



The Future of International Law

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“With law shall our land be built up, but with lawlessness laid waste.”

– *Njal’s Saga, Iceland, c 1270.*

Abstract

After the invention of agriculture, roughly 10,000 years ago, humans began to live in progressively larger groups, which were sometimes multi-ethnic. In order to make towns, cities and finally nations function without excessive injustice and violence, both ethical and legal systems were needed. Today, in an era of global economic interdependence, instantaneous worldwide communication and all-destroying thermonuclear weapons, we urgently need new global ethical principles and a just and enforceable system of international laws.

1. What is Law?

The principles of law, ethics, politeness and kindness function in slightly different ways, but all of these behavioral rules help human societies to function in a cohesive and trouble-free way. Law is the coarsest. The mesh is made finer by ethics, while the rules of politeness and kindness fill in the remaining gaps.

Legal systems began at a time when tribal life was being replaced by life in villages, towns and cities. One of the oldest legal documents that we know of is a code of laws enacted by the Babylonian king Hammurabi in about 1754 BC. It consists of 282 laws, with scaled punishments, governing household behavior, marriage, divorce, paternity, inheritance, payments for services, and so on. An ancient 2.24 meter stele inscribed with Hammurabi’s Code can be seen in the Louvre. The laws are written in the Akkadian language, using cuneiform script.

Humanity’s great ethical systems also began during a period when the social unit was growing very quickly. It is an interesting fact that many of history’s greatest ethical teachers lived at a time when the human societies were rapidly increasing in size. One can think, for example of Moses, Confucius, Lao-Tzu, Gautama Buddha, the Greek philosophers, and Jesus. Muhammad came slightly later, but he lived and taught at a time when tribal life was being replaced by city life in the Arab world. During the period when these great teachers lived, ethical systems had become necessary to overwrite raw inherited human emotional behavior patterns in such a way that increasingly large societies could function in a harmonious and cooperative way, with a minimum of conflicts.

2. Magna Carta, 1215

2015 marks the 800th anniversary of the Magna Carta, which is considered to be the foundation of much of our modern legal system. It was drafted by the Archbishop of Canterbury to make peace between the unpopular Norman King John of England and a group of rebel barons. The document promised the protection of church rights, protection for the barons from illegal imprisonment, access to swift justice, and limitations of feudal payments to the Crown. It was renewed by successive English sovereigns, and its protection against illegal imprisonment and provisions for swift justice was extended from the barons to ordinary citizens. It is considered to be the basis for British constitutional law, and in 1789, it influenced the drafting of the Constitution of the United States. Lord Denning described the Magna Carta as “the greatest constitutional document of all times: the foundation of the freedom of the individual against the arbitrary authority of the despot.”

3. The English Bill of Rights, 1689

When James II was overthrown by the Glorious Revolution, the Dutch stadholder William III of Orange-Nassau and his wife, Mary II of England were invited to be joint sovereigns of England. The Bill of Rights was originally part of the invitation, informing the couple regarding the limitations that would be imposed on their powers. Later the same year, it was incorporated into English law. The Bill of Rights guaranteed the supremacy of Parliament over the monarch. It forbade cruel and unusual punishments, excessive bail and excessive fines. Freedom of speech and free elections were also guaranteed, and a standing army in peacetime was forbidden without the explicit consent of the Parliament. The Bill of Rights was influenced by the writings of the Liberal philosopher, John Locke (1632-1704).

4. The United States Constitution and Bill of Rights, 1789

The history of the Federal Constitution of the United States is an interesting one. It was preceded by the Articles of Confederation, which were written by the Second Continental Congress between 1776 and 1777, but it soon became clear that the Confederation was too weak a form of union for a collection of states.

George Mason, one of the drafters of the Federal Constitution, believed that “such a government was necessary as could directly operate on individuals, and would punish those only whose guilt required it”, while another drafter, James Madison, wrote that the more he reflected on the use of force, the more he doubted “the practicality, the justice and the efficacy of it when applied to people collectively, and not individually.”

Finally, Alexander Hamilton, in his Federalist Papers, discussed the Articles of Confederation with the following words: “To coerce the states is one of the maddest projects that was ever devised... Can any reasonable man be well disposed towards a government which makes war and carnage the only means of supporting itself, a government that can exist only by the sword? Every such war must involve the innocent with the guilty. The single consideration should be enough to dispose every peaceable citizen against such government... What is the cure for this great evil? Nothing, but to enable the... laws to operate on individuals, in the same manner as those of states do.”

* See http://en.wikipedia.org/wiki/Magna_Carta

In other words, the essential difference between a confederation and a federation, both of them unions of states, is that a federation has the power to make and to enforce laws that act on individuals, rather than attempting to coerce states (in Hamilton's words, "one of the maddest projects that was ever devised.") The fact that a confederation of states was found to be far too weak a form of union is especially interesting because our present United Nations is a confederation. We are at present attempting to coerce states with sanctions that are "applied to people collectively and not individually." The International Criminal Court, which we will discuss below, is a development of enormous importance, because it acts on individuals, rather than attempting to coerce states.

