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## NUCLEAR ARMS AND WORLD PUBLIC ORDER: A TRANSFORMATIONAL PERSPECTIVE

SAUL MENDLOVITZ\*

As good policy-makers and law professors know, policy that is not grounded in specifics is unlikely to deal with the problem at hand and will result in solutions removed from the realities with which that policy deals. I make that obvious remark because what I am about to do in my presentation, I do with some trepidation. I intend, as you will see, to disregard by and large the factual patterns and evaluations of them which are being presented by my fellow panelists. That is to say, I do not intend to deal with the contemporary strategic military arrangements in any systematic fashion.

I did have an opportunity to read the papers which were prepared for this symposium and I have learned a good deal from them, especially from General Jones on the process by which military policy is actually forged. Were I to get into a discussion of these matters as they have been presented, I would align myself, in the main, with Ambassador Smith's analysis. Ambassador Smith argues, and I agree, that the United States has been an equal partner with the Soviet Union in escalating the nuclear arms race and that we have not had an appropriate appreciation of the Soviet perception of our own behavior in connection with arms control and disarmament negotiations. I concur with his recommendations for ratification of SALT II,<sup>1</sup> support for the announcement of a no-first-use doctrine by the United States and his pointing to non-proliferation as a major problem to be dealt with—although I have a rather strong feeling that he underestimates the extent to which vertical proliferation, that is, the ever-increasing stockpiling of nuclear states, exacerbates this problem. His observation that nuclear policy is becoming democratized and that the nuclear threat has deeply penetrated the consciousness of millions of Americans is one which I share and it is indeed part of the basis for my own remarks. I do have a disagreement with Ambassador Smith, in fact a sharp one, with regard to supporting and strengthening our conventional forces in Europe; for I believe that such a policy will lead to

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1. SALT II signed June 18, 1979 (not entered into force), *reprinted in* S. EXEC. DOC. No. Y, 96th Cong., 1st Sess. 37-45; *see also* BUREAU OF PUBLIC AFFAIRS, U.S. DEPT. OF STATE, SELECTED DOCUMENTS No. 12B, SALT II Agreement (June 18, 1979).

escalation of the nuclear arms race, an argument which I shall have to make in another forum. Moreover, I do have deep and quite pervasive disagreements with Mr. Grey; he has almost persuaded me to join the fray. I find his characterization of the necessity for the United States to modernize the triad grossly misrepresents the capacity and threat of the strategic force balance. In my view, Mr. Grey's position will lead to an escalation of the arms race and provide more insecurity for both superpowers and, indeed, for the people of the world. However, I should like, instead of carrying on the discussion of these specifics, to raise what I consider to be a more fundamental point. My views are expressed, albeit in somewhat cautious fashion, in a portion of the introduction to George Kennan's new book, *The Nuclear Delusion: Soviet-American Relations in the Atomic Age*.<sup>2</sup>

Before terminating these observations, I have one confession to make. There is need for it here, because the state of mind it reveals is of recent origin, and is not reflected in the documents here reproduced. [These documents are a set of essays expressing Kennan's opinions on containment, and range from his writings under the pseudonym of "Mr. X" in the 1940's, to his most recent suggestion that we have a 50% reduction in all nuclear weapons.]

In all these expressions of opinion I have been going on the assumption that while another conventional war in Europe would indeed be an immense danger, not to be undergone without new and lasting damage to European civilization, nevertheless the most main and urgent necessity was to get rid of nuclear weapons, [for they] presented a danger beyond any other that civilized life has ever known; and that, having got rid of these latter, one could somehow set out with good confidence to muddle along with the conventional weapons hoping that some sort of balance among them could eventually be achieved and that they, too, would never come into use. [I have] always resisted the suggestion that war, as a phenomenon of international life, could be totally ruled out, partly because the demands for outlawing war were usually cast (like the pathetically unrealistic Kellogg Pact) in universal and therefore wholly impractical terms, partially because it was so hard to see what other ultimate sanction for the protection of national interest could be devised.

*I am now bound to say that while the earliest possible*

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2. G. KENNAN, *THE NUCLEAR DELUSION: SOVIET-AMERICAN RELATIONS IN THE ATOMIC AGE* (1982).

