New Zealand Centre for Global Studies
Te Pokapū Akoranga Aorere o Aotearoa

The Treaty Approach to Nuclear Disarmament:
The Prohibition Treaty and the Non-Proliferation Treaty

Research Paper prepared for Student Symposium:

Understanding disarmament: Insights for, and from young global citizens
Wellington, September 2019

Author:
Dr Kennedy Graham
Director
NZ Centre for Global Studies

August 2019

NZ Centre for Global Studies
18 Queens Drive, Waiheke Island, 1081, Aotearoa New Zealand
www.nzcgs.org.nz

New Zealand Centre for Global Studies
Te Pokapū Akoranga Aorere o Aotearoa

Content

Introduction

The Treaty on the Prohibition of Nuclear Weapons (2017) is one of the most important developments of the modern era. Beyond its own intrinsic importance, the Prohibition Treaty raises important issues pertaining to the relationship between the political and legal dimensions of multilateral disarmament – in particular, the dynamic between initiatives taken in the political context and their potential subsequent affirmation in law.

This research paper considers the main dimensions of the Prohibition Treaty: its central concepts, its supporting characteristics, and its future potential. In particular, it considers the relationship between politics and law with respect to the Prohibition Treaty, and also the Non-Proliferation Treaty. Consideration of the political dimension requires an analysis of the legal foundation on which political action rests, and the extent to which renewed political initiative contributes, in turn, to the strengthening of that legal foundation.

Scope exists for further political initiative regarding the Treaty itself, pertaining to the two central concepts. Such initiative draws from an assessment of the contemporary state of customary international law, and whether the non-possession of all weapons of mass destruction, including nuclear weapons, might be attaining, or have the potential to attain, the status of an emerging peremptory norm. it is open for New Zealand to lead in such initiatives, consistent with its commitment to strengthening the multilateral rules-based order.

1. Politics and Law: The nexus in WMD disarmament policy

WMD disarmament policy draws from an intimate connection between politics and law. States maintaining a dependence on nuclear weapons advance political arguments against approaching the question of their possession or use in law. States opposing the existence of nuclear weapons claim legal justification for their proscription, and advance political reasons for doing so. To the extent that the political dimension has a legal foundation, it has been left to the World Court to advance an authoritative opinion on the relationship.

(a) Political aspects of WMD disarmament

The idea, in the 1990s, of seeking a legal opinion on the use of nuclear weapons in itself proved politically controversial. The decision of the UN General Assembly to ask the Court for an opinion reflected ongoing division with 78 votes for, 43 against, and 38 abstaining. Once the matter was before the Court, some States then argued on political grounds against the appropriateness of the Court even considering a legal question. Three arguments in particular were advanced, and the Court responded to each.

1. 'Vague, abstract, hypothetical and speculative; … of no purpose or practical assistance'
   Some States argued that the question posed was 'vague and abstract', which might lead the Court to make 'hypothetical or speculative' declarations outside the scope of its judicial function. Such an opinion would provide 'no practical assistance' to the General Assembly.
   The Court disagreed:
   "… to contend that it should not deal with a question couched in abstract terms is 'a mere affirmation devoid of any justification', … the Court may give an advisory opinion on any legal question, abstract or otherwise".[1]

2. Adverse effect on disarmament negotiations
   Some States submitted that a reply from the Court might 'adversely affect' disarmament negotiations. The Court, however, did not regard such a political judgement as relevant to a legal question:

[1] ICJ: Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996, para. 15 [hereafter, ICJ opinion]

"… there are no evident criteria by which it can refer one assessment to another. That being so, the Court cannot regard this factor as a compelling reason to decline to exercise its jurisdiction".[2]

3. Court action *ultra vires*
   It was also contended that in answering the question posed by the UN General Assembly, the Court would be going beyond its judicial role, assuming a law-making capacity. The Court disagreed:
   "It is clear that the Court cannot legislate, and, in the circumstances of the present case, it is not called upon to do so. Rather its task is to engage in its normal judicial function of ascertaining the existence or otherwise of legal principles and rules applicable to the threat or use of nuclear weapons. The contention that the giving of an answer to the question posed would require the Court to legislate is based on a supposition that the present corpus juris is devoid of relevant rules in this matter. The Court could not accede to this argument; it states the existing law and does not legislate. This is so even if, in stating and applying the law, the Court necessarily has to specify its scope and sometimes note its general trend."[3]

(b) A legal opinion on the political aspects

More broadly, the Court offered its view on the 'political aspects of the legal question posed'.

"The fact that this question also has political aspects, as, in the nature of things, is the case with so many questions which arise in international life, does not suffice to deprive it of its character as a 'legal question' … Whatever its political aspects, the Court cannot refuse to admit the legal character of a question which invites it to discharge an essentially judicial task, namely, an assessment of the legality of the possible conduct of States with regard to the obligations imposed upon them by international law".

The Court moreover considered that the political nature of the motives which may be said to have inspired the request, and the political implications that the opinion given might have, were of 'no relevance in the establishment of its jurisdiction to give such an opinion'.[4] Equally, once the Assembly had asked, by adopting a resolution, for an advisory opinion on a legal question, the Court, in determining whether there were any compelling reasons for it to refuse to give such an opinion, would not have regard to the origins or to the political history of the request, or to the distribution of votes in respect of the adopted resolution.[5]

Thus, the General Assembly's request was politically controversial but legally valid. The comments of the Court in 1996 have direct application to the current debate over the political aspect, and legal status, of nuclear weapons possession two decades later. The issue is likely to be the central 'security debate' of the next decade.

[2] ICJ opinion, para. 17
[3] ICJ opinion, para. 18
[4] ICJ opinion, para. 13.
[5] ICJ opinion, para. 16

2. The Treaty's Central Concepts

The Treaty essentially prohibits possession of nuclear weapons by any State Party. Other aspects of the Treaty – procedural affirmation, safeguards, implementation and verification, victim assistance, meetings of the parties – are all necessary. Yet they are supportive of the central purpose, which is prohibition. And, in order for prohibition to be successful, the obligation of non-possession must ultimately be irreversible and universal.