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There are many historical examples of successful federations; but in general, unions of states based on the principle of confederation have proved to be too weak. Probably, our best hope for the future lies in gradually reforming and strengthening the United Nations, until it becomes a federation.

In the case of the Federal Constitution of the United States, there were Anti-Federalists who opposed its ratification because they feared that it would be too powerful. Therefore, on June 8, 1789, James Madison introduced in the House of Representatives a series of 39 amendments to the Constitution, which would limit the government's power. Of these, only amendments 3 to 12 were adopted, and these have become known collectively as the Bill of Rights.

Of the ten amendments that constitute the original Bill of Rights, we should take particular notice of the First, Fourth and Sixth, because they have been violated repeatedly and grossly by the present government of the United States.

The First Amendment requires that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." The right to freedom of speech and freedom of the press has been violated by the punishment of whistleblowers. The right to assemble peaceably has also been violated repeatedly and brutally by the present government's militarized police.

The Fourth Amendment states that "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." It is hardly necessary to elaborate on the U.S. Government's massive violations of the Fourth Amendment. Edward Snowden's testimony has revealed a huge secret industry carrying out illegal and unwarranted searches and seizures of private data, not only in the United States, but also throughout the world. This data can be used to gain power over citizens and leaders through blackmail. True democracy and dissent are thereby eliminated.

The Sixth Amendment requires that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the

crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.” This constitutional amendment has also been grossly violated.

In the context of federal unions of states, the Tenth Amendment is also interesting. This amendment states that “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” We mentioned above that historically, federations have been very successful. However, if we take the European Union as an example, it has had some problems connected with the principle of subsidiarity, according to which as few powers as possible should be decided centrally, and as many issues as possible should be decided locally. The European Union was originally designed as a free trade area, and because of its history commercial considerations have trumped environmental ones. The principle of subsidiarity has not been followed, and enlightened environmental laws of member states have been declared to be illegal by the EU because they conflicted with free trade. These are difficulties from which we can learn as we contemplate the conversion of the United Nations into a federation.

The United States Bill of Rights was influenced by John Locke and by the French philosophers of the Enlightenment. The French Declaration of the Rights of Man (August, 1789) was almost simultaneous with the U.S. Bill of Rights.[†]

We can also see the influence of Enlightenment philosophy in the wording of the U.S. Declaration of Independence (1776): “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness – That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed...” Another criticism that can be leveled against the present government of the United States is that its actions seem to have nothing whatever to do with the consent of the governed, not to mention the violations of the rights to life, liberty and the pursuit of happiness implicit in extrajudicial killings.¹

5. Kellogg-Briand Pact, 1928

World War I was a catastrophe that still casts a dark shadow over the future of humanity. It produced enormous suffering, brutalization of values, irreparable cultural loss, and a total of more than 37 million casualties, military and civilian. Far from being the “war to end war”, the conflict prepared the way for World War II, during which nuclear weapons were developed; and these now threaten the existence of the human species and much of the biosphere.

After the horrors of World War I, the League of Nations was set up in the hope of ending the institution of war forever. However, many powerful nations refused to join the League, and it withered. Another attempt to outlaw war was made in 1928 in the form of a pact named after its authors, U.S. Secretary of State Frank B. Kellogg and French Foreign Minister Astrid Briand. The Kellogg-Briand Pact is formally called the General Treaty for the Renunciation

[†] See http://en.wikipedia.org/wiki/Natural_and_legal_rights, http://en.wikipedia.org/wiki/John_Locke and http://en.wikipedia.org/wiki/Declaration_of_the_Rights_of_Man_and_of_the_Citizen

of War as an Instrument of National Policy. It was ultimately ratified by 62 Nations, including the United States (by a Senate vote of 85 to 1). Although frequently violated, the Pact remains in force today, establishing a norm which legally outlaws war.

6. United Nations Charter, 1945

The Second World War was even more disastrous than the First. Estimates of the total number of people who died as a result of the war range between 50 million and 80 million. With the unspeakable suffering caused by the war fresh in their minds, representatives of the victorious allied countries assembled in San Francisco to draft the charter of a global organization which they hoped would end the institution of war once and for all.

The Preamble to the United Nations Charter starts with the words: “We, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind; and to unite our strength to maintain international peace and security; and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest; and to employ international machinery for the promotion of the economic and social advancement of all peoples, have resolved to combine our efforts to accomplish these aims.”

