

## **The Trident and International Law**

### **Scotland's Obligations**

**Judge C.G. Weeramantry**

Trident-related activity is replete with issues concerning the long-term future of humanity. It cannot be considered in isolation as an episode in itself, but needs to be viewed against a long-term historical background of the uneasy compromise that has existed throughout the centuries between humanity's higher instincts and its use of weapons of destruction.

#### **Historical flashback**

When Jenghiz Khan was engaged on his blood-drenched career of world conquest, he is said to have proclaimed a policy that any cities which defied him would be razed to the ground with not a hut standing and not a whimper of life remaining. Not even a dog or mouse would survive; leave alone the humans who would be exterminated with no exceptions.

The powerful nations, even in the early 20<sup>th</sup> century liked to describe themselves in international documents as 'civilized nations'. Yet the successors of these nations are prepared, even in the 21<sup>st</sup> century to manufacture, stockpile and undertake research on weapons which can in fact outdo such primitive brutality. Indeed they claim the right to use a weapon that can exterminate all life in the target city down to the last microbe. Its use would automatically pollute the environment not only of the victim state but of all surrounding neutral states and cause damage that lasts for over twenty thousand years. Despots like Jenghiz Khan would dearly have loved to enjoy this power, the brutality of which goes far beyond anything they could envisage. One of the strange contradictions of our contemporary world is that there are nation states pledged to the maintenance of civilised values that at the same time cherish and preserve this power despite the fact that it reeks so heavily of barbarism at its worst.

We must here note another factor that distinguishes the modern use of nuclear weapons from the indiscriminate slaughter perpetrated by the despots of the past. They were limited in their devastation to the city or state which defied them. The modern nuclear state causes inevitable damage to the entire global environment and not merely to the opposing state. In addition it harms future generations, but these circumstances do not seem to deter the nuclear states from asserting their claim to use the weapon.

There is another important feature which we tend to ignore in these discussions. When primitive tyrants ruthlessly built up their empires they were not trampling on international law, for it did not exist. They were not violating a charter of the nations, for that concept was unknown. They were not ignoring human rights, for such a notion still lay in the womb of time. All these have now been established through the sacrifice of millions of lives. To override them all today involves greater culpability than could have been attributed to the most merciless despots of the past. It is pertinent to recall in this context the speech of the Belgian delegate at the Congress of Versailles after World War I, when he reminded the assembled delegates that the failure to establish a system of international justice would be a betrayal of the sacrifices of the millions of people who had given up their lives to give us a better world.

Yet, despite the existence of a UN Charter, a system of international law and a recognised body of human rights – all achieved through the sacrifice of millions of lives - the nuclear nations assert the right to commit indiscriminate slaughter and devastation of the environment. They cherish this right and defend it against all comers, claiming that they are entitled both morally and legally to use such power.

As the twenty-first century gets into its stride, we need to reflect very closely on this anomaly if we are to be true to our claim that we are seeking to protect human dignity, human rights and human values. In particular we need to consider the discipline of international law which is the principal weapon of civilization against this weapon of barbarism.

This assumes critical importance at a time when the world is teetering on the brink of the nuclear abyss, with a dozen or more factors in operation, any one of which is capable of exploding at any time and providing the flashpoint for humanity's ultimate catastrophe – the use of the nuclear weapon.

With a new administration now in place in the world's leading nuclear power, the time is now opportune for a reconsideration of these issues, in the light of the higher principles to which democratic governments are committed and the universal values which underlie international law.

### **Some anomalies in humanitarian law**

“Civilized nations” have indeed not been insensitive to their obligations to avoid the use of weapons that cause unnecessary suffering. They have evolved an extensive body of humanitarian law, rooted in religious and ethical principles. In the late 19<sup>th</sup> Century there was grave concern, for example about the dum-dum bullet which caused cruel and unnecessary suffering by exploding on its entry into the victim's body. It was resolved in The Hague Declaration concerning Expanding Bullets 1899 that the weapon was too cruel to be used in warfare. We should not therefore be too ready to accuse “civilized nations” of insensitivity in this regard. The sensitivity has always been there. The legal and institutional response to such sensitivity is what has been lacking. Any means by which this sensitivity can be translated into legal and practical efforts needs to be welcomed.