(a) Irreversibility

Under Article 1, each State Party undertakes 'never under any circumstances' to possess nuclear weapons.[6] This requires in logic that each State Party assumes an irreversible obligation. Indeed, the Preamble to the Treaty recognises that a legally binding prohibition of nuclear weapons constitutes an important contribution towards the "irreversible …. elimination of nuclear weapons".

The irreversibility of the obligation is, however, directly undermined, within the Treaty itself, through the option of withdrawal. Article 17 allows a State Party, in 'exercising its national sovereignty', to withdraw if it decides that 'extraordinary events' have jeopardised its 'supreme interests'.[7] The withdrawing State is obliged simply to convey a statement of such events to the depositary. The Treaty's withdrawal article is identical to that of the other two WMD disarmament texts – the Biological Weapons Convention (1972) and the Chemical Weapons Convention (1993). The problem of withdrawal therefore attends to WMD disarmament law, generically.

It is a central part of positivist law that a state may withdraw from a treaty according to its own judgement. The major treaties of contemporary times have, if anything, weaker withdrawal obligations.[8] The difference, however, between them and the WMD disarmament treaties is that the former are simply transactional agreements for common goals, whereas the latter are transformational in that the central tenet is an irreversible prohibition.[9]

Irreversibility and withdrawal comprise, essentially, a contradiction in terms. The phrase 'never under any circumstances' means there are no conceivable circumstances in which an obligation terminates. Withdrawal from the obligation means that there are conceivable circumstances. This is contrary to human logic.

This problem is essentially political rather than legal. It arises from the natural tension in the late-Westphalian era between global obligation and national sovereignty. It is frequently contended that national sovereignty,

---

[6] The Article prohibits associated activities: testing, production, manufacture, acquisition, stockpiling, transferring, receiving, using, threatening to use, encouraging others, seeking assistance from others, stationing, installing or deploying.

[7] *"Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of the Treaty have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to the Depositary. Such notice shall include a statement of the extraordinary events that it regards as having jeopardized its supreme interests."* TPNW, Art. 17.

[8] See, for example, the 1982 UN Convention on the Law of the Sea (Art. 317), the UN Framework Convention on Climate Change (Art. 25), the 1994 WTO Statute (Art. XV), the 1998 Rome Statute (Art. 127), and 2015 Paris Agreement (Art. 23).

[9] The WMD conventions drew upon their arms control predecessor, the nuclear Non-Proliferation Treaty (1968). And the politically subjective dimension has proven to be strong: when North Korea withdrew from the NPT, the effort of the three depositaries (US, UK, Russia) and the Security Council to reject the stated reasons did not prevent withdrawal, even in law. Yet the regional Treaty of Rarotonga (1985) contains what is possibly a uniquely different withdrawal mechanism; Article 13 allows withdrawal only in the event of a Treaty violation by another State Party.

including the right of withdrawal, must always be respected in international treaty-making. But as a majority of jurists have noted, the sovereignty of the nation-state in the UN era is limited.[10]

The tension between global obligation and national sovereignty, therefore, is best approached and resolved through political initiative. Such initiative will necessarily draw upon customary international law. It is therefore directly related to the other central concept in the Treaty, namely, universality.

(b) Universality

States may choose to become party to a treaty under international law or not, in their sovereign discretion. Universal or near-universal adherence ('effective universality') is the hallmark of expression by the international community of States.[11] It is also the primary determinant of influence with regard to that particular aspect of law. This is the other main political challenge facing the Treaty.

The decision by the UN General Assembly to commence negotiations for the Treaty was adopted by 113 votes for, with 35 opposing and 13 (including China) abstaining. In the negotiating conference the draft treaty was adopted by 122 votes, with 1 opposing and 1 abstaining, while 69 States did not vote.

A deep uncertainty surrounds the fate of the nuclear Treaty in terms of effective universality. The nine nuclear-armed States plus the nuclear-dependent States opposed the negotiations for the Treaty and continue to oppose it now that it exists. The questions therefore arise:

- What prospect is there of the Treaty attaining, in the foreseeable future, effective universality?
- If it lacks that status, does this make a meaningful difference in political or legal terms?

Consideration of the 'meaningful difference' requires an exploration of the legal foundation on which such political action rests in global disarmament policy.

3. Legal Foundations of WMD disarmament

International law provides the foundation for political action at the global level, including in the area of disarmament policy. The 'meaningful difference' identified above requires an exploration of the nature of international law, and certain aspects of its content.

(a) Sources of international law

Under the ICJ Statute, international law is drawn from three primary sources: International conventions, international custom and general principles. A fourth – judicial decisions and teachings – acts as subsidiary means for determining the rules of law.[12] Each source of law fulfils a different function in the mosaic of international law.

- Conventions (or treaties, or agreements) are essentially transactional documents, specifying selected areas of common agreement for cooperation. *Prima facie*, they are not binding upon non-parties, and parties can almost always withdraw.

[10] This widely-held view has been succinctly stated by the UN Secretary-General: "It is undeniable that the centuries-old doctrine of absolute and exclusive sovereignty no longer stands and was in fact never so absolute as it was conceived to be in theory." Cited in Steven Lee, 'A Puzzle of Sovereignty' (California Western International Law Journal Vol 27 No. 2; 1993). See also S. Lee, Morality, *Prudence, and Nuclear Weapons* (Cambridge UP; 1993) and Louis Henkin *et al*, *International Law: Cases and Materials* (International Law 18, 3rd ed., 1993).

[11] 'Effective universality' is defined here as at least 80% of all 193 UN Member States, i.e. 155 States.

[12] Statute of the International Court of Justice, Article 38 (1) [hereafter, ICJ Statute].

- International custom, in contrast, is taken as a general practice accepted as law. Some customary international laws are non-derogable – no State may violate these, whether or not the obligation is in treaty form.
- The general principles are those 'recognised by civilised nations'.[13] These are closely related to the matter of international custom.

The Treaty is, clearly, an international convention from which, if traditional legal positivism is retained, future States Parties will be free to withdraw. But as noted, there exist certain norms of customary international law which no State can violate. The question therefore arises whether, in the future, non-possession of nuclear weapons becomes a customary law, in which case a non-State Party or a withdrawing State may not legally possess nuclear weapons.