Article 2 of the UN Charter requires that “All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state.” This requirement is somewhat qualified by Article 51, which says that “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”

Thus, in general, war is illegal under the UN Charter. Self-defense against an armed attack is permitted, but only for a limited time, until the Security Council has had time to act. The United Nations Charter does not permit the threat or use of force in preemptive wars, or to produce regime changes, or for so-called “democratization”, or for the domination of regions that are rich in oil.[‡]

Clearly, the United Nations Charter aims at abolishing the institution of war once and for all; but the present Charter has proved to be much too weak to accomplish this purpose, since it is a confederation of the member states rather than a federation. This does not mean that our present United Nations is a failure. Far from it! The UN has achieved almost universal membership, which the League of Nations failed to do. The Preamble to the Charter speaks of “the promotion of the economic and social advancement of all peoples”, and UN agencies, such as the World Health Organization, the Food and Agricultural Organization and UNESCO, have worked very effectively to improve the lives of people throughout the world. Furthermore, the UN has served as a meeting place for diplomats from all countries, and many potentially serious conflicts have been resolved by informal conversations behind the scenes at the UN. Finally, although often unenforceable, resolutions of the UN General Assembly and declarations by the Secretary General have great normative value.

When we think of strengthening and reforming the UN, then besides giving it the power to make and enforce laws that are binding on individuals, we should also consider giving it an

[‡] See <http://www.un.org/en/documents/charter/preamble.shtml>

independent and reliable source of income. As it is, rich and powerful nations seek to control the UN by means of its purse strings: They give financial support only to those actions that are in their own interests.

“The voting system of the United Nations General Assembly needs to be reformed, and the veto power in the Security Council needs to be abolished.”

A promising solution to this problem is the so-called “Tobin tax”, named after the Nobel Laureate economist James Tobin of Yale University. Tobin proposed that international currency exchanges should be taxed at a rate between 0.1 and 0.25 percent. He believed that even this extremely low rate of taxation would have the beneficial effect of damping speculative transactions, thus stabilizing the rates of exchange between currencies. When asked what should be done with the proceeds of the tax, Tobin said, almost as an afterthought, “Let the United Nations have it.”

The volume of money involved in international currency transactions is so enormous that even the tiny tax proposed by Tobin would provide the United Nations with between 100 billion and 300 billion dollars annually. By strengthening the activities of various UN agencies, the additional income would add to the prestige of the United Nations and thus make the organization more effective when it is called upon to resolve international political conflicts. The budgets of UN agencies, such as the World Health Organization, the Food and Agricultural Organization, UNESCO and the UN Development Programme, should not just be doubled but should be multiplied by a factor of at least twenty.

With increased budgets the UN agencies could sponsor research and other actions aimed at solving the world’s most pressing problems: AIDS, drug-resistant infectious diseases, tropical diseases, food insufficiencies, pollution, climate change, alternative energy strategies, population stabilization, peace education, as well as combating poverty, malnutrition, illiteracy, lack of safe water and so on. Scientists would be less tempted to find jobs with arms-related industries if offered the chance to work on idealistic projects. The United Nations could be given its own television channel, with unbiased news programs, cultural programs, and “State of the World” addresses by the UN Secretary General.

In addition, the voting system of the United Nations General Assembly needs to be reformed, and the veto power in the Security Council needs to be abolished.

7. International Court of Justice, 1946

The International Court of Justice (ICJ) is the judicial arm of the United Nations. It was established by the UN Charter in 1945, and it began to function in 1946. The ICJ is housed in the Peace Palace in The Hague, a beautiful building constructed with funds donated by Andrew Carnegie. Since 1946, the ICJ has dealt with only 161 cases. The reason for this low number is that only disputes between nations are judged, and both the countries involved in a dispute have to agree to abide by the Court’s jurisdiction before the case can be accepted.

Besides acting as an arbitrator in disputes between nations, the ICJ also gives advisory opinions to the United Nations and its agencies. An extremely important judgment of this kind was given in 1996: In response to questions put to it by WHO and the UN General Assembly, the Court ruled that “the threat and use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and particularly the principles and rules of humanitarian law.” The only possible exception to this general rule might be “an extreme circumstance of self-defense, in which the very survival of a state would be at stake”. But the Court refused to say that even in this extreme circumstance the threat or use of nuclear weapons would be legal. It left the exceptional case undecided. In addition, the World Court added unanimously 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 international control.”

This landmark decision has been criticized by the nuclear weapon states as being decided “by a narrow margin”, but the structuring of the vote made the margin seem more narrow than it actually was. Seven judges voted against Paragraph 2E of the decision (the paragraph which states that the threat or use of nuclear weapons would be generally illegal, but which mentions as a possible exception the case where a nation might be defending itself from an attack that threatened its very existence.) Seven judges voted for the paragraph, with the President of the Court, Mohammed Bedjaoui of Algeria casting the deciding vote. Thus the Court adopted it, seemingly by a narrow margin. But three of the judges who voted against 2E did so because they believed that no possible exception should be mentioned! Thus, if the vote had been slightly differently structured, the result would have been ten to four.