Even a schoolchild or a notional visitor from outer space could ask, with some surprise, how the dum-dum bullet stands banned for its excessive cruelty while the same nations who are concerned with its cruelty claim the right to use a bomb that exceeds that cruelty a million fold or more. They could well ask also how, when international law is founded upon the higher values taught by all cultures and civilizations, it can permit the existence, the threat and the use of such weapons, which contradict every value that international law upholds.

I base this discussion on the assumption that the indiscriminate slaughter of civilians, the devastation of the environment, the infliction of excruciating suffering on hundreds of thousands, the infliction of genetic damage for generations and the wholesale destruction of a nation's cultural inheritance are all acts which even individually constitute a crime against humanity. In combination it is irrefutable that they fall within this category.

If such a crime is contemplated whether by individuals or by governments there is an inherent duty imposed on those who treasure the basic values of civilization to ensure that these things do not happen.

#### **Linkages between preparation and use.**

There is of course a gap between the act of using the weapon and the acts of deployment and research. The expenditure of millions of pounds and the heavy scientific and military effort involved are clearly not incurred to keep the weapons for showcase display. These things are clearly done with an intention of use. If one does not really intend to use them one cannot convince others that one will use them if the circumstances occurred for their engagement. The whole purpose of the exercise is to convince others of that intention, thereby using them as a form of deterrence. Others will not be so convinced if the party seeking to induce that belief has a secret intention not to use it. This is dissimulation at its worst, for intention is in the last resort the essence of this activity. Deterrence is not an act of deception but a real intent to use.

Statements are not indeed lacking at the highest governmental levels, indicating the readiness of nuclear powers to use these weapons. The former British Defence Secretary for example said in 2002 that,

*'For that to be a deterrent, a British government must be able to express their view that ultimately and in conditions of extreme self-defence, nuclear weapons would have to be used.'* And: *'It is therefore important to point out that the Government have nuclear weapons available to them, and that – in certain specified conditions to which I have referred – we would be prepared to use them.'* (Hansard, 29 April 2002).

We do not however need such specific pronouncements to reach the self evident conclusion that a real intent of use in certain circumstances underlies the activity of preparation and the concept of deterrence.

## **Humanitarian law is not quiescent in times of peace**

This body of principles exists and is active, not only in times of war but also in times of peace. Indeed it cannot be silent in times of peace for it is largely during periods of peace that preparations are made for war. If humanitarian law is silent in times of peace, we are laying the groundwork for its violation in times of war, thereby defeating its very purpose and rationale. This is particularly so in this nuclear age, when long and careful preparation of these weapons of ultimate cruelty takes place in times of peace to achieve readiness for their use in times of war. No nuclear nation waits for the outbreak of war to make these weapons.

Indeed, we would be facilitating the violation of humanitarian law by neglecting the preparations for it at a time when such future violations could be minimized with much less effort. From this point of view it is vitally important that we do not wait till war breaks out but that we activate these principles in times of peace as well.

There was a fallacy once prevalent that laws are silent in times of war "*Silent enim leges inter arma*". The answer to this was the evolution of humanitarian law which stated in no uncertain terms that far from being silent in times of war, it is particularly important that the law be active in times of war. Indeed this was a principle recognised by all religions as well for the literature of Hinduism, Judaism, Christianity and Islam has numerous specific passages on this. (See for example *War and Peace in World Religions*, Gerald Weisfeld lectures ed. Perry Schmidt-Leukel, scm press). More than two thousand years ago, the Indian classics, the *Ramayana* and *the Mahabharatha*, afford evidence that Hinduism specifically prohibited the use of a hyper destructive weapon which could ravage the enemy's country side and indiscriminately kill its population. Buddhism went even further, condemning war in every shape or form, leave alone the use of even a mildly dangerous weapon.