(b) Customary international law

What is the scope and content of customary international law? Does it have potential application to WMD disarmament law?

Customary international law is defined in the ICJ Statute as a 'general practice accepted as law'.[14] The two essential elements are state practice and *opinio juris.* In relation to the psychological element that is *opinio juris*, the ICJ has held that:

> *… not only must the acts concerned amount to a settled practice, but they must also be such, or be carried out in such a way, as to be evidence of a belief that this practice is rendered obligatory by the existence of a rule of law requiring it... The States concerned must therefore feel that they are conforming to what amounts to a legal obligation.*[15]

The Court emphasised the need to prove a 'sense of legal duty' as distinct from acts motivated by courtesy, convenience or tradition. *Opinio juris* is therefore the subjective element used to judge whether the practice of a State is due to a belief that it is legally obliged to do a particular act. When *opinio juris* exists and is consistent with nearly all state practice, customary international law emerges.

At the political level, the question then arises whether, if nine UN member states possess nuclear weapons and 184 do not, such possession amounts to 'state practice'. Correspondingly, if 95% of UN member states do not possess nuclear weapons and accept a 'legal obligation' not to do so,[16] does this amount to a 'sense of legal duty' comprising *opinio juris*? If so, the legal obligation has the status of a customary international law and, if it is accepted as strong enough, a peremptory norm under such law.

(b) Peremptory norms

A peremptory norm[17] is a fundamental principle at the highest level of customary international law, from which no derogation is permitted.[18]

---

[13] In the 21st century, this is perhaps more sensitively understood as principles 'recognised by all nations acting in a civilised manner'.
[14] ICJ Statute, Art. 38 (1 b)
[15] ICJ: *North Sea Continental Shelf.* Subsequently confirmed in ICJ: *Nicaragua v. United States of America*.
[16] The 26 NATO non-nuclear-armed States accept such a legal obligation under the NPT.
[17] Otherwise known as ***jus cogens*** or ***ius cogens,*** for 'compelling law'.
[18] *For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.* Vienna Convention, Art. 53

Contemporary norms

There is no clear consensus over what norms are *jus cogens*, or how a norm reaches that status. No such compilation has been formally and explicitly made by any authoritative body. It is generally accepted, however, that *jus cogens* includes the following norms:

- prohibition on piracy and apartheid;
- prohibition on the four crimes identified in the Rome Statute (genocide, war crimes, crimes against humanity, and manifest acts of aggression); and
- the four non-derogable rights in the ICCPR (right to life, freedom from torture, slavery, and the retroactive application of penal laws).

Once a norm reaches the status of *jus cogens,* matters change. Under the Vienna Convention, a treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm.[19] Given that no treaty compels in law any State to possess nuclear weapons, the question of its nullification does not arise. By the same token this article of law, *mutatis mutandis,* nullifies the political argument that nuclear weapons may be retained under the NPT for the 'indefinite future'.

Emergence of new peremptory norms

The Vienna Convention acknowledges the possible emergence of new peremptory norms.[20] Two areas of law have been identified in recent decades as possibly containing a new peremptory norm: environmental precaution, and civilian protection from atrocity crimes. Analysis of these sheds some light on the normative status of WMD possession.

Environment: The precautionary principle

The precautionary approach to the protection of the environment has its conceptual origin in the rejection of assumptions inherent in the traditional 'assimilative capacity approach'.[21] The principle was foreshadowed in the 1982 World Charter for Nature[22] but was first explicitly advanced in the 1987 Brundtland Report.[23] Its formal

[19] Vienna Convention, Art. 53. See also Art. 71.

[20] *Emergence of a new peremptory norm of general international law ("jus cogens"): If a new peremptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates*. Vienna Convention, Art. 64

[21] Otherwise known as the 'permissive principle' – see A. Stebbing, *Environmental Capacity and the Precautionary Principle*, 24 Marine Pollution Bulletin (1992), pp. 287-95. This rests on four assumptions: science can accurately predict threats to the environment; science can provide technical solutions to mitigate such threats once they have been accurately predicted; there will remain sufficient time to act; and acting at that stage results in the most efficient utilisation of scarce financial resources. See also E Hey, *The Precautionary Concept in Environmental Policy and Law after the Earth Summit*

[22] A/RES 37/7, 28 Oct. 1982 http://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/37/7

[23] UN World Commission on Environment and Development (Brundtland Commission) Annex 1. *Summary of Proposed Legal Principles for Environmental Protection and Sustainable Development*
Principle 11. Strict Liability: States shall take all reasonable precautionary measures to limit the risk when carrying out or permitting certain dangerous but beneficial activities and shall ensure that compensation is provided should substantial transboundary harm occur even when the activities were not known to be harmful at the time they were undertaken.
https://en.wikisource.org/wiki/Brundtland_Report/Annexe_1._Summary_of_Proposed_Legal_Principles_for_Environmental_Protection_and_Sustainable_Development

expression in treaty law is contained in the 1992 UN Framework Convention on Climate Change,[24] and in declaratory form in the accompanying Rio Declaration.[25]

In the revisited French Nuclear Tests case of 1995, New Zealand argued before the World Court that France's underground testing was illegal in that it caused, or was likely to cause, the introduction into the maritime environment of radioactive material. France was under an obligation, before carrying out such tests, to provide evidence that they would not introduce such material to the environment *'in accordance with the precautionary principle very widely accepted in contemporary international law'.*[26]

'Contemporary' and 'customary' international law are not identical, the former having no jurisprudential, only political, status. But in a dissenting opinion, Sir Geoffrey Palmer argued that the precautionary principle had 'developed rapidly' and 'may now be a principle of customary international law.[27] Palmer acknowledged, however, that it may not be possible for the Court to reach a firm conclusion as it had not been able to hear counter-arguments to the proposition that these obligations constituted norms of customary international law.[28]

In the 1990s, largely as a result of the 1992 Climate Change Framework Convention, academic opinion was already assessing whether the precautionary principle had become a matter of custom; for example:

> *"Opinion remains divided as to whether the precautionary principle may have crystallised into to binding norm of customary international law. … [The] level of academic support, coupled with recent State practice and ICJ commentary, would appear to considerably endorse the principle's status as a norm of customary international law. … It is contended that the precautionary principle has indeed crystallised into a norm of customary international law."*[29]

Since then, international concern for environmental protection and especially alarm over climate change has evolved considerably: in 2015 the Paris Agreement acknowledged climate change to be a 'common concern of humankind', and recognised that 'need for an effective and progressive response'. It is therefore likely that the precautionary principle has attained the status of a customary norm.