Of the remaining four judges who cast dissenting votes, three represented nuclear weapons states, while the fourth thought that the Court ought not to have accepted the questions from WHO and the UN. However, Judge Schwebel from the United States, who voted against Paragraph 2E, nevertheless added, in a separate opinion, “It cannot be accepted that the use of nuclear weapons on a scale which would, or could, result in the deaths of many millions in indiscriminate inferno and by far-reaching fallout, have pernicious effects in space and time, and render uninhabitable much of the earth, could be lawful.”

Judge Higgins from the UK, the first woman judge in the history of the Court, had problems with the word “generally” in Paragraph 2E and therefore voted against it, but she thought that a more profound analysis might have led the Court to conclude in favor of illegality in all circumstances.

Judge Fleischhauer of Germany said, in his separate opinion, “The nuclear weapon is, in many ways, the negation of the humanitarian considerations underlying the law applicable in armed conflict and the principle of neutrality. The nuclear weapon cannot distinguish between civilian and military targets. It causes immeasurable suffering. The radiation released by it is unable to respect the territorial integrity of neutral States.”

President Bedjaoui, summarizing the majority opinion, called nuclear weapons “the ultimate evil”, and said, “By its nature, the nuclear weapon, this blind weapon, destabilizes humanitarian law, the law of discrimination in the use of weapons... The ultimate aim of every action in the field of nuclear arms will always be nuclear disarmament, an aim which is no longer utopian and which all have a duty to pursue more actively than ever.”

8. Nuremberg Principles, 1947

In 1946, the United Nations General Assembly unanimously affirmed “the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal”. The General Assembly also established an International Law Commission to formalize the Nuremberg Principles. The result was a list that included Principle VI, which is particularly important in the context of the illegality of NATO.

Principle VI: The crimes hereinafter set out are punishable as crimes under international law:

a) Crimes against peace:

1. Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;
2. Participation in a common plan or conspiracy for accomplishment of any of the acts mentioned under (I).

Robert H. Jackson, who was the chief United States prosecutor at the Nuremberg trials, said that “To initiate a war of aggression is therefore not only an international crime; it is the supreme international crime, differing from other war crimes in that it contains within itself the accumulated evil of the whole.”

Furthermore, the Nuremberg principles state that “The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.” The training of soldiers is designed to turn the trainees into automatons, who have surrendered all powers of moral judgment to their superiors. The Nuremberg Principles put the burden² of moral responsibility squarely back where it ought to be: on the shoulders of the individual.

9. The Universal Declaration of Human Rights, 1948

On December 10, 1948, the General Assembly of the United Nations adopted a Universal Declaration of Human Rights. 48 nations voted for adoption, while 8 nations abstained from voting. Not a single state voted against the Declaration. In addition, the General Assembly decided to continue work on the problem of implementing the Declaration. The Preamble to the document stated that it was intended “as a common standard of achievement for all peoples and nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms.”

Articles 1 and 2 of the Declaration state that “all human beings are born free and equal in dignity and in rights”, and that everyone is entitled to the rights and freedoms mentioned in the Declaration without distinctions of any kind. Neither race, color, sex, language, religion, political or other opinion, national or social origin, property or social origin must make a difference.

The Declaration states that everyone has a right to life, liberty and security of person and property. Slavery and the slave trade are prohibited, as well as torture and cruel, inhuman or degrading punishments. All people must be equal before the law, and no person must be subject to arbitrary arrest, detention or exile. In criminal proceedings, an accused person must

be presumed innocent until proven guilty by an impartial public hearing where all necessary provisions have been made for the defense of the accused.

“Education must be directed towards the full development of the human personality and to strengthening respect for human rights and fundamental freedoms.”

No one shall be subjected to interference with his privacy, family, home or correspondence. Attacks on an individual’s honor are also forbidden. Everyone has the right of freedom of movement and residence within the borders of a state, the right to leave any country, including his own, as well as the right to return to his own country. Every person has the right to a nationality and cannot be arbitrarily deprived of his or her nationality.

All people of full age have a right to marry and to establish a family. Men and women have equal rights within a marriage and at its dissolution, if this takes place. Marriage must require the full consent of both parties.

The Declaration also guarantees freedom of religion, of conscience, and of opinion and expression, as well as freedom of peaceful assembly and association. Everyone is entitled to participate in his or her own government, either directly or through democratically chosen representatives. Governments must be based on the will of the people, expressed in periodic and genuine elections with universal and equal suffrage. Voting must be secretive.

Everyone has the right to the economic, social and cultural conditions needed for dignity and free development of personality. The right to work is affirmed. The job shall be of a person’s own choosing, with favorable conditions of work, and remuneration consistent with human dignity, supplemented if necessary with social support. All workers have the right to form and to join trade unions.

Article 25 of the Declaration states that everyone has the right to an adequate standard of living, including food, clothing, housing and medical care, together with social services. All people have the right to security in the event of unemployment, sickness, disability, widowhood or old age. Expectant mothers are promised special care and assistance, and children, whether born in or out of wedlock, shall enjoy the same social protection. Everyone has the right to education, which shall be free in the elementary stages. Higher education shall be accessible to all on the basis of merit. Education must be directed towards the full development of the human personality and to strengthening respect for human rights and fundamental freedoms. Education must promote understanding, tolerance, and friendship among all nations, racial and religious groups, and it must further the activities of the United Nations for the maintenance of peace.