The fallacy that humanitarian law is silent in times of peace is parallel to the fallacy that the law is silent in times of war. Such a belief renders it particularly easy for humanitarian law to be violated in times of war. "*Si vis pacem, para bellum*" ran the ancient maxim – "if you desire peace prepare for war". Conversely, if you envisage war, you must necessarily prepare for it in time of peace. Those who prepare for war well know that they cannot wait to make their weapons till war breaks out. Making weapons in times of peace is thus a preparation for war, no matter what terminology one may use, whether it be deterrence or any other. The use of nuclear weapons is not possible unless they are prepared and researched in times of peace. Humanitarian law is meaningless unless it can reach this period of preparation and that invariably is the time of peace. Indeed it would make nonsense of humanitarian law if it is powerless to prevent the preparation and the stockpiling of an enormous-cache of hyper destructive weapons, to be let loose as soon as war breaks out. Indeed, even at the present moment more than a thousand nuclear weapons in the arsenals of the world are in a state of readiness to be triggered off in minutes should the occasion arise. Humanitarian law cannot reach them then. If it is to have any meaning, it must reach them now.

Moreover deterrence and threats, themselves illegalities, assume a greatly reinforced strength if such a fallacious view prevails regarding the reach of humanitarian law. When war does break out it would be far too late to bring the principles of humanitarian law into operation. To quote time honoured human wisdom, 'prevention is better than cure' - especially in situations where cure after the damaging event is patently impossible.

### **Folklore of the nuclear age**

Our vision of this problem tends to be blurred – often deliberately - by the folklore of the nuclear age which seeks to obscure many of the salient features of the anti-nuclear debate. It includes such observations as

- See how for sixty years our possession of the nuclear bomb has prevented attack by our cruel adversaries!
- See how Hiroshima and Nagasaki prosper despite attack by nuclear weapons! The nuclear weapon is obviously not the end of all civilization!

There is a whole array of such fallacies which can together be described as the folklore of the nuclear age, calculated by those who propagate it to lull the world's population into attitudes of apathy rather than protest, in a world bristling with nuclear weapons.

The first fallacy ignores the fact that we have been within a hair's breadth, time and again, of a global nuclear confrontation. The erection of the Berlin wall 1948, the Suez canal crisis 1956, the Taiwan Straits crisis 1958 and the Cuban Missile crisis 1962 readily come to mind as a few instances where humanity was on the verge of a nuclear catastrophe. In addition, nuclear accidents have occurred time and again. Launch on Warning (LOWC) systems have more than once readied themselves to launch a missile and have been held back, providentially, with only seconds to go.

The second fallacy ignores the fact that tomorrow's nuclear war will not be an attack upon a sitting duck type of target with no power of retaliation. The retaliatory bomb will be part of a nuclear exchange which could produce a nuclear winter and all those dreaded consequences which the nuclear powers know so well, but choose to ignore. The nuclear winter could destroy the food chain and wipe out all living things.

The beliefs induced by such fallacies still prevail despite their irrelevance and despite their total unreality.

### **The growing ascendancy of international law**

Another historical consideration relevant to this discussion is the fundamental change that has taken place over the last half century in the standing and reach of international law. From being a specialised subject confined to a small group of experts, it has during this period developed into a discipline producing a very real impact on every branch of domestic law. It has assumed a relevance which has transported it from a largely academic body of

knowledge to the level where every citizen needs to know something about it and needs to do what he or she can to protect and preserve it and to ensure its application.

Where once international law was nourished and fertilized by domestic law, international law has developed to such an extent that the traffic today is largely in the reverse direction. International law today fertilizes and enriches every department of domestic law – criminal law, military law, environmental law, health law, human rights law, constitutional law, family law, industrial law, commercial law and every other department of law. Standards and concepts of international law form an integral part of all of them. No longer can international law be placed in a compartment separate and distinct from domestic law. It pervades every section of it and is as much part of the life of every citizen as domestic law.

Consequently international law is no longer a matter for governments only. Today every citizen needs to be involved in it, to understand it, and to be involved in its application. Just as the average citizen was once encouraged to take an active interest in the domestic legal system, at the present day the average citizen needs to be encouraged likewise to take an active interest in the international legal system. While we are all citizens of our respective nations we all need to recognise also that we are citizens of the global community whose common home needs protection from all the assaults that modern technology and modern weaponry are making upon it.