---

[24] 1992 UN Framework Convention on Climate Change, Article 3 Principles (para 3): *The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost-effective so as to ensure global benefits at the lowest possible cost.*

[25] Rio Declaration on Environment and Development (1992), Principle 15.

[26] *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's judgment of 20 December 1974 in* Nuclear Tests [New Zealand v France], Order 22 IX 95, ICJ Rep [1995] p. 290.

[27] *"What those principles of international law establish in my view are the following propositions: (a) international environmental law has developed rapidly and is tending to develop in a way that provides comprehensive protection for the natural environment; (b) international law has taken an increasingly restrictive approach to the regulation of nuclear radiation; (c) customary international law may have developed a norm of requiring environmental impact assessment where activities may have a significant effect on the environment; (d) the norm involved in the precautionary principle has developed rapidly and may now be a principle of customary international law relating to the environment; (e) there are obligations based on Conventions that may be applicable here requiring environmental impact."*
https://www.icj-cij.org/files/case-related/97/097-19950922-ORD-01-07-EN.pdf

[28] France had not addressed these points during the preliminary submissions made prior to the case being set aside. The precautionary principle, however, was also relied upon in two other Court cases (Ireland v UK, 1996; and Hungary v Slovak Republic, 1997).

[29] *The Precautionary Principle as a Norm of Customary International Law*, O. McIntyre and T. Mosedale, Jnl. of Environmental Law, Vol 9, No. 2 (Oxford UP; 1997), pp. 221-41

Civilian Protection: The responsibility to protect

A second possible new norm is the Responsibility to Protect. The R2P concept is defined as the responsibility on the international community to intervene in a State's domestic affairs in the event that the State is unable or unwilling to meet its primary responsibility to protect its own citizens from an atrocity crime (genocide, war crimes, crimes against humanity). The R2P principle emerged from the Independent Commission's report of 2001, in response to the UN Secretary-General's request for a considered response to the controversies surrounding the Rwandan genocide and the Kosovo intervention.

More starkly than any other principle, R2P confronts the question of traditional state sovereignty and, as such, it is in itself controversial. One academic observer identified a 'stark truism' within the legal regime:

> *… sovereignty, as traditionally conceptualised under the treaties of Westphalia, continues to shield perpetrators from punitive measures and prevents the international community from stopping states committing acts of mass atrocity before they manifest themselves. … Many scholars and jurists are beginning to hypothesise, and argue consistently, that absolute state sovereignty, as a paramount concept recognised in international law, no longer serves as the primary paradigm from which the field of international relations should be measured.*[30]

And as Damrosch has succinctly put it:

> *Today, traditional notions of sovereignty are gradually becoming outdated and exaggerated.*[31]

Yet as with many areas of customary international law, it is difficult to ascertain whether R2P, as created by the Commission and endorsed by the UN, has reached the level of customary international law. According to the Special Adviser to the UN Secretary-General on the subject, the R2P doctrine is not a 'new legal norm' but rather an amalgamation of current and pre-existing principles under international law, reflecting the general commitment of the international community to protect citizens from universally-condemned crimes.[32]

It would therefore seem as if there is some way to go before the Responsibility to Protect is accepted as a peremptory norm in its own right.

WMD Disarmament: Chemical, biological and nuclear weapons

The critical issue addressed in this paper is whether the non-possession of nuclear weapons has emerged as a peremptory norm, and if not, whether there is scope for political initiative in this respect. In approaching this question, the status in customary international law of non-possession of the other two WMDs (biological and chemical) is directly relevant.

Three factors shed light in determining this issue: the duration of the negotiations, the time that elapses for entry-into-force, and the universality of adherence.

> *Negotiations:*
> Intergovernmental consideration of a prohibition of biological and chemical weapons (to supplement the 1925 Geneva Protocol which banned use but not possession) commenced in the Conference on Disarmament in 1968, The negotiations proceeded faster with biological weapons, and the BWC was

[30] P. Stockburger, *The Responsibility to Protect Doctrine: Customary international law, an emerging legal norm, or just wishful thinking?* Intercultural Human Rights Law Review, Vol. 5 (2010), p. 365-5
[31] L. Damrosch et al, International Law Cases and Materials 3 (4th ed., 2001)
[32] Edward Luck, Special Adviser to the Secretary-General. Statement to the UN General Assembly, 23 July 2009, www.un.org/ga/president/63/interactive/protect/luck.pdf

open for signature in April 1972, a period of four years. Negotiations on chemical weapons continued until the convention was open for signature in January 1993, an additional ten years.

In contrast, negotiations for a prohibition on nuclear weapons are structured under the Non-Proliferation Treaty of 1968, with a binding obligation on 'all States Parties' to pursue negotiations in good faith relating to nuclear disarmament at an early date. Half-a-century later in December 2016, the UN General Assembly decided to convene a UN conference to negotiate a legally-binding instrument to prohibit nuclear weapons, leading to their total elimination.[33]

At the political level, it should be noted that the Article VI obligation in the NPT to negotiate nuclear disarmament in good faith attends to all 188 States Parties to the NPT, not just the five that possess nuclear weapons. Deference to the latter group for a judgement on 'when' the time is right for negotiations is therefore not required.

Entry-into force:
The BWC required only 22 ratifications to enter into force, which took under three years (since opening for signature on 10 April 1972 to 26 March 1975). The CWC required 65 ratifications to enter into force, which took four years (since opening for signature on 13 January 1993 to 29 April 1997).