A supplementary document, the Convention on the Rights of the Child, was adopted by the United Nations General Assembly on the 12th of December, 1989. Furthermore, in July 2010, the General Assembly passed a resolution affirming that everyone has the right to clean drinking water and proper sanitation.

Many provisions of the Universal Declaration of Human Rights, for example Article 25, might be accused of being wishful thinking. In fact, Jean Kirkpatrick, former US Ambassador to the UN, cynically called the Declaration “a letter to Santa Claus”. Nevertheless, like the Millennium Development Goals, the Universal Declaration of Human Rights has great value in defining the norms towards which the world ought to be striving.

It is easy to find many examples of gross violations of basic human rights that have taken place in recent years. Apart from human rights violations connected with interventions of powerful industrial states in the internal affairs of third world countries, there are many cases where governmental forces in the less developed countries have violated the human rights of their own citizens. Often minority groups have been killed or driven off their land by those who coveted the land, as was the case in Guatemala in 1979, when 1.5 million poor Indian farmers were forced to abandon their villages and farms and to flee to the mountains of Mexico in order to escape murderous attacks by government soldiers. The blockade of Gaza and extrajudicial killing by governments must also be regarded as blatant human rights violations, and there are many recent examples of genocide.

Wars in general, and in particular, the use of nuclear weapons, must be regarded as gross violations of human rights. The most basic human right is the right to life; but this right is routinely violated in wars. Most of the victims of recent wars have been civilians, very often children and women. The use of nuclear weapons must be regarded as a form of genocide, since they kill people indiscriminately, babies, children, young adults in their prime and old people, without any regard for guilt or innocence.

10. Geneva Conventions, 1949

According to Wikipedia, “The Geneva Conventions comprise four treaties, and three additional protocols, that establish the standards of international law for the humanitarian treatment of war. The singular term, Geneva Convention, usually denotes the agreements of 1949, negotiated in the aftermath of the Second World War (1939-1945), which updated the terms of the first three treaties (1864, 1906, 1929) and added a fourth. The Geneva Conventions extensively defined the basic rights of wartime prisoners (civilians and military personnel); established protection for the wounded; and established protections for civilians in and around a war-zone. The treaties of 1949 were ratified, in whole or with reservations, by 196 countries.”

In a way, one might say that the Geneva Conventions are an admission of defeat by the international community. We tried to abolish war entirely through the UN Charter, but failed because the Charter was too weak.

Under the Fourth Geneva Convention, collective punishment is war crime. Article 33 states that, “No protected person may be punished for an offense that he or she did not personally commit.” Articles 47-78 also impose substantial obligations on occupying powers, with numerous provisions for the general welfare of the inhabitants of an occupied territory. Thus, Israel violated the Geneva Conventions by its collective punishment of the civilian population of Gaza in retaliation for largely ineffective Hamas rocket attacks. The larger issue, however, is the urgent need for lifting of Israel’s brutal blockade of Gaza, which has created what Noam Chomsky calls “the world’s largest open-air prison”. This blockade

violates the Geneva conventions because Israel, as an occupying power, has the duty of providing for the welfare of the people of Gaza.

11. Nuclear Non-Proliferation Treaty, 1968

In the 1960s, negotiations were started between countries that possessed nuclear weapons, and others that did not possess them, to establish a treaty that would prevent the spread of these highly dangerous weapons, but which would at the same time encourage cooperation in the peaceful uses of nuclear energy. The resulting treaty has the formal title ‘Treaty on the Non-Proliferation of Nuclear Weapons’ (abbreviated as the NPT). The Treaty also aimed at achieving general and complete disarmament. It was opened for signature in 1968, and it entered into force on the 11th of May, 1970.

190 parties have joined the NPT, and more countries have ratified it than any other arms limitation agreement, an indication of the Treaty’s great importance. Four countries outside the NPT have nuclear weapons: India, Pakistan, North Korea and Israel. North Korea had originally joined the NPT, but it withdrew in 2003.

The NPT has three main parts or “pillars”: 1) non-proliferation, 2) disarmament, and 3) the right to peaceful use of nuclear technology. The central bargain of the Treaty is that “the NPT non-nuclear weapon states agree never to acquire nuclear weapons and the NPT nuclear weapon states agree to share the benefits of peaceful use of nuclear technology and to pursue nuclear disarmament aimed at the ultimate elimination of their nuclear arsenals”.

Articles I and II of the NPT forbid states that have nuclear weapons to help other nations to acquire them. These Articles were violated, for example, by France, which helped Israel to acquire nuclear weapons, and by China, which helped Pakistan to do the same. They are also violated by the “nuclear sharing” agreements, through which US tactical nuclear weapons will be transferred to several countries in Europe in a crisis situation. It is sometimes argued that in the event of a crisis, the NPT would no longer be valid, but there is nothing in the NPT itself that indicates that it would not hold in all situations.

