- 22 "Part Four: Achieving Nuclear Disarmament," Report of the Tokyo Forum for Nuclear Non-Proliferation and Disarmament, July 25, 1999. Online at http://www.mofa.go.jp/policy/un/disarmament/forum/tokyo9907/report-4.html.
- 23 Weapons of Terror, p. 160.
- 24 *Id.*, p. 22.
- 25 *Id.*, p. 23.
- 26 *Id*.
- 27 M.V. Ramana, "Bombing Bombay? Effects of Nuclear Weapons and a Case Study of a Hypothetical Explosion," International Physicians for the Prevention of Nuclear War, 1999.
- 28 Nuclear Weapons Opinion, para. 36.

Section 1.1: Treaty Regimes and International Law

- 1 Weapons of Terror, p. 94.
- 2 *Id.*, pp. 167-168. *See also* Randy Rydell, "Disarmament without Agreements?" *International Negotiation*, *Vol. 10*, *No. 3*, 2005, pp. 363-380.
- 3 Nicole Deller, Arjun Makhijani, and John Burroughs, eds., *Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties*, The Apex Press, New York, 2003 ("*Rule of Power or Rule of Law?*").
- 4 Rule of Power or Rule of Law? preface, p. xiii.
- 5 *The Paquete Habana*, 175 U.S. 677, 700 (1900). Online at http://supreme.justia.com/us/175/677/case.html.
- The fact that U.S. international legal obligations have the status of law binding on the U.S. government does not mean that they are readily enforceable in U.S. courts. Citizens are not granted standing by courts to challenge alleged U.S. violations of international obligations unless they can demonstrate a harm personal to themselves as opposed to one generally suffered by the public. Courts have also developed what is known as the "last-in-time" rule, under which when there is a conflict between a treaty and a federal statute, the most recently adopted prevails. Additionally, a "non-self-executing" treaty will not be applied absent implementing legislation. Courts do recognize, however, that regardless of its enforceability in U.S. courts, a treaty obligation remains a legal obligation of the United States on the international plane. See *Rule of Power or Rule of Law?*, p. 2.
- 7 In remarks at Simon Fraser University in Vancouver, Canada on June 28, 2006, about a month after the WMD Commission Report was released, Hans Blix made similar observations:

[A]fter the end of the Cold War, at the beginning of the '90s, there was a feeling of sort of relief that we no longer risked the sort of MAD Mutually Assured Destruction of the U.S. and Russia in which the rest of us might be wiped off as collateral damage. That concern, that anguish, was over and we all expected a sort of harvest for disarmament. Well there was some harvest. There was the Chemical Weapons Convention, which had been negotiated for decades. There was also the Comprehensive Test Ban Treaty, which had also been negotiated.... We also got something that was very important during the '90s and that was the decision of the Security

Council under the inspiration and proposal from the President of the United States, from Bush Senior, to intervene in Iraq to stop the Iraqi aggression against Kuwait and the Security Council was standing wholeheartedly behind it. And it was stated that for the first time the UN security system really functioned. And President Bush talked about the new international order and they were all very hopeful. Regrettably, it didn't last very long and in the '90s we began to see a stagnation also with disarmament and arms control and since then we have seen much worse. We have seen arms races appearing and we have seen also the stagnation in the organs established for arms control.

Online at http://globalactionpw.org/meetings/WMDC_GAPWsession.htm.