The Nuclear Weapons Treaty, with half of the required 50 ratifications secured within 18 months since it was open for signature, seems likely to come into force within a proportionate time-period to that of the other two WMD agreements – at the current rate by 2021. In that event and at that stage, a prohibition on nuclear weapon possession will exist in international law, in the same manner as with biological and chemical.

Universality:
The Biological Weapons Convention currently has 182 States Parties, and the Chemical Weapons Convention has 193 States Parties. Adoption of the Nuclear Weapons Treaty was supported by 122 States, which falls short of 'effective universality'.

It would seem likely that, on grounds of universality and the short duration of negotiation and entry-into-force, the principle of non-possession of biological and chemical weapons might be seen as having 'crystallised' into a norm of customary international law. The same cannot, however, be said of nuclear weapons at the present time.

Yet the ICJ was clear, in its 1996 Advisory opinion, that nuclear weapons had unique characteristics:

> *"These characteristics render the nuclear weapon potentially catastrophic. The destructive power of nuclear weapons cannot be contained in either space or time. They have the potential to destroy all civilization and the entire ecosystem of the planet."*[34]
> *In consequence, in order correctly to apply to the present case the Charter law on the use of force and the law applicable in armed conflict, in particular humanitarian law, it is imperative for the Court to take account of the unique characteristics of nuclear weapons, and in particular their destructive capacity, their capacity to cause untold human suffering, and their ability to cause damage to generations to come.*[35]

[33] A/RES/71/258
[34] ICJ opinion, para. 35
[35] ICJ opinion, para. 36

4. Non-possession of nuclear weapons in customary law

Is the possession of nuclear weapons illegal today?

For those States that have ratified, or even signed, the Treaty, the answer is yes – even pending its entry-into-force, their action in ratifying or signing the Treaty imposes a legal obligation to abide by its provisions.

For those States that are explicitly on record as opposing the Treaty, the answer is: not in positive law, but potentially in customary law. The critical question is therefore whether the non-possession of nuclear weapons is illegal under international customary law. Again, there is a political and a legal dimension to this question.

(a) The political aspect

Throughout the UN era, the international community has expressed deep concern over the national possession of nuclear weapons and a strong determination to eliminate such possession. In 1946, the first resolution adopted by the General Assembly established a Disarmament Commission which was to proceed 'with the utmost despatch' for, inter alia, the 'elimination from national armaments of atomic weapons and all other major weapons adaptable to mass destruction'.

That determination, moreover, was shared at the time by the two major powers. The US Baruch Plan of 1946 proposed to 'eliminate from national armaments atomic weapons and all other major weapons adaptable to mass destruction' through international inspection and verification. The USSR, apprehensive over potential US control even through international management, made a counter-proposal. Both plans were left in abeyance

Since then, the nuclear powers have been opposed to nuclear disarmament in the foreseeable future while nonetheless accepting a binding legal obligation to 'pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament'.[36]

Yet the overwhelming majority of countries remained committed to the original goal of nuclear disarmament within the foreseeable future.

(i) *Action by governments: The UN General Assembly*

It is highly significant that the governments of UN member states have, in exercising political opinion in the General Assembly even after the stalemate of the late-1940s, consistently been assertive of the need to eliminate nuclear weapons. In 1954, the Assembly resolved that a further effort should be made to reach agreement on 'the total prohibition of the use and manufacture of nuclear weapons and weapons of mass destruction of every

[36] Treaty on the Non-Proliferation of Nuclear Weapons (1968), Article VI

type'.[37] Strong views pertaining to the survival of humankind were repeated in 1965[38] and 1978.[39] In 1994 the General Assembly, in its request to the ICJ for an advisory opinion on the use of nuclear weapons, reflected the history of such concern expressed.[40]

---

[37] A/RES/808 (IX)

[38] In 1965, the Assembly issued a Declaration on the Prohibition of Nuclear and Thermo-nuclear Weapons, which stated:

"… the armaments race … has reached a dangerous stage requiring all possible precautionary measures to protect humanity and civilization from nuclear and thermos-nuclear catastrophe;

Recalling that the use of weapons of mass destruction, causing unnecessary human suffering, was in the past prohibited, as being contrary to the laws of humanity and the principles of international law;

and declared that:

The use of nuclear and thermos-nuclear weapons would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind and civilizations and, as such, is contrary to the rules of international law and to the laws of humanity;

Any State using nuclear and thermos-nuclear weapons is to be considered as violating the Charter of the United Nations, as acting contrary to the laws of humanity and as committing a crime against mankind and civilization".

A/RES/1653 (XVI)

[39] In 1978, the Assembly's 1st Special Session on Disarmament referred to the:

"… unprecedented threat to the very survival of mankind posed by the existence of nuclear weapons … [the] unprecedented threat of self-extinction arising from the massive and competitive accumulation of the most destructive weapons ever produced … [The] accumulation of weapons, particularly nuclear weapons, constitutes much more a threat than a protection to the future of mankind … Nuclear weapons pose the greatest danger to mankind and to the survival of civilization."

[40] *Recalling* its resolutions 1653 (XVI) of 24 November 1961, 33/71 B of 14 December 1978, 34/83 G of 11 December 1979, 35/152 D of 12 December 1980, 36/92 I of 9 December 1981, 45/59 B of 4 December 1990 and 46/37 D of 6 December 1991, in which it declared that the use of nuclear weapons would be a violation of the Charter and a crime against humanity,

- *Welcoming* the progress made on the prohibition and elimination of weapons of mass destruction, including the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction,
- *Convinced* that the complete elimination of nuclear weapons is the only guarantee against the threat of nuclear war,
- *Noting* the concerns expressed in the Fourth Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons that insufficient progress had been made towards the complete elimination of nuclear weapons at the earliest possible time,
- *Recalling* that, convinced of the need to strengthen the rule of law in international relations, it has declared the period 1990-1999 the United Nations Decade of International Law,
- *Noting* that Article 96, paragraph 1, of the Charter empowers the General Assembly to request the International Court of Justice to give an advisory opinion on any legal question,
- *Recalling* the recommendation of the Secretary-General, made in his report entitled "An Agenda for Peace", 25/ that United Nations organs that are authorized to take advantage of the advisory competence of the International Court of Justice turn to the Court more frequently for such opinions,
- *Welcoming* resolution 46/40 of 14 May 1993 of the Assembly of the World Health Organization, in which the organization requested the International Court of Justice to give an advisory opinion on whether the use of nuclear weapons by a State in war or other armed conflict would be a breach of its obligations under international law, including the Constitution of the World Health Organization,
- *Decides,* pursuant to Article 96, paragraph 1, of the Charter of the United Nations, to request the International Court of Justice urgently to render its advisory opinion on the following question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?