The most blatantly violated provision of the NPT is Article VI. It requires the member states 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”, and negotiations towards a “Treaty on general and complete disarmament”. In other words, the states that possess nuclear weapons agreed to get rid of them. However, during the 47 years that have passed since the NPT went into force, the nuclear weapon states have shown absolutely no sign of complying with Article VI. There is a danger that the NPT will break down entirely because the majority of countries in the world are so dissatisfied with this long-continued non-compliance.

Looking at the NPT with the benefit of hindsight, we can see the third “pillar”, the “right to peaceful use of nuclear technology”, as a fatal flaw of the treaty. In practice, it has meant encouragement of nuclear power generation, with all the many dangers that go with it. The enrichment of uranium is linked to reactor use. Many reactors of modern design make use of low enriched uranium as a fuel. Nations operating such a reactor may claim that they need a program for uranium enrichment in order to produce fuel rods. However, by operating their ultracentrifuge a little longer, they can easily produce highly enriched (weapons-usable) uranium.

The difficulty of distinguishing between a civilian nuclear power generation program and a military nuclear program is illustrated by the case of Iran. In discussing Iran, it should be mentioned that Iran is fully in compliance with the NPT. It is very strange to see states that are long-time blatant violators of the NPT threaten Iran because of a nuclear program that fully complies with the Treaty.

I believe that civilian nuclear power generation is always a mistake because of the many dangers that it entails, and because of the problem of disposal of nuclear waste. However, a military attack on Iran would be both criminal and insane. Why criminal? Because such an attack would also violate the UN Charter and the Nuremberg Principles. Why insane? Because it would initiate a conflict that might escalate uncontrollably into World War III.

12. Biological Weapons Convention, 1972

During World War II, British and American scientists investigated the possibility of using smallpox as a biological weapon. However, it was never used, and in 1969 President Nixon officially ended the American biological weapons program, bowing to the pressure of outraged public opinion. In 1972, the United States, the United Kingdom and the Soviet Union signed a Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction. Usually this treaty is known as the Biological Weapons Convention (BWC), and it has now been signed by virtually all of the countries of the world.

However, consider the case of smallpox: A World Health Organization team led by D.A. Henderson devised a strategy in which cases of smallpox were isolated and all their contacts vaccinated, so that the disease had no way of reaching new victims. Descriptions of the disease were circulated, and rewards offered for reporting cases. The strategy proved to be successful, and finally, in 1977, the last natural case of smallpox was isolated in Somalia. After a two-year waiting period, during which no new cases were reported, WHO announced in 1979 that smallpox, one of the most frightful diseases of humankind, had been totally eliminated from the world. This was the first instance of the complete eradication of a disease, and it was a demonstration of what could be achieved by the enlightened use of science combined with international cooperation. The eradication of smallpox was a milestone in human history.

It seems that our species is not really completely wise and rational; we do not really deserve to be called “Homo sapiens”. Stone-age emotions and stone-age politics are alas still with us. Samples of smallpox virus were taken to “carefully controlled” laboratories in the United States and the Soviet Union. Why? Probably because these two Cold War opponents did not trust each other, although both had signed the Biological Weapons Convention. Each feared that the other side might intend to use smallpox as a biological weapon. There were also rumors that unofficial samples of the virus had been saved by a number of other countries, including North Korea, Iraq, China, Cuba, India, Iran, Israel, Pakistan and Yugoslavia.

13. Chemical Weapons Convention, 1997

On the 3rd of September, 1992, the Conference on Disarmament in Geneva adopted a Convention on the Prohibition of Development, Production, Stockpiling, and Use of

Chemical Weapons and on their Destruction. This agreement, which is usually called the Chemical Weapons Convention (CWC), attempted to remedy some of the shortcomings of the Geneva Protocol of 1925. The CWC went into force in 1997, after Hungary deposited the 65th instrument of ratification.

The provisions of Article I of the CWC are as follows:

1. Each State Party to this convention undertakes never under any circumstances:
 - (a) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;
 - (b) To use chemical weapons;
 - (c) To engage in any military preparation to use chemical weapons;
 - (d) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party in accordance with the provisions of this Convention.
2. Each State Party undertakes to destroy chemical weapons it owns or possesses, or those located at any place under its jurisdiction or control, in accordance with the provisions of this Convention.
3. Each State Party undertakes to destroy all chemical weapons it abandoned on the territory of another State Party, in accordance with the provisions of this Convention.
4. Each State Party undertakes to destroy any chemical weapons production facilities it owns or possesses, or those located at any place under its jurisdiction or control, in accordance with the provisions of this Convention.
5. Each State Party undertakes not to use riot control agents as a method of warfare.