Every individual is encouraged by all legal systems to defend the constitution and the interests of his or her state. The circumstances of our time demand that every individual be encouraged to defend international law and the interests of the global community. This is an imperative of our time. The stakes could not be higher, for they concern the very survival of civilization and of humanity itself.

Another important factor in elevating the authority of international law is that all nations should comply with it. Every citizen knows from ordinary experience that a policeman who seeks to enforce the law must not make a mockery of that law by flagrantly and openly violating the very law he seeks to enforce. Every piece of conduct on the part of the policeman violating the very rule he proposes to enforce, provokes others to violate that very rule and extends the ranks of violators. The self appointed nuclear policemen of the world need to realise how their actions totally destroy their credibility. The way to the universal abolition of nuclear weapons is for the nuclear states themselves to provide the example. No amount of policing by them or by the UN can be effective so long as they claim the right to have the weapon. Moreover all the moral authority that should lie behind the rule disappears if it is not universally complied with. It is elementary that there cannot be one law for some and another law for others.

### **Some incontrovertible legal and factual propositions**

I set out a number of incontrovertible legal and factual propositions each of which has a bearing on the Trident operation. The incontrovertibility of the legal propositions follows in my view from the incontrovertibility of the factual propositions set out. To assert otherwise is to undermine the fundamental principles of humanity, justice, good faith and concern for the future on which international law depends.

#### A) Legal Propositions

1. The use of nuclear weapons is illegal in any circumstances whatsoever
2. The threat of use of nuclear weapons is illegal in any circumstances whatever
3. The possession of nuclear weapons is illegal, for possession is not for show-case display but for use if required
4. The further development of nuclear weapons is illegal
5. The manufacture and testing of nuclear weapons are illegal
6. The use of nuclear weapons violates every rule of humanitarian law
7. The use of nuclear weapons violates every principle of human rights, to which all nations are committed
8. The use of nuclear weapons is a crime against humanity
9. Nuclear weapons are a weapon of genocide
10. There is an obligation on all nuclear states to take meaningful steps to reduce and eliminate their stocks
11. Failure to reduce stocks with a view to their total elimination is a violation of the requirements laid down by the unanimous opinion of the International Court of Justice
12. The testing and improvement of existing nuclear weapons is a contravention of the obligations of nuclear states under international law and of the unanimous opinion of the International Court of Justice
13. Every citizen has an obligation to use his or her influence to prevent crimes against humanity
14. There is an absolute contravention of international law if belligerent states cause irretrievable damage to neighbouring states.
15. It is an absolute contravention of international law to cause irretrievable damage to the environment

16. It is an absolute contravention of international law to cause irretrievable damage to future generations
17. Devastation of the enemy's countryside and the mass slaughter of its population go far beyond the purposes of war and are international crimes
18. There cannot be self appointed enforcers of the rule against nuclear weapons, especially if the self appointed enforcers are themselves principal violators of this rule
19. There cannot be one law for some members of the international community of nations and another law for others
20. Those who take the decision to launch a nuclear weapon are personally guilty of a crime against humanity

#### B) Factual Propositions

1. Nuclear weapons constitute a threat to the health of the community
2. nuclear weapons cause indiscriminate slaughter of the enemy population
3. Nuclear weapons are a source of environmental pollution for thousands of years
4. nuclear weapons cause excruciating suffering which goes far beyond the needs of war
5. Nuclear weapons are a health hazard for an unforeseeable number of generations
6. Nuclear weapons produce social disintegration
7. Nuclear weapons contaminate and destroy the food chain
8. Nuclear weapons cause genetic defects and deformities transmissible in perpetuity to future generations
9. They produce psychological stress and fear syndromes which last throughout the victims' lives
10. They wreak cultural devastation, irretrievably destroying historical monuments, historical documents and works of art, which are the inheritance of centuries

Neither of these lists is comprehensive and each can be considerably supplemented.

#### **Growing immediacy of the nuclear threat**

All this assumes the gravest urgency when a number of volatile disputes in today's international arena could trigger off the use of the weapon, not merely states but by irresponsible terrorist elements of all sorts.

Here are some of the circumstances that render the international situation so susceptible to the sudden use of a nuclear weapon.

