

# FOREWORD

SCOTT L. SILLIMAN\*

While the greatest threats of the nuclear arms race have perhaps now been tempered, the United States and the world continue to face arms control issues of tremendous significance. In some ways, the collapse of the Soviet Union has exacerbated the problems we encountered during the Cold War. The need for hard currency caused by the weakened economies of the Newly Independent States, the lack of effective national controls over nuclear weapons systems and storage facilities, and the sagging morale of the military who are charged with controlling and safeguarding weapons of mass destruction and facilities, seemingly invite black market proliferation of these weapons and fissile materials. Further, the international community continues to be frustrated in its attempts to either regulate or totally ban the production, storage and use of chemical and biological weapons by states that consider them a viable counterforce to the major nuclear powers.

Iraq's ongoing resistance to allow U.N. personnel to inspect all its potential chemical and biological weapons production and storage facilities is but one example of this problem.<sup>1</sup> Moreover, if weapons of mass destruction are being produced and stockpiled without completely effective international control and enforcement regimes, a terrorist group or rogue state remains unchecked in its capability to procure these weapon systems and use them indiscriminately. Some weapons of mass destruction can even be produced from readily available materials in unsophisticated laboratories anywhere in the world, as illustrated by the 20 March 1995 sarin gas attack by members of the Aum Shinrikyo sect upon the Japanese subway system,

---

\*Executive Director of the Center on Law, Ethics and National Security, and Senior Lecturing Fellow, Duke University School of Law. B.A., J.D., University of North Carolina.

1. See *ABC World News This Morning: U.N., Iraq Seem Headed for Another Confrontation* (ABC television broadcast, Dec. 16, 1997); *Iraq Insists that U.N. Arms Inspectors Avoid Sensitive Sites*, N.Y. TIMES, Nov. 24, 1997, at A8; *CNN Morning News: Chief U.N. Inspector Looks for Way to Regain Access to Iraq* (CNN television broadcast, Nov. 14, 1997); James Bone, *Iraq Bars American Pair in Arms Row with UN*, TIMES, Oct. 31, 1997, at 21, available in LEXIS, News Library, Curnws File; *All Things Considered: U.N. Iraqi Travel Resolution* (NPR radio broadcast, Oct. 23, 1997).

which killed eleven people and injured almost a thousand more.<sup>2</sup>

U.S. policy on controlling weapons of mass destruction is especially complicated by the absence of a clear national consensus about how to proceed. This was evidenced in part by the statement issued two years ago by over fifty flag officers from the United States and around the world renouncing nuclear weapons on moral grounds and urging unilateral disarmament—a position quickly challenged by other respected authorities on U.S. policy.<sup>3</sup>

Scant guidance on the applicable law was gained from the 8 July 1996 advisory decision of the International Court of Justice on the legality of the threat or use of nuclear weapons.<sup>4</sup> The convoluted opinion was rife with ambiguity and the Court's most celebrated holding—that the threat or the use of nuclear arms is generally contrary to the rules of international law applicable in armed conflicts except in an extreme circumstance in which a state's very survival would be at stake—almost defies an agreed-upon interpretation or application. Then again, even in cases where potential nuclear, chemical or biological threats have been addressed by international treaties, questions remain in the United States about verification and enforcement of those agreements. The heated debate in the U.S. Senate last April<sup>5</sup> on the advisability of approving ratification of the Chemical Weapons Convention,<sup>6</sup> a seemingly straightforward treaty

---

2. See *Global Proliferation of Weapons of Mass Destruction: A Case Study on the Aum Shinrikyo: Hearings Before the Comm. on Governmental Affairs*, 104th Cong. 89 (1995) (statement of the Staff of the Subcomm. on Investigations). See also *Australia Believes Sect Tested Gas on Ranch*, N.Y. TIMES, May 12, 1995, at A9; William J. Broad, *Seismic Mystery in Australia: Quake, Meteor, or Nuclear Blast?*, N.Y. TIMES, Jan. 21, 1997, at C1; Norman Kempster, *U.S. Vulnerable to Cult Attacks, Senator Nunn Says*, L.A. TIMES, Oct. 16, 1995, at A8; Nicholas D. Kristof, *A Guru's Journey—A Special Report; The Seer Among the Blind: Japanese Sect Leader's Rise*, N.Y. TIMES, Mar. 26, 1995, § 1, at 1.

3. See *Statement on Nuclear Weapons by International Generals and Admirals* (Dec. 5, 1996) <<http://www.stimson.org/generals/internat.htm>>. For challenges to this statement, see *All Things Considered: Retired Military and Nuclear Weapons* (NPR radio broadcast, Dec. 5, 1996), available in LEXIS, News Library, Curnws File; Richard N. Haas, *Getting Rid of America's Nuclear Weapons Isn't a Good Idea*, INT'L HERALD TRIB., Dec. 16, 1996, available in LEXIS, News Library, Curnws File; White House Press Office, *Statement on Reduction of Nuclear Weapons Arsenals*, U.S. Newswire, Dec. 7, 1996, available in LEXIS, News Library, Curnws File.

4. *Legality of the Threat or Use of Nuclear Weapons*, 35 I.L.M. 809 (1996) (Advisory Opinion of July 8, 1996).