The CWC also makes provision for verification by teams of inspectors, and by 2004, around 1,600 such inspections had been carried out in 59 countries. It also established the Organization for the Prevention of Chemical Warfare. All of the declared chemical weapons production facilities have now been inactivated, and all declared chemical weapons have been inventoried. However, of the world's declared stockpile of chemical warfare agents (70,000 metric tons), only 12% have been destroyed. One hopes that in the future the CWC will be ratified by all the nations of the world and that the destruction of stockpiled chemical warfare agents will become complete.

14. Mine Ban Treaty, 1999

In 1991, six NGOs organized the International Campaign to Ban Landmines, and in 1996, the Canadian government launched the Ottawa process to ban landmines by hosting a meeting among like-minded anti-landmine states. A year later, in 1997, the Mine Ban Treaty was adopted and opened for signatures. In the same year, Jody Williams and the International Campaign to ban Landmines were jointly awarded the Nobel Peace Prize. After the 40th ratification of the Mine Ban Treaty in 1998, the treaty became binding international law on the 1st of March, 1999. The Ottawa Treaty functions imperfectly because of the opposition of several militarily powerful nations, but nevertheless it establishes a valuable norm, and it represents an important step forward in the development of international law.

15. International Criminal Court, 2002

In 1998, in Rome, representatives of 120 countries signed a statute establishing an International Criminal Court (ICC), with jurisdiction over the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

Four years were to pass before the necessary ratifications were gathered, but by Thursday, April 11, 2002, 66 nations had ratified the Rome agreement, 6 more than the 60 needed to make the court permanent. It would be impossible to overstate the importance of the ICC. At last, international law acting on individuals has become a reality! The only effective and just way that international laws can act is to make individuals responsible and punishable, since (in the words of Alexander Hamilton), “To coerce states is one of the maddest projects that was ever devised.”

At present, the ICC functions very imperfectly because of the bitter opposition of several powerful countries, notably the United States. U.S. President George W. Bush signed into law the American Service-Members’ Protection Act of 2002, which is intended to intimidate countries that ratify the treaty for the ICC. The new law authorizes the use of military force to liberate any American or citizen of a U.S. allied country being held by the court, which is located in The Hague. This provision, dubbed the “Hague Invasion Clause,” has caused a strong reaction from U.S. allies around the world, particularly in the Netherlands.³

Despite the fact that the ICC now functions so imperfectly, it is a great step forward in the development of international law. It is there and functioning. We have the opportunity to make it progressively more impartial and to expand its powers.

16. Arms Trade Treaty, 2013

On April 2, 2013, a historic victory was won at the United Nations, and the world achieved its first treaty limiting international trade in arms. Work towards the Arms Trade Treaty (ATT) began in the Conference on Disarmament in Geneva, which requires a consensus for the adoption of any measure. Over the years, the consensus requirement has meant that no real progress in arms control measures has been made in Geneva, since a consensus among 193 nations is impossible to achieve.

To get around the blockade, British U.N. Ambassador Mark Lyall Grant sent the draft treaty to Secretary-General Ban Ki-moon and asked him on behalf of Mexico, Australia and a number of others to put the ATT to a swift vote in the General Assembly, and on Tuesday, April 3, 2013, it was adopted by a massive majority.

Among the people who have worked hardest for the ATT is Anna MacDonald, Head of Arms Control at Oxfam. The reason why Oxfam works so hard on this issue is that trade in small arms is a major cause of poverty and famine in the developing countries. On April 9, Anna MacDonald wrote: “Thanks to the democratic process, international law will for the first time regulate the 70 billion dollar global arms trade. Had the process been launched in the consensus-bound Conference on Disarmament in Geneva, currently in its 12th year of meeting without even being able to agree on an agenda, chances are it would never have left the starting blocks...”

The passage of the Arms Trade Treaty by a majority vote in the UN General Assembly opens new possibilities for progress on other seemingly intractable issues. In particular, it gives hope that a Nuclear Weapons Convention might be adopted by a direct vote on the floor of the General Assembly. The adoption of the NWC, even if achieved against the bitter opposition of the nuclear weapon states, would make it clear that the world's peoples consider the threat of an all-destroying nuclear war to be completely unacceptable.

17. We can pass a Nuclear Weapons Convention in the UN General Assembly

A convention banning nuclear weapons could be adopted by a majority vote on the floor of the UN General Assembly, following the precedent set by the Arms Trade Treaty. Indeed, this is the path forward advocated by the International Campaign to Abolish Nuclear Weapons (ICAN). In the case of a Nuclear Weapons Convention, world public opinion would have especially great force. It is generally agreed that a full-scale nuclear war would have disastrous effects, not only on belligerent nations but also on neutral countries. Mr. Javier Pérez de Cuéllar, former Secretary-General of the United Nations, emphasized this point in one of his speeches:

“I feel”, he said, “that the question may justifiably be put to the leading nuclear powers: by what right do they decide the fate of humanity? From Scandinavia to Latin America, from Europe and Africa to the Far East, the destiny of every man and woman is affected by their actions. No one can expect to escape from the catastrophic consequences of a nuclear war on the fragile structure of this planet...”