*elimination of nuclear weaponry is of no less vital importance in my eyes than it ever was, this would not be enough, in itself, to give Western civilization even an adequate chance of survival. War itself, as a means of settling differences at least between the great industrial powers, will have to be in some way ruled out; and with it there will have to be dismantled (for without this the whole outlawing of war would be futile) the greater part of the vast military establishments now maintained with a view to the possibility that war might take place.*

...

No one could be more aware than I am of the difficulty of ruling out war among great states. It is not possible to write any sure prescription as to how this might be achieved, particularly because the course of international life is not, and cannot be, determined over the long term by a specific set of treaties or charters agreed upon at a single moment in history and reflecting only the outlooks and circumstances of that particular moment. It is the ingrained habits and assumptions of men, and above all of men in government, which alone can guarantee any enduring state of peaceful relations among nations.<sup>3</sup>

I should say at the outset that I am an abolitionist with regard to war. To state the matter simply and in somewhat dramatic fashion, it would be fair to compare my position, let us say, to an abolitionist against slavery in 1795, some six years after the Constitution of the United States was adopted. Thus, if we put ourselves back, for just a moment, to 1795 and I was presenting to you an argument for the abolition of slavery against the backdrop of a new constitution in which blacks, who were then slaves, were mentioned only for the purposes of representation—at a fraction, at that—by the slave states in Congress, you probably would have considered me, at best, utopian, certainly not offering a serious political project, and there would have been many of you who would have considered me to be a radical, calling for unconstitutional confiscation of private property. It is only in historical retrospect that we are now willing to say that the abolition of slavery was a feasible political project. What I wish to do here is to suggest, like Kennan, that the abolition of all war needs to be taken seriously—as seriously as the abolition of slavery was perceived in another era. To be sure, the focus on nuclear weapons, their limitation and abolition, has become increasingly a focal point for political action and this is all to

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3. *Id.* at xxvii-xxix (emphasis added).

the good. But in my opinion it will be impossible to control and eliminate nuclear weapons unless we deal with the underlying question of the abolition of war.

To state the matter starkly, we need a major change in the way we think about the security of the United States and of the world's four and one-half billion people if we are to avoid nuclear holocaust. We must move away, in thought and action, from a system which believes that military might, however regrettable, will ultimately have to be used, for national security reasons, by states to defend their citizenry.

In order to bring about this change of thinking we must confront initially the common perception that war is inevitable. I believe that it is accurate, and therefore possible, to show that this proposition is false. In an over-simplified fashion, the argument can be stated as follows.

There is a macrohistory which shows that war, as a bureaucratic, organized institution around the use of violence, arose with the development of civilization some 5,000 to 7,000 years ago; that it grew up concomitantly with slavery and the state; that it has become intermingled with the state system itself and that it has now become a crucial element in the political culture of nations.<sup>4</sup> To overstate somewhat, militarism has become the culture of the globe. What is now necessary, is for a cadre of individuals, on a global basis, to take on militarization in the same way that abolitionists in a prior period took on slavery.

Here, I wish to suggest, almost in passing, the manner in which we might begin to think seriously of this political project. We need to engage in demilitarization. Such a process will require the development of an alternative security system to the one we presently utilize. The fact is, national security in a decentralized, militarized system in which unilateral military decisions are made by national elites, is no longer capable of insuring security and has a high likelihood of producing serious disaster for the human race.

We live at a moment in history when global society has emerged. And we live with a political system where the national elites, carrying on the system of territorial statehood, believe that their primary obligation is the protection and security of territorial integrity and political independence and that they must make unilateral military decisions in order to achieve those goals. Yet, I believe, like Kennan, that unilateral military decisions are no longer commensurate with either the individual security of nation-states or the globe as a whole.

In order to achieve this paradigm shift, political elites must come to understand the reality of the contemporary situation in some deep

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4. See *WAR AND THE HUMAN RACE* 63-69 (M. Walsh ed. 1971).

historical, philosophical and metaphysical sense. There is the necessity of understanding that the nation-state system is a blip in terms of time in the history of humanity. We international lawyers have arbitrarily, but conveniently, placed the beginning of the nation-state system at 1648.<sup>5</sup> But it is apparent that this system is only one way of dealing with authority and power. What is now necessary is the questioning of the validity of this decentralized system in a much more forthright fashion than has been done to date. Let us look at the following sense of history.