5. See generally 143 CONG. REC. S3567-658 (daily ed. Apr. 24, 1997).

6. See generally *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction*, opened for signature Jan. 13, 1993, S. TREATY DOC. No. 103-21 (1993), reprinted in 32 I.L.M. 800 (1993).

banning the development, production, stockpiling and use of chemical weapons, reflects the great division in the United States over the propriety of ratifying treaties that have no deterrent effect upon those non-treaty states most prone to the use of chemical or biological warfare or to supporting terrorist activities. In the end, the treaty was approved for ratification only after provision was made for twenty-eight “understandings,” which ostensibly gave clarification to how the United States interprets significant portions of the signed agreement.<sup>7</sup> It was perhaps not mere happenstance that an accord was reached at the same time between the Clinton administration and North Carolina Senator Jesse Helms, Chairman of the Senate Foreign Relations Committee, for restructuring the State Department—a goal long sought by Helms.<sup>8</sup>

It was against this backdrop of world events that Duke Law School’s Center on Law, Ethics and National Security hosted a conference in Durham in April 1997 entitled “Contemporary Issues in Controlling Weapons of Mass Destruction,” with the Center for National Security Law at the University of Virginia serving as a co-sponsor for the event. The intent was to bring together a group of distinguished scholars, U.S. administration officials and others to provide a focus to the perplexing problem of controlling weapons of mass destruction by identifying key issues and proposing recommended action. Several of the articles in this symposium edition of the *Journal* are the result of papers presented at that conference.

The lead essay by Dr. Graham Allison from the John F. Kennedy School of Government at Harvard University introduces the extreme vulnerability of the United States to acts of chemical, nuclear or biological megaterrorism, especially in light of what Allison terms the threat of “loose nukes”—uncontrolled nuclear weapons and weapons-grade material in Russia that could be stolen or sold to terrorists or rogue states for use against this country. Dr. Allison chronicles the deteriorating political and economic conditions in Russia following the demise of the Soviet Union, conditions resulting in uncontrolled nuclear weaponry, and he then discusses some deterrents that have, so far, limited the number of acts of megaterrorism in the world. He concludes with a call to action by proposing national security decisions and programs he believes essential to deal with the

---

7. See generally *id.*; see also 143 CONG. REC. S3651-3658 (daily ed. Apr. 24, 1997).

8. See *U.S. Senate Panel Approves Chemical Weapons Treaty*, Reuters N. Am. Wire, Apr. 25, 1996, available in LEXIS, News Library, Curnws File.

vast amount of nuclear weapons-grade materials still in Russia and the threat those materials pose if left uncontrolled. He argues that the United States must recognize the reality and seriousness of the threat, and institute immediate and high-priority actions in order to avert a major tragedy on American soil.

The continued viability of nuclear weapons as an effective deterrent in U.S. national security policy is considered in two complementary essays, one authored by retired Air Force General Charles Horner, who headed the coalition's air campaign in the Persian Gulf War, and the other by Stephen Hadley, who served as Assistant Secretary of Defense for International Security Policy in the Bush administration. General Horner, who was one of the signers of the 1996 statement renouncing the use of nuclear weapons on moral grounds,<sup>9</sup> argues that the use of nuclear weapons as a deterrent is no longer credible against either the rational or the irrational actor. As to the former, he argues that our historical success with conventional weapons, as for example against Iraq, leads many states to conclude that it would be untenable for an American president to use nuclear weapons; and as to the latter, he suggests that an irrational actor would be unconcerned with the consequences of a nuclear strike against it and would perhaps even invite such an attack. Horner suggests that new policies must be developed to protect our vital national security interests and he proposes a three-phased approach to deal with the threats that confront our country today. Stephen Hadley, on the other hand, argues that the debate over the use of nuclear weapons has failed to acknowledge the major changes that have been made in U.S. nuclear strategy and force posture since the end of the Cold War, and that it is simply wrong to characterize U.S. policy as either irresponsible or immoral. He credits the security arrangements developed after World War II, arrangements in which the threatened use of nuclear weapons was an integral part, for securing and maintaining peace in Europe for the last forty-five years.

Hadley asserts that the goal of a nuclear weapons-free world is unachievable—as nuclear weapons cannot be *uninvented*—and that a nuclear weapons capability may also serve as a credible deterrent against the modern-day threat of the use of chemical or biological weapons. But even in defending a continued nuclear deterrent capability, Hadley suggests a series of actions that must be taken to en-

---

9. See *Statement on Nuclear Weapons by International Generals and Admirals*, *supra* note 3.

hance the peace and security of the United States and its allies.

Captain Mark Rosen, an active-duty attorney in the U.S. Navy, critically analyzes efforts within the international community to create regional nuclear weapons free zones. He explores the question of whether the United States should lend support to the creation of such zones or whether these regional initiatives detract from the ongoing international arms control regimes in which the United States is already engaged. He argues that U.S. support for the regional zones is potentially destabilizing and suggests that such support detracts from the global anti-proliferation effort. In view of the number of nuclear free zones either in existence or being proposed, Captain Rosen urges a calm and reflective look at their efficacy.

The effective control of weapons of mass destruction, and the resultant enhancement of efforts to achieve a true world peace, will continue to be major goals challenging the global community for the foreseeable future. To that end, the *Duke Journal of Comparative & International Law* offers this symposium edition in the hopes of contributing to the ongoing international dialogue crucial to the achievement of those goals.