And in 2010, the Non-Proliferation Review Conference made the following statement:

> *"The Conference expresses its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons and reaffirms the need for all States at all times to comply with applicable international law, including international humanitarian law."*

(ii) Action by parliaments: The Inter-Parliamentary Union

With respect to the Inter-Parliamentary Union:

- Its resolution *Towards a nuclear-weapon-free world: The contribution of parliaments* (130th Assembly; March 2014) in which all member parliaments agreed to work with their governments on eliminating the role of nuclear weapons in security doctrines and to urge their governments to start negotiations on a nuclear weapons convention or package of agreements to achieve a nuclear-weapon-free world.[41]
- On completion of the 2017 Treaty, the circulation of a *Parliamentary Action Plan for a Nuclear-Weapon-Free World 2017-20.*

(b) The legal opinion

In 1996 the ICJ delivered an Advisory Opinion on the question, submitted by the UN General Assembly: *Is the threat or use of nuclear weapons in any circumstances permitted under international law?*

In approaching the question, the Court observed that:

> *"[Their] characteristics render the nuclear weapons potentially catastrophic. The destructive power of nuclear weapons cannot be contained in either time or space. They have the potential to destroy all civilizations and the entire ecosystem of the planet."*[42]

The Court then proceeded to consider, in systematic and rigorous manner, the 'applicable law' of the time, namely: the UN Charter, the law of armed conflict, customary international law, and international humanitarian law. Its reasoning on each issue is set out in the Appendix.

The Court's opinion

The Court adopted six opinions on the question, which together acknowledge what came to be regarded as the 'legal gap' with respect to nuclear weapons.[43] The three most pertinent to question of a peremptory norm are the following:

- The Court was unanimous (14-0) that there exists an obligation to pursue in good faith and bring to a conclusion, negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.
- A significant majority (11-3), however, were of the view that:
  There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such.
- The Court narrowly formed the opinion (7-7; the President's affirmative vote carrying the motion), that:
  The threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.
  The Court also concluded, however, that: *in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.*

[41] Reservations entered by Cuba, India, Iran and Pakistan.
[42] ICJ Advisory Opinion on the Threat or Use of Nuclear Weapons (1996), p. 35
[43] http://www.icj-cij.org/files/case-related/95/7497.pdf

In this respect, three of the dissenting judges wrote that there was "no exception under any circumstances (including that of ensuring the survival of a State)" to the general principle that use of nuclear weapons was illegal.

5. Future Political Trends: An emerging peremptory norm

Thus, in 1996 the Court judged that the use or threat of nuclear weapons was not illegal under customary international law. At the same time, it indicated that the matter was subject to a natural evolution in political thinking that could well impact on the law. Such a natural evolution has indeed occurred.

(a) Legal foundation

The legal foundation for the non-possession of nuclear weapons, therefore, lies in two related facts: first, the expectation of the World Court in 1996 regarding future trends and the likelihood of a complete prohibition; and secondly, the fulfilment of that expectation in 2017 through a treaty to that effect.

(i) The Court's expectation of 1996

The Court's opinion reflected the state of international law a quarter-century ago. Two decades of continued expression of concern and the imminence of a binding treaty banning nuclear weapons possession indicates that global opinion has moved since 1996. It therefore depends upon political initiative in the 2020s whether nuclear weapon non-possession becomes accepted as a customary norm. In delivering its opinion, the Court wrote the following *obiter dictum:*

Need for liberation from the existence of nuclear weapons:

> *In the last two decades, a great many negotiations have been conducted regarding nuclear weapons; they have not resulted in a treaty of general prohibition of the same kind as for bacteriological and chemical weapons. However, a number of specific treaties have been concluded in order to limit various aspects of the possession, deployment or use or threat of use of nuclear weapons.*[44]
> *These two treaties,*[45] *the security assurances given in 1995 by the nuclear-weapon States and the fact that the Security Council took note of them with satisfaction, testify to a growing awareness of the need to liberate the community of States and the international public from the dangers resulting from the existence of nuclear weapons. …. It does not, however, view these elements*[46] *as amounting to a comprehensive and universal conventional prohibition on the use, or the threat of use, of those weapons as such.*[47]

Foreshadowing a future general prohibition:

> *The Court notes that the treaties dealing exclusively with acquisition, manufacture, possession, deployment and testing of nuclear weapons, without specifically addressing their threat or use, certainly point to an increasing concern in the international community with these weapons; the Court concludes from this that these treaties could therefore be seen as foreshadowing a future general prohibition of the use of such weapons, but they do not constitute such a prohibition by themselves.*[48]
> *In the long run, international law, and with it the stability of the international order which it is intended to govern, are bound to suffer from the continuing difference of views with regard to the legal status of weapons as deadly as nuclear weapons. It is consequently important to put an end to this state of affairs:*

[44] ICJ opinion, para 58
[45] Tlatelolco Treaty and Rarotonga Treaty
[46] Other emerging treaties on nuclear disarmament.
[47] ICJ opinion, para 63
[48] ICJ opinion, para 62

the long-promised complete nuclear disarmament appears to be the most appropriate means of achieving that result.[49]

(ii) Treaty Law: Fulfilment in 2017

The Treaty on the Prohibition of Nuclear Weapons is, essentially the fulfilment of the Court's expectation. Its negotiating mandate lies in the ICJ judgement that the use of nuclear weapons would generally be contrary to the principles and rules of humanitarian law.