In the fifteenth century, there were only one-half billion people on the face of the earth. Only one-tenth of one percent knew that the globe was round.<sup>6</sup> There were few organic relationships, even in an environmental sense, of impact on one another of the people who were separated from one another by even a few thousand miles. Now, less than five hundred years later, there are eight times that number of people on earth.<sup>7</sup> No matter how divided we are, no matter how much we hate each other because of nationhood, race, ethnicity, or sex, there is an emerging understanding that we are going to have to live together or else we will kill each other. To be sure, there will always be people who will be willing to kill and we will always need ways to protect ourselves from those willing to engage in this kind of an enterprise. But it is this task—this political project—and nothing else, which is called for.

To put the matter somewhat differently, as John Dewey has noted, human society exists in and through communication; I would add to this that there needs to be a symbiotic base, that is, exchange transactions seemingly necessary for individuals involved in the society. Using this view of society based on communication and symbiosis, it is clear that the twentieth century is the time in which global human society has emerged. It is necessary to move from this metaphysic, that is, this new reality in the flow of history, to some operationalizing of that global society. Central to that effort must be some notion of people's security. I would argue that at this moment in history, lawyers and those who have the luxury of thinking rather than marching in the streets, should be considering the following. Is there another form of security besides national security? What is the way of creating an alternative security at this moment in history? In answering these questions, I would not be afraid of "old hat" notions. If world federalism

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5. H. MORGENTHAU, *POLITICS AMONG NATIONS* 277 (1963).

6. See generally 1 *THE CAMBRIDGE MODERN HISTORY* 18-19, 23 (A. Ward, G. Prothero & S. Leaves eds. 1969) for discussion of the development and acceptance of the concept that the world is spherical.

7. *THE HAMMOND ALMANAC* 247 (M. Badheller ed. 1983).

springs to mind—try it out. It may turn out to be the direction toward which the law and power must go. At the same time, do not be afraid of new notions, such as people's security.

The concept of security must be reviewed, and it must be decided whose security is involved. Is it the security of a governmental elite, of a polity bounded by some juridical notion of territory, or does it involve people? Should security mean filling basic human needs, civil rights, as well as freedom from violence and freedom from having to engage in violence as members of the armed forces of our own society?

Redefining security in order to move toward some alternative security system, from the viewpoint of those of us in law and government, calls for a redefinition of sovereignty. For example, the question of why two superpowers have the right to engage in vertical proliferation of weaponry while asking for horizontal nonproliferation on the part of other states, has been raised in this symposium. Some method must be devised to submit the superpower elites, United States as well as Soviet, to community review in a more effective fashion. I would argue that it is the policy-makers like ourselves who must now begin to review our own society in the same modest way in which Ambassador Smith began his observations—by looking at what we are doing and at the Soviet Union's responses to our actions and by looking at it from the viewpoint of the other four billion people on the earth who have a stake in the planet. We must not dismiss them as people who, after we have come to a solution, might somehow be brought into that solution. The notion of sovereignty—how to define it, how to review the decisions and behavior of the policy-makers—is then, I believe, another crucial element with which we should be working.

In addition, and let me present still another adumbrated argument, I believe that we, as lawyers and policy-makers, should begin, whether or not Professor Reisman or Professor Weston is correct with regard to the illegality of nuclear weapons, to think in terms of the criminality of nuclear weapons. I am using criminality in a very specific, technical sense. I mean that individuals who manufacture, deploy, possess, threaten to use or, in fact, use nuclear weapons, should be considered criminals. It was because of this kind of discussion with regard to the institution of the divine rights of kings in the sixteenth century, slavery in the eighteenth century, and imperialism in the nineteenth and twentieth centuries, that the undermining of these social/political/economic systems came about. Enough people were willing to challenge the legitimacy of these institutions conceptually, politically and through the use of protest movements. The flow of history was with such people, and the abolition of war and militarism will be brought about by similar processes.

Finally, in the year 2020 there will be approximately seven to eight billion people on this earth.<sup>8</sup> The notions that these seven to eight billion people will not be part of some kind of centralized political-legal system, or that global society will avoid either an Orwellian 1984 situation or nuclear holocaust, appear to me to be very unlikely. This means that those of us who are involved in policy and in worrying about the authoritative decision-makers and the criteria they use, must really begin to integrate the notion of a central legal system built around the concept of human dignity with the way we think about the future. Therefore, I urge that, in looking at the very important kinds of contemporary, immediate problems that face us, we put our answers to the questions that have been raised by these papers into the context of an alternative security system and the abolition of war.

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8. *Id.*

