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Nuclear Weapons and Climate Change:
Shine a Light, Stop the Hate, Lower the Heat

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The end of World War II and its aftermath saw three momentous developments: the adoption of the United Nations Charter, the US nuclear bombings of two Japanese cities, and the Nuremberg trials.

The reliance within a few years of the US and the USSR on nuclear weapons, poised to be used, as a claimed mechanism of international security was completely contrary to the UN Charter. The Charter forbids the threat or use of force except in certain narrowly defined circumstances. It certainly did not envisage a permanent threat of devastating force as a basis for global order.

In the Nuremberg trials, the US and allies held German leaders, officials, scientists, and others accountable for war crimes, crimes against humanity, and the crime of aggression. The crime of aggression includes an element of planning and preparing.

Under the law applied at Nuremberg, scientists, planners and perpetrators of a nuclear war would similarly be culpable.

Nuremberg law has not faded away over the decades. On the contrary, it has been robustly affirmed and developed. Notably, in 1977 negotiations were completed on a major treaty, Protocol I to the Geneva Conventions, comprehensively setting forth the law of armed conflict, or international humanitarian law.

In 1996, the International Court of Justice found the use of nuclear weapons to be generally contrary to international humanitarian law.

Then in 1998 negotiations were completed on the Rome Statute of the International Criminal Court. It sets out in detail definitions of war crimes, crimes against humanity, genocide, and aggression.

In 2018, the UN Human Rights Committee found that threat or use of nuclear weapons is incompatible with respect for the right to life and may amount to a crime under international law.

Finally, the Treaty on the Prohibition of Nuclear Weapons, the TPNW, was adopted in 2017 and entered into force this year. Its preamble sets out rules of international humanitarian law applicable to all states, and considers the use of nuclear arms to violate IHL. The TPNW contains specific obligations and prohibitions applicable to states that ratify the treaty, above all do not develop, possess, or threaten or use nuclear weapons.

However, the US and other nuclear-armed states did not participate in negotiation of the TPNW and have not joined it. Moreover, the five nuclear-armed permanent members of the UN Security Council, the US, UK, France, Russia and China, have jointly declared their opposition to the treaty.

But the TPNW's significance goes beyond what it requires of states that join the treaty. The TPNW is a strong and visible declaration of the illegality for all states of the threat and use of nuclear weapons. In this it builds upon, and reinforces, the international law developments since World War II I have outlined.

Especially with regard to nuclear weapons, the US has attempted to shield itself from the development of international law, despite having been its champion at the close of World War II. Thus the US has not ratified Protocol I to the Geneva Conventions or the Rome Statute of the International Criminal Court though it was an active negotiator of both treaties.

However, it is not possible for any state to entirely exempt itself from the basic rules of international law. The Pentagon recognizes this, and there has been a significant effort to bring ordinary US military operations into conformity with the law of armed conflict, or at least the US view of that law.

How can US claimed adherence to the law of armed conflict be reconciled with reliance on nuclear arms? A disturbing trend is that Pentagon planners are asserting that certain uses of nuclear arms would be lawful, as when the military advantage is so large that it outweighs what is referred to as "collateral damage" to civilians and civilian infrastructure. But as the Red Cross, a leading authority on IHL, explained at the hearings before the International Court of Justice in 1995, it is a fundamental distortion of the law of armed conflict to claim that it somehow could justify the mass killing of civilians.

A more honest defense of reliance on nuclear weapons, sometimes said out loud, is that the horrifying nature of the consequences of their use is the reason that so-called deterrence works. Therefore the immorality and illegality of use of nuclear weapons is a feature of deterrence.

It cannot be right to rely indefinitely – for decades into the future - on a system of security that is morally and legally rotten at its core. And then, of course, there is the risk of nuclear war inherent in the system.

Under Article VI of the Nuclear Non-Proliferation Treaty, and potentially as well in the TPNW, there is a general framework for the global elimination of nuclear arms. But the NPT framework lacks the specificity, targets and timelines set out in the Paris Agreement on climate change. It is imperative to create an effective process for global nuclear disarmament paralleling that for climate protection. And it is imperative to actually accomplish, in both the nuclear and climate spheres, the safeguarding of the earth and civilization for future generations.

Thank you for listening and thanks to all who worked so hard on this annual event.