The Humanitarian Pledge

- On that basis, the Humanitarian Initiative was formed, commencing in 2012 with a 'Joint Statement on the Humanitarian Dimension of Nuclear Disarmament' , delivered by Switzerland to the Preparatory Committee for the NPT Review Conference. In 2013, Norway convened the first Conference on the Humanitarian Impact of Nuclear Weapons, and South Africa delivered the Joint Statement to the NPTRC, repeated by New Zealand to the General Assembly later that year. Follow-up conferences in Mexico (Feb. 2014) and Austria (Dec. '14) resulted in the Austrian Pledge, subsequently renamed the Humanitarian Pledge.
- The Pledge, delivered by Austria on behalf of 159 States at the 2015 NPT Review conference, spoke of filling the '*legal gap for the prohibition and elimination of nuclear weapons'.* The group pledged to "*cooperate with all relevant stakeholders, States, international organisations, the International Red Cross and Red Crescent Movements, parliamentarians and civil society, in efforts to stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks.*"

The declaratory content of the Treaty
The Treaty's preamble duly reflects the 'soft-law' basis that has been built for over 70 years, and effectively realises its expression in the form of 'hard law'. The Preamble cites the relevant expressions and conetps in the UN resolutions, the ICJ Opinion, and the Humanitarian Pledge. On the basis of such a declaratory foundation, the Treaty makes illegal the possession of nuclear weapons in positive law, thereby filling the 'legal gap' the Court had identified in 1996.

(b) Political initiative: A second pledge

How to undertake political initiative with a view to realising legal affirmation in due course?

Those States that formulated the Humanitarian Pledge, led in the negotiations for the Treaty, and already ratified it, could consider collective action to that end. The two central concepts identified in Section 1, irreversibility and universality, are the obvious areas for political initiative.

A second Humanitarian Pledge, building upon the first, but now acknowledging the Treaty and looking to the future, could be issued for signature and support. Such a pledge could be issued on the date of entry-into-force of the treaty. To that end, a loose alliance could be formed by New Zealand and other ratifying States (such as Austria, Ireland, Liechtenstein; Costa Rica, Mexico, Brazil; South Africa and Ghana).

(i) Irreversibility: Statement of non-withdrawal

New Zealand could also consider developing a collaborative initiative with other signatory States to explore ways in which, through declaratory action, non-possession is all WMDs is collectively regarded as a peremptory norm in international law, and that withdrawal from all three WMD treaties is forever renounced.

[49] ICJ opinion, para 98

(ii) Universality: Call for universal adherence

New Zealand could focus on universal adherence across the Pacific working with the six island States that have already signed to persuade the other six which voted for the text, to do so.[50]

Conclusion

This chapter draws the following ten conclusions:

1. The political dimension of the Treaty is rooted in the division of opinion over prohibition of nuclear weapon possession, with two-thirds of UN member states in favour, a fifth opposed, and the remainder with no recorded view.

2. The entry-into-force of the Treaty will mean that there is treaty law, in accordance with the Statute of the ICJ (Article 38 (1.a), for the prohibition of all three weapons of mass destruction.

3. The inclusion of a withdrawal clause in all three WMD conventions whose central concept is the 'irreversible elimination of nuclear weapons' and whose States Parties undertake 'never under any circumstances' to possess them, amounts to a logical contradiction.

4. Whether the non-possession of nuclear weapons becomes binding on all UN member states, including non-parties to the Treaty, depends on whether it is accepted as a new norm in customary international law, and perhaps even as a peremptory norm.

5. In recent decades, at least one such new norm has emerged – the precautionary principle governing environmental protection, while the responsibility to protect civilians against atrocity crimes might be seen today as an emerging norm.

6. The non-possession of biological and chemical weapons may perhaps be accepted as a new norm because of the 'effective universality' of adherence to the respective conventions, but the present lack of 'effective universality' of adherence to the nuclear convention makes this is unlikely in the case of nuclear weapons.

7. Although the ICJ judged, in 1996, that the use of nuclear weapons was not at that stage illegal under customary international law, it noted a growing awareness of the need to liberate humankind from the existence of nuclear weapons, and that treaty law already then existing foreshadowed a future prohibition on the use of such weapons,

8. The Treaty comprises that 'future prohibition' foreshadowed in the Court's Advisory Opinion, and is the fulfilment of the NPT's Article VI which imposes a binding legal obligation on all NPT States Parties, not only those possessing nuclear-weapons, to pursue negotiations relating to nuclear disarmament at an early date.

9. If and when the Treaty attains 'effective universality', it may credibly be regarded as a new norm in customary international law; until then, States Parties may credibly describe it as an emerging norm.

10. New Zealand and other States Parties could make the non-possession obligation in the Treaty genuinely irreversible by declaring that they will never withdraw from the Treaty and they regard the withdrawal article as illogical, and therefore null and void.

[50] Marshall Is., Micronesia FS, Nauru, PNG, Solomon Is., Tonga.

Final comment

There is an historical irony that states in one particular region should choose to remain reliant on nuclear weapons through a continuing notion of national security through self-defence. Such States have a right to retain a subjective interpretation of their national security. But they have long since lost the right to effectively oppose a collective judgement in which they have shared – that the use of nuclear weapons would have 'catastrophic consequences for the planet', violating the 'principles of humanity' and the 'dictates of public conscience', which in the opinion of the World Court makes their elimination necessary.

If, as appears likely, the Nuclear Weapons Prohibition Treaty comes into force within a few years, achieves a significant majority of States Parties during the 2020s, and becomes regarded as an emerging customary norm, such States will find themselves on the wrong side of history.

Appendix 1

Applicable Law considered by the ICJ in the Advisory Opinion of 1996

In applying applicable law, the Court considered several major treaties, namely the non-derogable right to life (specified in the ICCPR) and the prohibition of genocide as a rule of customary international law (specified in the Genocide Convention). It was also asked to consider the argument that any use of nuclear weapons would be unlawful by reference to 'existing norms' relating to the safeguarding and protection of the environment.

The Court was not persuaded, however, that any of these legal provisions expressly rendered the threat or use of nuclear weapons illegal. It concluded that the most directly relevant applicable law related to the provisions governing

- the use of force in the UN Charter; and
- the law applicable in armed conflict.

