
The ceasefire of 1953 between the DPRK and the U.S. must be replaced by a peace treaty. Recently in Genf talks were held for the fourth time between North and South Korea as

well as the People's Republic of China and the U.S.A. on the topic of this peace treaty.

The most important condition for maintaining peace on the Korean peninsula is the withdrawal of the U.S. Forces.

From October 24 until November 2 the U.S. and South Korea nevertheless performed maneuvers against the Democratic People's Republic of Korea. About 35,000 U.S. soldiers based in South Korea and more than

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WRITE NOW!! URGE CANADA TO LEAD IN BANNING NUCLEAR WEAPONS!

IN THE NEXT FEW WEEKS, CANADIANS HAVE A RARE OPPORTUNITY to help rid the world of nuclear weapons. We need the government to take courage and support abolition!

Background

On December 4, 1998, the House of Commons Standing Committee on Foreign Affairs and International Trade (SCFAIT), chaired by Bill Graham, MP, issued a report on Canada's nuclear weapons policy entitled, *Canada and the Nuclear Challenge: Reducing the Political Value of Nuclear Weapons for the Twenty-first Century* (available on the Parliamentary Internet:

This report reflects the result of months of public hearings and consultations, and is supported by four of the five major political parties. The Reform Party issued a separate *Minority Report*.

The SCFAIT report makes 15 recommendations. Highlights include recommending that:

- Canada work with other countries to encourage the Nuclear Weapons States (NWS) to enter into and conclude negotiations leading to the elimination of nuclear arsenals;
- Canada endorse the concept of de-alerting all nuclear forces worldwide to reduce the risk of accidental nuclear war;
- Canada "argue forcefully within NATO" that NATO's present reliance on nuclear weapons be re-examined;
- Canada "support the call for the conclusion of a nuclear weapons disarmament convention."

The Government of Canada is required to respond to the Report by May 7, 1999. Its response can range from total acceptance to total rejection. Implementing the Report's 15 recommendations would change

Canadian policy. The Government's long-standing support for the nuclear weapons doctrine of the Cold War era would be transformed into a forward-looking policy envisioning a nuclear weapons-free world.

The nuclear-armed NATO states are pressuring the Government to reject this Report. However, at the UN in December 1998, 12 out of 16 NATO countries voted differently from the nuclear-armed NATO states on a key vote - indicating a desire to consider a "new agenda" with nuclear weapons. We need to support this fragile new call for consideration of nuclear abolition.

What you can do

1. Write a letter to The Right Honourable Jean Chrétien, Prime Minister Of Canada, House of Commons, Ottawa, Ontario, K1A 0A6. (Your letter will be forwarded automatically to the Minister of Foreign Affairs, Mr. Lloyd Axworthy.)

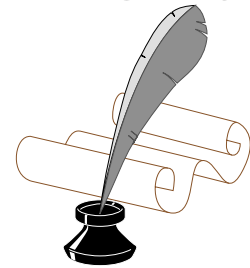
- Provide the Prime Minister with your brief comments on the report and encourage the Government to take leadership in banning nuclear weapons. Remind him that 92% of Canadians (Angus Reid poll, Feb. 1998) support the Government of Canada taking a leading role in banning nuclear weapons (as it did with land-mines);
- Urge the Government to accept the report and implement its recommendations fully and promptly.

2. Send a copy of your letter to your MP (even better, write a separate personalized letter) to your MP and to cabinet ministers all at the address given in 1. above.

3. Make an appointment to visit your MP at his/her riding office to discuss the report.

4. Copy this sheet and distribute it as widely as possible.

Notes: There is no need for postage on letters to Members of Parliament. Letters should be sent by mid-March 1999.



DPRK

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50,000 South Korean soldiers took part in the military maneuvers that were held at the same time under the name of "Hwarang 98," more than 1.1 million regular and semi-regular armed forces of South Korea and the U.S. took part.

The military assault in 1950, the hunger blockade lasting for decades and the annual threats by these maneuvers are all an expression of the permanent aggression of the U.S. against Korea.

The International Forum for Solidarity therefore demands that the U.S. and the South Korean authorities stop the common maneuvers against the DPRK. In accordance to the resolution of the 30th UN assembly, the U.S. has to withdraw all its troops and weapons from South Korea. The most reasonable way for the reunification of Korea is the creation of the Confederate Republic of Koryo as proposed by President Kim II Sung which was made concrete by his successor Kim Jong II, General Secretary of the Workers' Party of Korea.