1. The number of states having access to nuclear weapons is ever on the increase. There are states that have nuclear weapons and have not declared them and there are others who seek nuclear weapons but have not declared their intentions.
2. There is a phenomenal increase in the power and spread of terrorist groups. They are often in league with arms manufacturers, drug runners and other elements of society which pay scant regard to humanitarian values.
3. The knowledge necessary to make a nuclear weapon has ceased to be the preserve of a few experts walled within the security establishments of states. With the proliferation of information technology the know-how necessary to make a nuclear weapon has spread to the extent that a clever university student or code buster/hacker could break into the necessary information.
4. The materials necessary for putting together a nuclear weapon, especially the by-products of nuclear reactors, are available in increasing quantities, with the proliferation of nuclear reactors all over the world.
5. Even the International Atomic Energy Agency (IAEA) does not have a proper check on all records of this material
6. Some nations have put their defence systems on alert in accordance with what is known as a launch on warning capability (LOWC). No decision of a head of state is required to trigger them off. The machine takes the decision, does so within seconds and can well be in error
7. Nuclear accident is an ever present possibility. There have been numerous such accidents in the past, and considering the fact that there are tens of thousands of these weapons around, the dangers are grave.
8. The number of occasions when the world was on the verge of nuclear war in the past sixty years is considerable. In well over a dozen cases the world was hovering on the brink and it was only by a series of happy accidents that humanity was saved from nuclear war.
9. The number of mini wars throughout the world is on the increase. There is an ever present danger of nuclear powers becoming embroiled in these conflicts, for the nuclear powers have an interest in some of these conflicts
10. There has been a trend in recent years for International Law to be disregarded as and when it suited those who felt they were in a position to disregard it. An instance is the invasion mounted on Iraq by two of the permanent members of the Security Council in disregard of the several rules that have grown up in international law forbidding precisely the sort of unilateral action that was resorted to.

11. Another source of danger is that there is a vast gulf between the rich world and the poor world and this gulf is constantly widening. There are many nations in a state of desperation, unable to acquire even the basic necessities for their sustenance.
12. Another factor to be borne in mind is that research on the improvement and refinement of nuclear weapon is proceeding across the world.
13. The increasing number of suicide bombers now available for carrying out desperate tasks is a phenomenon of our times.
14. Even outer space is not free of nuclear weapons and testing and deployment are a source of constant danger
15. There are a number of scientists once employed in nuclear establishments whose expertise is available at a price to bidders for this knowledge.

### **Matters of particular concern to Scotland**

All of this underlines the importance of citizens being concerned with the proliferation and deployment of a weapon that makes them targets and imperils their children and their children's children, a weapon that endangers their environment, their fishing grounds, their food chain and their cultural heritage. These are all areas which must necessarily be concerns of the Parliament of Scotland even if it is totally devoid of power regarding foreign policy and defence. We may note in this context that although The Scotland Act 1998 provides that the conduct of international relations is a matter reserved for the United Kingdom Parliament and the United Kingdom government, paragraph 7(2) (a) provides inter alia that implementing and observing international obligations are not so reserved. This is a factor which gives strength to the view that gross violations of international obligations are not excluded from the purview of the Scottish Parliament. The absence of power in the former area cannot cancel out its responsibilities in the latter.

The Trident Missile developed by the Government of United Kingdom and positioned within the area over which the Scottish Parliament has jurisdiction highlights the issue in a special way and stimulates reflection on the duties and responsibilities of elected assemblies down to provincial and local levels.

Scotland will be a target for retaliation if the Trident missile should ever be used. The people of Scotland will be the sufferers. When the International Court heard the nuclear weapons case the evidence that was placed before it in regard to the human sufferings caused by the nuclear weapon and by nuclear testing was so harrowing that one could be left in no doubt of the need for the abolition of the weapon. Witnesses came to us from distant places like the Marshall Islands giving us the saddest descriptions of the birth deformities and the continuing suffering imposed on the islanders through nuclear testing.

A woman from the Marshall Islands said that Marshallese women after exposure to nuclear weapons testing

“give birth, not to children as we like to think of them, but to things we could only describe as ‘octopuses’, ‘apples’, ‘turtles’ and other things in our experience. We do not have Marshallese words for these kinds of babies because they were never born before the radiation came.