Nuclear weapons and the UN Charter

According to the ICJ:

> *The Charter neither expressly prohibits, nor permits, the use of any specific weapon, including nuclear weapons. A weapon that is already unlawful per se, whether by treaty or custom, does not become lawful by reason of its being used for a legitimate purpose under the Charter.* (para. 39)

The law of armed conflict and nuclear weapons

The Court noted that

> *"…. international customary and treaty law does not contain any specific prescription authorizing the threat or use of nuclear weapons or any other weapon in general or in certain circumstances, in particular those of the exercise of legitimate self-defence. Nor, however, is there any principle or rule of international law which would make the legality of the threat or use of nuclear weapons or of any other weapons dependent on a specific authorization. State practice shows that the illegality of the use of certain weapons as such does not result from an absence of authorization but, on the contrary, is formulated in terms of prohibition."* (para 52)

Self-defence and customary international law

> *The submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law.* (para 41)
>
> *…. it suffices for the Court to note that the very nature of al1 nuclear weapons and the profound risks associated therewith are further considerations to be borne in mind by States believing they can exercise a nuclear response in self-defence in accordance with the requirements of proportionality. (para 42)*

…in view of the present state of international law viewed as a whole, as examined above by the Court, and of the elements of fact at its disposal, the Court is led to observe that it cannot reach a definitive conclusion as to the legality or illegality of the use of nuclear weapons by a State in an extreme circumstance of self-defence, in which its very survival would be at stake. (para 97)

Customary international law and nuclear weapons

The Court examined whether the use of nuclear weapons was contrary to customary international law.

States which hold the view that the use of nuclear weapons is illegal have endeavoured to demonstrate the existence of a customary rule prohibiting this use. They refer to a consistent practice of non-utilization of nuclear weapons by States since 1945 and they would see in that practice the expression of an opinio juris on the part of those who possess such weapons. (para 65)

Some other States, which assert the legality of the threat and use of nuclear weapons in certain circumstances, invoked the doctrine and practice of deterrence in support of their argument. They recall that they have always, in concert with certain other States, reserved the right to use those weapons in the exercise of the right to self-defence against an armed attack threatening their vital security interests. In their view, if nuclear weapons have not been used since 1945, it is not on account of an existing or nascent custom but merely because circumstances that might justify their use have fortunately not arisen. (para 66)

…. the members of the international community are profoundly divided on the matter of whether non-recourse to nuclear weapons over the past 50 years constitutes the expression of an opinio juris. Under these circumstances the Court does not consider itself able to find that there is such an opinio juris. (para 67)

Examined in their totality, the General Assembly resolutions put before the Court declare that the use of nuclear weapons would be "a direct violation of the Charter of the United Nations7'; and in certain formulations that such use "should be prohibited". The focus of these resolutions has sometimes shifted to diverse related matters; however, several of the resolutions under consideration in the present case have been adopted with substantial numbers of negative votes and abstentions; thus, although those resolutions are a clear sign of deep concern regarding the problem of nuclear weapons, they still fall short of establishing the existence of an opinio juris on the illegality of the use of such weapons. (para 71)

The Court further notes that the first of the resolutions of the General Assembly expressly proclaiming the illegality of the use of nuclear weapons, resolution 1653 (XVI) of 24 November 1961 (mentioned in subsequent resolutions), after referring to certain international declarations and binding agreements, from the Declaration of St. Petersburg of 1868 to the Geneva Protocol of 1925, proceeded to qualify the legal nature of nuclear weapons, determine their effects, and apply general rules of customary international law to nuclear weapons in particular. That application by the General Assembly of general rules of customary law to the particular case of nuclear weapons indicates that, in its view, there was no specific rule of customary law which prohibited the use of nuclear weapons; if such a rule had existed, the General Assembly could simply have referred to it and would not have needed to undertake such an exercise of legal qualification. (para 72)

Having said this, the Court points out that the adoption each year by the General Assembly, by a large majority, of resolutions recalling the content of resolution 1653 (XVI), and requesting the member States to conclude a convention prohibiting the use of nuclear weapons in any circumstance, reveals the desire of a very large section of the international community to take, by a specific and express prohibition of the use of nuclear weapons, a significant step forward along the road to complete nuclear disarmament. The emergence, as lex lata, of a customary rule specifically prohibiting the use of nuclear weapons as such is

hampered by the continuing tensions between the nascent opinio juris on the one hand, and the still strong adherence to the practice of deterrence on the other. (para 73)

International Humanitarian Law

The threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.

Appendix 2
Preambular References in the Treaty

- the catastrophic humanitarian consequences that would result from any use of nuclear weapons, and recognizing the consequent need to completely eliminate such weapons, which remains the only way to guarantee that nuclear weapons are never used again under any circumstances,
- *Mindful* of the risks posed by the continued existence of nuclear weapons, and emphasizing that these risks concern the security of all humanity, and that all States share the responsibility to prevent any use of nuclear weapons,
- *Acknowledging* the ethical imperatives for nuclear disarmament and the urgency of achieving and maintaining a nuclear-weapon-free world, which is a 'global public good of the highest order', serving both national and collective security interests,
- *Basing themselves* on the principles and rules of international humanitarian law, in particular the principle that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited, the rule of distinction, the prohibition against indiscriminate attacks, the rules on proportionality and precautions in attack, the prohibition on the use of weapons of a nature to cause superfluous injury or unnecessary suffering, and the rules for the protection of the natural environment,
- *Considering* that any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of international humanitarian law,
- *Reaffirming* that any use of nuclear weapons would also be abhorrent to the principles of humanity and the dictates of public conscience,
- *Recognizing* that a legally binding prohibition of nuclear weapons constitutes an important contribution towards the achievement and maintenance of a world free of nuclear weapons, including the irreversible, verifiable and transparent elimination of nuclear weapons, and determined to act towards that end,
- *Stressing* the role of public conscience in 'the furthering of the principles of humanity as evidenced by the call for the total elimination of nuclear weapons'.