

Upcoming new release: Comprehensive Treatise on Nuclear Weapons Threat and Use (publication date February 15, 2024)

***Nuclear Weapons and International Law:
Existential Risks of Nuclear War and Deterrence through a Legal Lens***

by Charles J. Moxley, Jr.

With Forewords by

**William J. Perry
John D. Feerick
Claire Finkelstein**

This two-volume treatise provides a comprehensive analysis of legal issues raised by the potential use of nuclear weapons, based on existing international law, established facts as to nuclear weapons and their effects, and nuclear weapons policies and plans of the United States. Based on detailed analysis of the facts and law, Professor Moxley shows that the United States' arguments that uses of nuclear weapons, including low-yield nuclear weapons, could be lawful do not withstand analysis.

The book is scheduled for publication on February 15, 2024 by Rowman & Littlefield—Hamilton Books and is available at <https://www.amazon.com/Nuclear-Weapons-International-Post-World/dp/0761874151>.

Moxley opens by examining established rules of international law governing the use of nuclear weapons, first analyzing this body of law based on the United States' own statements of the matter and then extending the analysis to include requirements of international law that the United States overlooks in its assessment of the lawfulness of potential nuclear weapons uses. He then develops in detail the known facts as to nuclear weapons and their consequences and U.S. policies and plans concerning such matters. He describes the risks of deterrence and the existential nature of the effects of nuclear war on human life and civilization.

He proceeds to pull it all together, applying the law to the facts and demonstrating that known nuclear weapons effects cannot comply with such legal requirements as those of distinction, proportionality, necessity, precaution, the corollary requirement of controllability, and the law of reprisal. Moxley shows that, when the United States goes to apply international law to potential nuclear weapons uses, it distorts the law as it has itself articulated it, overlooks law in such areas as causation, risk analysis, *mens rea*, and *per se* rules, and disregards known risks as to nuclear weapons effects, including radioactive fallout, nuclear winter, electromagnetic pulses, and potential escalation. He then shows that the policy of deterrence is unlawful because the use of such weapons would be unlawful.

Moxley urges that the United States and other nuclear weapons States take heed of the requirements of international law as to nuclear weapons threat and use. He argues that law can be a positive force in society's addressing existential risks posed by nuclear weapons and the policy of nuclear deterrence.

About the Author

Charles J. Moxley, Jr., a member of the board of the Lawyers Committee on Nuclear Policy (LCNP), teaches nuclear weapons law at Fordham Law School and has written about international law restraints on the threat and use of nuclear weapons for over twenty years, starting with his 2000 book, *Nuclear Weapons and International Law in the Post Cold War World*, of which this book is the second edition. He has been a member of LCNP since the publication of this book and has actively participated in LCNP's work.

Moxley is the co-author, with John Burroughs and Jonathan Granoff, of the 2011 article, *Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty*, in the *Fordham International Law Journal*. This article has become a classic analysis of legal issues concerning nuclear weapons threat and use. Burroughs was at the time Executive Director of LCNP and Granoff was a board member, which he continues to be. Burroughs is now LCNP's Acting Executive Director and also serves as Senior Analyst for LCNP.

Moxley was faculty lead for the 2020 Conference, *Nuclear Weapons and International Law*, the proceedings of which were published by the *Fordham International Law Journal* and are available at https://static1.squarespace.com/static/5b394cb9365f029282c3590a/t/6287dbf9f2fb542c38b72f08/1653070843043/45_Special+Edition_Combined.pdf. Moxley is faculty lead of the 2023 Conference, *Nuclear Weapons and International Law, The Renewed Imperative in Light of the Russian Invasion of Ukraine*, the proceedings of which will be published by the *Georgetown Journal of International Law*. Burroughs and Granoff have also been leading organizers of these conferences and leading speakers in the conferences.

Moxley received his law degree from Columbia Law School, where he concentrated in international law and was Managing Editor of the Columbia Journal of Transnational Law. He received an M.A. in Russian Area Studies and a B.A. in political science from Fordham University.

Following his graduation from law school, Moxley served as law clerk for a United States District Judge in the Southern District of New York and started his practice with the international law firm, Davis Polk & Wardwell, following which he was affiliated with a number of boutique litigation firms before starting his own firm, MoxleyADR LLC, specializing in arbitration and mediation. He also serves as Distinguished ADR Practitioner in Residence at Benjamin N. Cardozo School of Law.

A long-time litigator and arbitrator, Moxley's approach to addressing issues as to the lawfulness of nuclear weapons threat and use is to subject such issues to the same depth of legal and factual analysis as lawyers, judges, and arbitrators apply to complex securities and commercial disputes in federal and other courts and arbitrations throughout the country. Moxley's thesis, comprehensively developed in his upcoming book, *Nuclear Weapons and International Law: Existential Risks of Nuclear War and Deterrence through a Legal Lens*, is that the threat and use of nuclear weapons cannot pass scrutiny under the applicable rules of international law as expressed by the United States.

Critical Commentary

William J. Perry

Professor Moxley's broad-ranging discussion of the rules of international law that govern the threat and use of nuclear weapon makes a persuasive case for working to eliminate nuclear weapons since it is hardly possible to imagine a use that would be in compliance with recognized principles of international humanitarian law.

Because nuclear weapons impact every person on the planet the issues raised by Professor Moxley deserve the attention of all persons, especially those having responsibility in the United States and elsewhere for nuclear weapons. Most centrally, Professor Moxley's broad and comprehensive application of international law to known facts as to nuclear weapons provides an inspirational agenda for our consideration as to how to truly make international law the firewall against the destruction of human civilization.