“Women on Rongelap, Likiep, Ailuk and other atolls in the Marshall Islands have given birth to these ‘monster babies’..... One woman on Likiep gave birth to a child with two heads.... There is a young girl on Ailuk today with no knees, three toes on each foot and a missing arm...

“The most common birth defects on Rongelap and nearby islands have been “jellyfish” babies. These babies are born with no bones in their bodies and with transparent skin. We can see their brains and hearts beating..... many women die from abnormal pregnancies and those who survive give birth to what looks like purple grapes which we quickly hide away and bury.

“My purpose in travelling such a great distance to appear before the court today is to plead with you to do what you can not to allow the suffering that we Marshallese have experienced to be repeated in any other community in the world” (CR95/32, pp 30-31). The people of Scotland have every right to protest against the possibility of this experience being repeated in Scotland.

The Vanuatu delegate to the forty sixth World Health Assembly 1993 spoke of the birth after 9 months of “a substance that breathes but does not have a face or legs or arms” (Materials furnished to the court by WHO)

The Mayors of Hiroshima and Nagasaki also placed before us one of the most lamentable tales of human suffering ever recorded – facts and records over many of which the nuclear powers had thrown a blanket of secrecy and which they still choose to ignore.

Nobody aware of that evidence could be left in the slightest doubt that every step that can be taken legally towards the abolition of this weapon of brutality needs to be taken and that those steps should be taken not nominally but effectively, not leisurely but urgently, not hesitantly but decisively. Good faith should pervade the whole operation, for good faith is an essential element in every aspect of the application and observance of international law.

True, foreign policy and defence are the prerogative of the national government. Yet the safety of the population of Scotland is the concern of Scotland. The health of the Scottish population is the concern of Scotland. The welfare of future generations of its population is the concern of Scotland. The protection of the environment of Scotland is the concern of Scotland. The purity of the seas and the ocean life around Scotland are the concern of Scotland.

### **Growing importance of citizen involvement**

There is a dilemma here for people of all countries, for many nuclear activities across the world present conflicts of interest between local populations and central governments. It

is for international law to resolve these problems by providing the necessary guidelines based upon human dignity, human rights and human welfare.

The Nuremberg principles give effect to the most solemn duties and responsibilities that are carried by states and those in power. The principles of democracy impose a responsibility on citizens to elect their representatives to power and to exercise a continuing vigil over their exercise of that power. That vigil is all the more imperative when it concerns the highest powers of state and the gravest crimes that governments can commit. The question we have to ask ourselves is whether that duty of vigilance melts away when the power exercised or misused is the defence power of the nation state. Does the participatory responsibility of the citizens of a democracy disappear in the fields of defence and foreign affairs when what may be an international crime is prepared by a sovereign government? Does the law, whether domestic or international, require a concerned citizenry to remain silent and inactive if their government is taking action that can contravene the Nuremberg principles?

Do the people of Scotland have a right to demonstrate their concern with their safety, their health, their environment, their food chains, their future generations and their cultural inheritance? Modern human rights learning and doctrine would indicate an affirmative answer to these questions.

Moreover, the missile is being perfected for deterrence. Deterrence means the threat of use. Use attracts retaliation. The target for retaliation is the geographical area where the missiles are located. The victims of retaliation will be the people of Scotland. The decision to use the missile will be a decision taken by the national government. Is there a conflict here which international law needs to resolve? International law cannot stand aside when human rights are violated and negated by doctrines of state sovereignty.

Indeed anti nuclear civil resistance is the right of every citizen of this planet for the nuclear threat, attacking as it does every core concept of human rights, calls for urgent and universal action for its prevention. If it is a basic human right to be free of threat or violence, if the right to life is a basic human right, and if the protection of children and future generations is a basic human duty, international law must unhesitatingly recognise that the right to non violent resistance activities for the prevention of such an international crime is basic to human dignity.

It is clear from the foregoing considerations that there is an increasing need in the modern world whether in Scotland or elsewhere, for citizens to take a greater interest in international law and in the way their government fulfils its obligation in this regard. This is increasingly a matter for the citizenry of the world and if they do not rise to their obligations in this respect, future generations will pay dearly for this inaction.