- This paragraph and parts of the rest of this section and of section 1.2, draw upon John Burroughs, Nicole Deller, and Arjun Makhijani, "Global Security Treaties Under Siege: U.S. Rejection of Agreements on Nuclear Weapons," in Michael Flynn, ed., *The Second Nuclear Age: Political and Psychocultural Perspectives*, forthcoming from University Press of Kentucky.
- Weapons of Terror, pp. 129-130, 132-133. See also remarks of Jonathan Tucker, "Hans Blix Reports on WMD Dangers and Solutions," Arms Control Association press briefing, June 7, 2006. Online at http://armscontrol.org/ events/20060607_Blix_WMDC_Transcript.asp.
- See Nicole Deller and John Burroughs, "Arms Control Abandoned: The Case of Biological Weapons," World Policy Journal, Vol. 20, No. 2, Summer 2003, pp. 37-42. Online at http://worldpolicy.org/journal/articles/wpj03-2/deller.html.
- 11 See Mark Wheelis and Malcolm Dando, "Back to Bio-weapons?" *Bulletin of the Atomic Scientists*, January/February 2003, pp. 40-46.
- 12 Judith Miller, Stephen Engelberg, and William Broad, "U.S. Germ Warfare Research Pushes Treaty Limits," *New York Times*, September 4, 2001. Online at http://commondreams.org/headlines01/0904-02.htm; Scott Shane, "Army confirms making anthrax in recent years," *Baltimore Sun*, December 13, 2001. Online at http://www.baltimoresun.com/news/custom/attack/bal-te.anthrax13de c13,0,4104922.story?coll=bal-attack-utility.
- 13 Weapons of Terror, p. 116.
- 14 *Id.*, p. 25.
- 15 "Just What is a War Criminal?," *Insight on the News*, August 2, 1999, responding to moves by a lawyer seeking to indict the then President Clinton and Secretary of Defense William Sebastian Cohen for war crimes and crimes against humanity in Yugoslavia. Online at http://www.findarticles.com/p/articles/mi_m1571/is 28 15/ai 55410553.
- 16 See John Bolton, "Is There Really 'Law' in International Affairs," *Transnational Law and Contemporary Problem, Vol. 10, No. 1*, 2000, p. 10.
- 17 Weapons of Terror, p. 168.
- 18 *Id.*, p. 176.
- 19 "Notes For An Address By The Honourable Bill Graham, Minister of Foreign Affairs, To The Conference On Disarmament, Geneva, Switzerland," March 19, 2002, cited in *Rule of Power or Rule of Law?* p. 131. Online at http://www.reachingcriticalwill.org/political/cd/speeches02/can190302cd.pdf.
- 20 On issues of compliance and enforcement, see *Rule of Power or Rule of Law?* pp. 131-137. See also Peter Weiss, "The Future of Universal Jurisdiction," in

Wolfgang Kaleck, Michael Ratner, Tobias Singelnstein and Peter Weiss, eds., *International Prosecution of Human Rights Crimes*, Springer, Berlin, 2006.