We express our full solidarity for the upright efforts of the Korean people for the withdrawal of the U.S. troops from South Korea and for the reunification of the divided country by means of the foundation of the Confederate Republic of Koryo. Stop the Maneuvers of the U.S. and South Korea Against the DPRK!

Withdraw U.S. Troops from the Korean peninsula!

Stop the Blockade Against the DPRK!

For a Peaceful Reunification of Korea!

- Vienna, November 9th, 1998

Canadian Courage: Leadership on Nuclear Weapons

by Bev Delong

Canada's recent abstention vote at the UN on the key nuclear abolition resolution was the subject of much positive comment at the November 26, 1998 seminar in Ottawa. This event gathered together representatives of government, civil society and the Canadian Network to Abolish Nuclear Weapons to discuss the current political environment and concerns about Canada's position with respect to nuclear weapons policy. Speakers included Gwynne Dyer, Professor Stephen Clarkson of the U. of T., Alyn Ware of the Lawyers Committee on Nuclear Policy, Ernie Regehr of Ploughshares and Doug Roche of the Middle Powers Initiative. A summary of these speeches will soon be available.

My comments during the seminar reflected my concerns that current NATO reliance on nuclear weapons offends international law for these reasons:

1. NATO proposes the use of nuclear weapons in cases where the very survival of the state is not at stake, which is required by the Advisory opinion of the International Court of Justice. I suggested that relying on the "loophole" in the Advisory Opinion of the ICJ was a hazardous course since it could at a later date be found by the Court that use of nuclear weapons even in this exceptional situation is illegal. Prudent legal advice would be to simply consider use of nuclear weapons would be illegal.

2. Even if that rule were simply to be complied with, NATO's anticipated use is in breach of international law requiring that weapons used be small enough to be used in a manner to discriminate between civilians and military.

3. Further, the weapons used would cause unnecessary harm to combatants.

4. Use of nuclear weapons would be a disproportionate response to the action taken against the NATO state. For example, use of a nuclear weapons in response to a chemical or biological weapon (as is apparently now being planned) would not be proportionate.

5. Use of nuclear weapons would also breach the requirement that neutral states be respected and remain uninvolved in conflicts outside their borders.

6. NATO further is in disregard of the legal obligations of the Nuclear Weapons States under Article VI the NonProliferation Treaty to pursue negotiations in good faith for nuclear disarmament.

This promise was confirmed by the Nuclear Weapons states in the 1995 Principles and objectives brokered by Canada. That document states that all states agree to "systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goal of eliminating nuclear weapons." The International Court of Justice has said that the Art. VI. NPT obligation "goes beyond mere obligation of conduct, the obligation involved here is an obligation to achieve a precise result, nuclear disarmament in all its aspects."

6. Further, NATO Nuclear Weapons States appear to be in breach of Articles I and II of the NonProliferation Treaty by failing to limit access to nuclear weapons to nuclear weapons states as defined under that Treaty. Instead, we are informed that non-nuclear weapons states (such as Canada) are involved in nuclear weapons planning and training.

Given these difficulties with current NATO nuclear activities, many of the participants at the seminar sincerely congratulated the Government for the work it did on building support within many middle powers for a either a "yes" or an "abstention" vote at the United Nations on the Resolution placed before the UN by the New Agenda Coalition calling for a clear and unequivocal commitment to nuclear abolition from the Nuclear Weapons States. This coalition, composed of Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden. (Slovenia has dropped out of co-sponsorship of the Resolution due to pressure from the Nuclear Weapons states.)

The 12 out of 16 NATO states that either voted for or abstained on the UN Resolution will form a strong group to demand a review of current nuclear weapons policies during the upcoming NATO Strategic Concept review. This review is to be completed in time to mark the 50th anniversary of NATO in April, 1999.

This vote, together with the strong Report of the Standing Committee on Foreign Affairs, offer hope to those of us working for nuclear weapons abolition. The Standing Committee has been under tremendous pressure from military representatives from the US and UK; they, and the Minister of Foreign Affairs, need your words of support now.