**Seminal importance of the unanimous Opinion of the International Court of Justice**

Reference has been made earlier to the unanimous Opinion of the International Court of Justice on nuclear disarmament. Whatever other differences there might have been amongst the Judges, they all agreed, without exception, 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”.*

It cannot be stressed too strongly that there cannot be a more authoritative statement of international law than a unanimous Opinion of the international community’s highest judicial tribunal. Moreover this is an age in which, if there is to be a peaceful world, there needs to be respect paid to international law particularly by the most powerful states. International law depends just as the International Court of Justice does, not on force of arms but on the force or its moral authority. Those who deprive international law of its moral authority are doing a distinct disservice to the community of nations and the future of humanity.

The Opinion in question was probably the most important judicial statement delivered in the history of the Court. The Opinion was sought by a majority of the nation states through a request for an Opinion by the General Assembly of the United Nations. It saw the largest number of nation states recorded as participating in the hearing of any case. It was perhaps the longest judicial hearing. A vast amount of material was placed before the Court including documents with millions of signatures. The record room of the Court could not hold the documentary material submitted, so vast was it in bulk. Every judge of the court wrote a considered opinion.

Such an Opinion of the International Court is also cogent evidence that the principles that it enunciates have entered the field of customary international law, which is a principal source of international law. All states are obliged to recognize such a principle and to act upon it. A treaty embodying such a rule is scarcely necessary when a principle of customary international law is so clear.

To treat such a judicial pronouncement with scant regard is not, in this day and age, responsible conduct on the part of any state.

### **Violation of the Nuclear Non Proliferation Treaty 1968**

In addition to this positive obligation imposed by the unanimous opinion of the International Court of Justice, the continuing work on the Trident missile system and its replacement constitutes a violation of Article VI of the Nuclear Non Proliferation Treaty 1968.

This is a cardinal provision of the treaty and it must be remembered also that a provision as important as this must necessarily attract the principle of good faith in the observance, implementation and interpretation of the Treaty. It can scarcely be said that an

interpretation of Article VI which leaves room for the activities in question accords with the fundamental principles of the Vienna Convention on the Law of Treaties, which stresses that the words of a treaty are to be interpreted in the light of its object and purpose. That object and purpose would be entirely defeated by the interpretation in question.

### **Contrast between preparations to usher in the 20<sup>th</sup> century and lack of preparations for the 21<sup>st</sup> century**

I close as I began with a historical perspective which will cause us to consider how sadly we have neglected the task of planning for a new century of peace to succeed the bloodiest century in human history. There was much thinking in the air when the 20th century began, regarding what should be done to leave behind a century of war and usher in a century of peace. The thinkers of the world and the governments of the world met together at the greatest peace conference that the world had seen till then. That was the Hague Peace Conference of 1899 which built a bridge between the worlds of philosophy and power. These two worlds had with a few exceptions functioned separately from each other from the dawn of history and the hope was that by bringing them together some sparks of inspiration from the world of philosophy would enter the corridors of power and help in the task of building a better world.

There was a sense of urgency and the 400 peace societies across the world looked on in eager anticipation of some meaningful progress along the road to peace, for this was a time if any for humanity to take a turn towards establishing a peaceful world. Czar Nicholas II, of Russia, himself an absolute potentate, saw the need for the planning and assembling of such a conference. He had been influenced by several factors not the least of which was the writings of Tolstoy.

Another major influence, very pertinent to our current topic, was that the Czar, had made a study of a monumental six volume work by Jan Bloch, a member of the Russian Council of State on the *War of the Future*. The concluding volume asserted that in view of the awesome power of new weapons of war, the war of the future would result in a break up of the entirety of social organization. War as a means of solving disputes had thus become impossible (Arthur Eyffinger, *The 1899 Peace Conference*, Kluwer pg. 19)

The next war, said Bloch would see the elimination of such vast numbers that there would be neither victors nor vanquished but two devastated nations. War had lost its relevance.

If the thinkers and rulers of that age had gone so far, having regard to the weaponry then available, how much further should not today's thinkers and rulers go!