“Like supreme arbiters, with our disputes of the moment, we threaten to cut off the future and to extinguish the lives of innocent millions yet unborn. There can be no greater arrogance. At the same time, the lives of all those who lived before us may be rendered meaningless; for we have the power to dissolve in a conflict of hours or minutes the entire work of civilization, with the brilliant cultural heritage of humankind.”

18. Racism, Colonialism and Exceptionalism

A just system of laws must apply equally and without exception to everyone. If a person, or, in the case of international law, a nation, claims to be outside the law, or above the law, then there is something fundamentally wrong. For example, when U.S. President Obama said in a 2013 speech, “What makes America different, what makes us exceptional, is that we are dedicated to act”, then thoughtful people could immediately see that something was terribly wrong with the system. If we look closely, we find that there is a link between racism, colonialism and exceptionalism. The racist and colonialist concept of “the white man’s burden” is linked to the Neo-Conservative self-image of benevolent (and violent) interference in the internal affairs of other countries.[§]

19. The Oslo Principles on Climate Change Obligation, 2015

The future of human civilization and the biosphere is not only threatened by thermonuclear war, it is also threatened by catastrophic climate change. If prompt action is not taken to

§ See <http://www.countercurrents.org/avery101013.htm>, <https://www.youtube.com/watch?v=efl6T8lovqY>, and <https://www.youtube.com/watch?v=ldB-DRbjx9j0>

curb the use of fossil fuels, and if the presently known reserves of fossil fuels are not left in the ground, then there is a great danger that we will pass a tipping point beyond which human efforts to stop a catastrophic increase in global temperatures will be useless because feedback loops will have taken over. There is a danger of a human-initiated 6th geological extinction event, comparable with the Permian-Triassic event, during which 96 percent of marine species and 70 percent of terrestrial vertebrates became extinct.

“Together, we have the power to choose a future where international anarchy, chronic war and institutionalized injustice will be replaced by democratic and humane global governance, a future where the madness and immorality of war will be replaced by the rule of law.”

Recently, there have been a number of initiatives which aim at making the human obligation to avert threatened environmental mega-catastrophes a part of international law. One of these initiatives can be seen in the proposal of the Oslo Principles on Climate Change Obligations; another is the Universal Declaration of the Rights of Mother Earth; and a third can be found in the concept of Biocultural Rights. These are extremely important and hopeful initiatives, and they point towards the future development of international law for which we must strive.^{4,5}

20. Hope for the Future, and Responsibility for the Future

Can we abolish the institution of war? Can we hope and work for a time when the terrible suffering inflicted by wars will exist only as a dark memory fading into the past? I believe that this is really possible. The problem of achieving internal peace over a large geographical area is not insoluble. It has already been solved. There exist today many nations or regions within each of which there is internal peace, and some of these are so large that they are almost worlds in themselves. One thinks of China, India, Brazil, the Russian Federation, the United States, and the European Union. Many of these enormous societies contain a variety of ethnic groups, a variety of religions and a variety of languages, as well as striking contrasts between wealth and poverty. If these great land areas have been forged into peaceful and cooperative societies, cannot the same methods of government be applied globally?

Today, there is a pressing need to enlarge the size of the political unit from the nation-state to the entire world. The need to do so results from the terrible dangers of modern weapons and from global economic interdependence. The progress of science has created this need, but science has also given us the means to enlarge the political unit: Our almost miraculous modern communications media, if properly used, have the power to weld all of humankind into a single supportive and cooperative society.

We live at a critical time for human civilization, a time of crisis. Each of us must accept his or her individual responsibility for solving the problems that are facing the world today. We cannot leave this to the politicians. That is what we have been doing until now, and the

results have been disastrous. Nor can we trust the mass media to give us adequate public discussion of the challenges that we are facing. We have a responsibility towards future generations to take matters into our own hands, to join hands and make our own alternative media, to work actively and fearlessly for better government and for a better society.

We, the people of the world, not only have the facts on our side; we also have numbers on our side. The vast majority of the world's peoples long for peace. The vast majority long for abolition of nuclear weapons, and for a world of kindness and cooperation, a world of respect for the environment. No one can make these changes alone, but together we can do it.

Together, we have the power to choose a future where international anarchy, chronic war and institutionalized injustice will be replaced by democratic and humane global governance, a future where the madness and immorality of war will be replaced by the rule of law.

We need a sense of unity of all mankind to save the future, a new global ethic for a united world. We need politeness and kindness to save the future, politeness and kindness not only within nations but also between nations. To save the future, we need a just and democratic system of international law; for with law shall our land be built up, but with lawlessness laid waste.

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Notes

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2. John Scales Avery, "The future of International Law," *Transcend Media Service* 20 April 2015 <https://www.transcend.org/tms/2015/04/the-future-of-international-law-2/>
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