Section 1.2: The Nuclear Non-Proliferation Treaty

- Natural Resources Defense Council, "Table of Global Nuclear Weapons Stockpiles, 1945-2002," Archive of Nuclear Data. Online at http://nrdc.org/nuclear/nudb/datab19.asp; Hans Kristensen, "Status of World Nuclear Forces," The Nuclear Information Project, updated February 17, 2007. Online at http://www.nukestrat.com/nukestatus.htm.
- 2 Weapons of Terror, p. 63.
- 3 *Id.*
- 4 *Id*.
- 5 *Id*.
- 6 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Decision 2, "Principles and Objectives for Nuclear Non-Proliferation and Disarmament," *Final Document*, Part I, NPT/CONF.1995/32, Annex, p. 10 ("1995 Final Document"). Online at http://disarmament2.un.org/wmd/npt/1995nptrevconfdocs.html.
- 7 "Middle East Resolution," 1995 Final Document, pp. 13-14.
- 8 International Court of Justice, "Legality of the Threat or Use of Nuclear Weapons," Advisory Opinion of 8 July 1996, *ICJ Reports* (1996), p. 226 (hereafter "*Nuclear Weapons Opinion*"). Online at http://www.icj-cij.org/icjwww/icases/iunan/iunanframe.htm.
- 9 *Id.*, para. 105(2)(E). See also paras. 33, 78-79, 89.
- 10 *Id.*, para. 42.
- 11 Committee on International Security and Arms Control, National Academy of Sciences, *The Future of U.S. Nuclear Weapons Policy*, National Academy Press, Washington, 1997, p. 87. Online at http://books.nap.edu/html/fun.
- 12 Nuclear Weapons Opinion, para. 105(2)(F) (emphasis supplied). In reaching this conclusion, the Court drew on both Article VI and other international law sources. See paras. 99, 100, 103. Thus while not stated explicitly, the Court's analysis makes it reasonably clear that the disarmament obligation applies to states outside the NPT, including India, Pakistan, and Israel.
- 13 Weapons of Terror, p. 109.
- 14 A/RES/61/83 (2006).
- 15 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, Vol. I, NPT/CONF.2000/28, Part I, pp. 14-15. Online at http://disarmament.un.org/wmd/npt/finaldoc.html.
- John Burroughs and William Epstein, "Hopes for Revival of Nuclear Disarmament Efforts?" *Nuclear Disarmament Commentary* (December 2000). Online at http://www.lcnp.org/disarmament/Commentary/Commentary10.htm.
- 17 See Peter Weiss, John Burroughs, and Michael Spies, "The Thirteen Practical Steps: Legal or Political?" Lawyers' Committee on Nuclear Policy, May 2005. Online at http://www.lcnp.org/disarmament/npt/13stepspaper.htm.
- 18 A/RES/61/74 (2006).
- 19 A/RES/61/65 (2006).
- 20 Members of the New Agenda Coalition are Brazil, Egypt, Ireland, Mexico, New Zealand, Sweden, and South Africa.

For the U.S. position on the Practical Steps and Article VI, see J. Sherwood McGinnis, Deputy U.S. Representative to the Conference on Disarmament, Remarks to the Second Session of the Preparatory Committee for the 2005 Review Conference, Geneva, May 1, 2003. Online at http://geneva.usmission.gov/press2003/0501NPTMcGinnis.htm.

- 22 See David E. Sanger, "Month of Talks Fails to Bolster Nuclear Treaty," *New York Times*, May 28, 2005.
- 23 Weapons of Terror, pp. 63-64.
- See Canada's working paper submitted to the 2005 NPT Review Conference, "Achieving Permanence with Accountability." May 17, 2005, NPT/CONF.2005/WP.39. This paper proposes annual meetings and a standing "bureau" composed of representatives of states parties. Online at http://reaching-criticalwill.org/legal/npt/RevCon05/wp/WP39.pdf.
- 25 See Jayantha Dhanapala with Randy Rydell, *Multilateral Diplomacy and the NPT: An Insider's Account*, United Nations Institute for Disarmament Research, Geneva, 2005, pp. 129-132.

Section 1.3: The Role of the UN Security Council

- 1 Weapons of Terror, p. 182.
- 2 *Id.*, p. 54.
- Article XII(3) of the CWC provides that in the case of prohibited activities, the Conference of the States Parties, "may recommend collective measures to States Parties in conformity with international law." The NPT and BWC have no such provision, but there is no doubt that review conferences or other meetings of states parties could call for states to apply sanctions. One obstacle to overcome would be the practice of consensus.
- 4 Weapons of Terror, p. 18.
- 5 See generally José E. Alvarez, *International Organizations as Law-Makers*, Oxford University Press, Oxford, 2005, pp. 184-217.
- 6 See id.
- Regarding some of these cases, see *Weapons of Terror*, pp. 180-181.
- 8 *Id.*, pp. 63-64.
- 9 United Nations Monitoring, Verification and Inspection Commission (UNMOVIC) was the second body established by the Security Council to verify Iraq's compliance with requirements of dismantling chemical and biological weapons and missile programs. Its fate remains to be determined by the Security Council.
- 10 See Michael Spies and John Burroughs, "Commentary on Security Council Resolution 1696 on Iran," Lawyers' Committee on Nuclear Policy, New York, July 31, 2006, online at http://lcnp.org/disarmament/iran/UNSCres-jul06. htm; John Burroughs, "The Iran Situation: Options for the Security Council," Lawyers' Committee on Nuclear Policy, New York, May 2, 2006, online at http://lcnp.org/disarmament/iran/remarks-may2.htm.
- Arms Control Association, "Hans Blix Reports on WMD Dangers and Solutions," June 7, 2006. Online at http://www.armscontrol.org/events/20060607 Blix WMDC Transcript.asp.
- 12 International Court of Justice, "Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding

- Security Council Resolution 276, Advisory Opinion of June 21, 1971," *ICJ Reports*, 1971.
- 13 Security Council Resolution 1695 (2006), July 15, 2006.
- 14 Security Council Resolution 1696 (2006), July 13, 2006.
- 15 See Michael Spies, "Iran and the Role of the Security Council," Lawyers' Committee on Nuclear Policy, New York, March 8, 2007. Online at http://lcnp.org/disarmament/iran/Iran-UNSC.pdf.
- 16 See *id*.
- 17 Article 26 provides that the Security Council is to be assisted in developing plans for regulation of armaments by a Military Staff Committee. For an explanation of how that committee become non-functional, see Felicity Hill, "The Military Staff Committee: A Possible Future Role in UN Peace Operations?" Global Policy Forum. Online at http://www.globalpolicy.org/security/peacekpg/reform/2001/msc.htm. The UN Charter also gives the General Assembly the role of making recommendations regarding "disarmament and the regulation of armaments" (Article 11). Unlike the Council, the Assembly has fulfilled that role through resolutions that have initiated treaty negotiations on control or elimination of a wide range of weapons.
- 18 Weapons of Terror, p. 181.
- For suggestions on how governments could implement resolution 1540 in ways reaching both non-proliferation and disarmament objectives, see Alyn Ware, "International Ju-Jitsu: Using United Nations Security Council Resolution 1540 to advance nuclear disarmament," Lawyers' Committee on Nuclear Policy, New York, July 2004, online at http://www.lcnp.org/disarmament/Ju-Jitsu_UNSC1540.pdf. For example, Ware advocates that states apply laws pertaining to acquisition and trafficking in NBC weapon-related items to both non-state and state actors.
- 20 Weapons of Terror, p. 57.
- 21 Lars Olberg, "Implementing Resolution 1540: What the National Reports Indicate," *Disarmament Diplomacy No. 86*, Spring 2006. ("*Olberg*"). Online at http://www.acronym.org.uk/dd/dd82/82lo.htm.
- 22 Weapons of Terror, p. 55.
- 23 Olberg; see also Merav Datan, "Security Council Resolution 1540: WMD and non-State trafficking," Disarmament Diplomacy No. 79, April/May 2005. ("Datan"). Online at http://www.acronym.org.uk/dd/dd79/79md.htm.
- 24 Security Council Resolution 1267 (1999), October 15, 1999.
- Article 13(1) of the Charter provides that the General Assembly shall "make recommendations for the purpose of (a) promoting international cooperation in the political field and *encouraging the progressive development of international law and its codification*" (emphasis supplied). The Assembly often adopts resolutions that call upon member states, for example in the Conference on Disarmament, to negotiate multilateral treaties.
- 26 Eric Rosand, "The Security Council as 'Global Legislator': Ultra Vires or Ultra Innovative?" 28 Fordham International Law Journal, February 2005, pp. 542, 544.
- 27 See Datan.
- Axel Marschik, "IILJ Working Paper 2005/18: The Security Council as World Legislator?: Theory, Practice, and Consequences of an Expanding World Power," Institute for International Law and Justice, New York, 2005. Online at

- http://www.iilj.org/papers/2005.18Marschik.htm. Marschik believes that states have subsequently consented and acquiesced in resolution 1373, but reserves judgment regarding resolution 1540.
- 29 See *Olberg*. See also Olivia Bosch and Peter van Ham, eds., *Global Non-Proliferation and Counter-Terrorism: The Impact of UNSCR 1540*, Brookings Institution Press, Washington, D.C., 2007, pp. 211-212.