Whatever the other influences which might have actuated him, the Czar was aware of these writings and saw value in convening such a meeting, which was held at The Hague.

Despite all the difficulties in the way of an International Court of Justice, at least a Permanent Court of Arbitration emerged, giving effect to the principle that future conflicts should be resolved by peaceful means rather than by war. The first step had been taken towards establishing the institutional structure of a more peaceful world.

Such were the thoughts that were uppermost in the minds of some at least of the powerful nations at the commencement of the 20<sup>th</sup> century. One wonders whether at the commencement of the 21<sup>st</sup> century there was a similar analysis in high places of fresh approaches towards world peace so that we could learn from the mistakes of the 20<sup>th</sup> century and make the 21<sup>st</sup> century a century of peace.

Sadly, the opening years of the 21<sup>st</sup> Century have been disfigured by war and every effort is needed, from the citizen in the street to the highest echelons of power, to mend this error and to place this new century on the route to peace. The nuclear weapon stands like an enormous road block on this route. All hands are needed to eliminate it and eliminate it we must, if we have any regard for the human future.

### **The issue is the survival of civilization**

At the dawn of the 21<sup>st</sup> century we did not have a peace conference of such proportions. The world of philosophy and the world of power still functioned in separate compartments though the need was even more urgent to bring them together, for this was the first century to dawn with humanity having the power to destroy itself. For this reason the century before us is our century of last opportunity and we must fervently hope that every avenue will be explored, every factor making for peace will come to the forefront and every obstacle in the way of peace will be removed.

What is at stake? It is nothing less than the survival of civilization and the key factor in this whole scenario is the nuclear weapon. We either destroy it or it will destroy us. Unlike the 20<sup>th</sup> century which, though bungled, had a 21<sup>st</sup> century to succeed it, the 21<sup>st</sup> century if bungled will be our last, for if we fail to put our affairs in order, nuclear weapons will emerge from their closets and civilization will be at an end. We must be conscious that just as the 20<sup>th</sup> century was a century of *lost* opportunity this is our century of *last* opportunity, if civilization is to survive.

Philosophers have said more than once that society suffers not for the wrongs of evil doers but for the complacency of good citizens in the face of evil. There can be little complacency about an evil so great as the nuclear weapon.

Since the century that should have been ushered in on a note of peace has been ushered in on a note of war and since we need to treasure and protect the achievements of millennia of human effort, which have taken the sacrifice of millions of lives to achieve, we must all contribute what we can to eliminate the nuclear scourge.

When a crime against humanity is involved every citizen has a duty to contribute what he or she can to prevent it. Every legal system which cherishes human rights would give its citizens every opportunity of peaceful demonstration in support of such causes.

International law gives due recognition to the right of sovereign states to determine matters of foreign policy and defence. This is their undoubted right. Yet it is a right to be exercised within the framework of international law. All ethical standards dictate that it should be exercised on the basis of good faith. International law condemns the threat or use of nuclear weapons. Good faith dictates that the obligation to abolish them must be discharged in good faith.

If the law is truly to be the custodian of the rights and liberties of present and future generations, anti nuclear civil resistance is the right of every citizen, for the nuclear threat, attacking as it does every core concept of human rights, calls for urgent and universal action for its prevention. If the right to life is a basic human right, and if the protection of children and future generations is a basic human duty, international law must unhesitatingly recognise that non violent resistance activities for the prevention of such an international crime is basic to human dignity.

### **The remedy is a more active international law strengthened by citizen participation**

We pressingly need more understanding of international law, more respect for international law, more compliance with international law, more support for international law and more good faith in the observance of international law. Whatever can be done to achieve these is activity which can help meaningfully to preserve humanity, civilization and the values we cherish.

We also pressingly need more citizen involvement in all these issues, for international law needs public support if it is to function effectively. Social motivation is essential to its success.

In an age in which the destructive power of weaponry was miniscule compared to its power today, Shakespeare could still see havoc as the inevitable result of war. "Cry 'havoc' and let slip the dogs of war" (Julius Caesar, III.1) describes it all. In an age of nuclear weapons every citizen has a right and duty to protest against any preparations enabling any entity to "cry 'havoc' and let slip" these bolts of doom.