From the Foreword by
William J. Perry
Secretary of Defense, Clinton Administration
Michael and Barbara Berberian Professor (Emeritus)
Director, Preventive Defense Project
Stanford University

John D. Feerick

The first edition of Charles Moxley's treatise on the law of nuclear weapons appeared in 2000 under the title, "Nuclear Weapons and International Law in the Post World War." As knowledge of its publication spread, it was seen as a work of epic proportions. One might say a Blackstone's Commentaries on the law of armed conflict. Former Secretary of State Robert McNamara described the book as the "best exposition that I have seen of the irrationality of the U.S. policy in this area, the irrationality of the politics of the other nuclear weapons states, and the irrationality of the human race in permitting the potential use of these weapons to continue."

...

The second edition of Moxley’s treatise, like the first edition, is amazing in its scope and breadth. It is a primer for a robust discussion of the potential of law to enable us to address the threats and use of nuclear weapons.

From the Foreword by
John D. Feerick
Professor and Dean Emeritus
Fordham Law School

Claire Finkelstein

Charles Moxley lays bare the anomaly whereby the United States and other nuclear weapons States, while acknowledging the requirements of IHL and their applicability to the threat and use of nuclear weapons, distort and understate those very requirements when it comes to applying them to the threat and use of nuclear weapons. Moxley vividly portrays the alarming risks that result from this failure of nuclear weapons States to come to grips with the requirements of international law insofar as concerns nuclear weapons—risks that must be addressed if human civilization is to stave off potential disaster that as time goes on becomes more and more likely as the Ukraine situation so vividly reminds us.

From the Foreword by
Claire Finkelstein
Algernon Biddle Professor of Law
University of Pennsylvania Law School

Hon. Ariel E. Belen

A person of integrity and deep commitment to public service, Charles Moxley has an extraordinary legal mind, able to grasp and synthesize the most complex of factual and legal situations. A leading arbitrator and mediator of complex high-stakes disputes in New York, Charlie is fair-minded and objective. His years long-effort to pull together the facts and law applicable to risks posed by nuclear weapons commands the attention of everyone who believes in the capacity of law to be a catalyst for overcoming threats to human life and civilization.

Justice (Ret.), New York Supreme Court

Critical Commentary on first edition *Nuclear Weapons and International Law in the Post Cold War World*

Robert S. McNamara

Professor Moxley has given us the best exposition that I have seen of the irrationality of the U.S. policy in this area, the irrationality of the policies of the other nuclear weapons states,

and the irrationality of the human race in permitting the potential use of these weapons to continue.

I urge the President and the Congress to investigate the claim Professor Moxley makes that, given all of the risk factors, the use of nuclear weapons is per se unlawful under rules of law long recognized by the United States.

Professor Moxley has done us a great service by inviting us to engage this historic opportunity. *Nuclear Weapons and International Law in the Post Cold War World* will be an indispensable reference work for all who wish to debate the issue.

From the Foreword by
Robert S. McNamara
Secretary of Defense, Johnson and Kennedy Administrations
President of World Bank, 1968-1981

David W. Leebron

This is a bold and provocative work, and will be controversial. This comprehensive and ambitious work must undoubtedly figure in future debates on this most important of subjects. Professor Moxley seizes this moment to set forth the arguments that require a response.

From the Foreword by
David W. Leebron
Dean and Lucy G. Moses Professor of Law
Columbia University

Kosta Tsipis

It is truly startling to see the extent to which the United States has itself recognized the principles of international law from which the unlawfulness of the use of nuclear weapons is evident based on the inevitable effects of such weapons. Moxley literally shows the unlawfulness of these weapons out of the United States' own mouth.

I welcome Professor Moxley's exhaustive and erudite examination of the legality of nuclear weapons. It is essential that our understanding of the law catch up with our understanding of the technical and policy forces. We should not squander the present historic opportunity to come to grips with the legal restraints on these weapons rather than continuing to legitimize them.

From the Foreword by
Kosta Tsipis
(Retired) Director of the Program in Science
and Technology for International Security of

the Massachusetts Institute of Technology

Jerome J. Shestack

Charles Moxley's thesis that nuclear weapons violate international law may be this century's most important advance towards a peaceable world order. His book should make you worry, make you think and above all, impel you to make his case against nuclear weapons your case.

Jerome J. Shestack
Past President, American Bar Association

Lawrence E. Walsh

Professor Moxley has written a thoughtful, well researched and clearly stated exposition of a fundamental issue of the twenty-first century, the confrontation of a policy of nuclear deterrence and use of instruments of mass destruction with the rule of law as presently understood and acceptable standards of safety.

Lawrence E. Walsh
Independent Counsel, Iran/Contra, 1986-1994
President, American Bar Association, 1975-1976

Cyrus Vance

Professor Moxley's book is a broad-ranging treatment of a complex subject that will contribute to the debate. The combination of international law, nuclear weapons policy, and technical analysis makes interesting reading.

Cyrus Vance
Secretary of State, Carter Administration

Alan Cranston

Charles Moxley has given us an incredibly thorough study of international law, its nature, its strengths, its weaknesses, and the need to find adequate ways to make it enforceable if the proliferation and use of nuclear weapons and consequent disaster are to be avoided.

U.S. Senator, 1969-1993