Section 1.4: The Breakdown of Disarmament Machinery

- 1 "CD/1693/Rev.1: Initiative of the Ambassadors Dembri, Lint, Reyes, Salander and Vega ("A5 Proposal")," Proposal of a Programme of Work at the Conference on Disarmament, Geneva, September 5, 2003. Online at http://reachingcriticalwill.org/political/cd/A5.pdf.
- 2 "CD/2007/L.1: Initiative of the 2007 CD Presidents: South Africa, Spain, Sri Lanka, Sweden, Switzerland, and Syria ("2007 P6")," Presidential Draft Decision at the Conference on Disarmament, Geneva, March 23, 2007. Online at http://www.reachingcriticalwill.org/political/cd/papers07/L1.pdf.
- Ambassador Christina Rocca, "The P6 proposal for continuing work in the CD in 2007," Statement to the Conference on Disarmament, Geneva, March 23, 2007. Online at http://www.reachingcriticalwill.org/political/cd/speeches07/1session/Mar23US.pdf.
- 4 See Paul Meyer, "The Conference on Disarmament: Getting Back to Business," *Arms Control Today*, December 2006.
- The U.S. is unlikely to support any amendments referring to negotiations on PAROS, and on March 27, 2007 France said that while it would not oppose the proposal as it stands, it would oppose it if any changes were made to the mandates for nuclear disarmament or NSAs.
- Nicole Deller, Arjun Makhijani, and John Burroughs, eds., *Rule of Power or Rule of Law? An Assessment of U.S. Policies and Actions Regarding Security-Related Treaties*, The Apex Press, New York, 2003, pp. 94-95.
- The Stephen Rademaker, U.S. Acting Assistant Secretary, Bureau of International Security and Nonproliferation, "Confronting Today's Threats," Statement to the First Committee of the General Assembly, United Nations, New York, October 3, 2005. Online at http://www.reachingcriticalwill.org/political/1com/1com05/statements/us3oct.doc.
- Highly enriched uranium refers to uranium enriched to the concentration of 20% or above of the fissile isotope uranium-235. Other fissile isotopes include uranium-233, neptunium-237, and americium-241. Most of the world's nuclear power reactors operate on low enriched uranium. Uranium enriched to reactor grade is not considered usable in nuclear weapons. Plutonium, any type of which is considered weapons-usable, does not exist in nature and is produced in nuclear reactors as a by-product (*see section 3.1*). See International Panel on Fissile Materials, *Global Fissile Materials Report 2006*, Princeton University, Princeton, NJ, 2006, pp. 6-10. Online at http://www.fissilematerials.org/ipfm/site down/ipfmreport06.pdf.
- 9 Weapons of Terror, p. 103.
- 10 UN General Assembly Resolution GA/48/75L, December 16, 1993.
- 11 Ambassador Gerald E. Shannon, "Consultations on the Most Appropriate Arrangement to Negotiate a Treaty Banning the Production of Fissile Material

- for Nuclear Weapons or Other Nuclear Explosive Devices ("Shannon Mandate")," Report CD/1299 of the Conference on Disarmament, Geneva, March 24, 1995. Online at http://www.reachingcriticalwill.org/political/cd/shannon.html.
- "NPT/CONF.1995/32 (Part I), Annex: Decision 2: Principles and Objectives for Nuclear Non-Proliferation and Disarmament," 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, New York, 1995, para. 4(b). Online at http://www.reachingcriticalwill.org/legal/npt/1995dec.html#2.
- 13 "NPT/CONF.2000/28: Final Document: Part I, Step 3." 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, New York, 2000, pp. 14-15. Online at http://disarmament.un.org/wmd/npt/finaldoc.html.
- Permanent Mission of the U.S. to the UN in Geneva, "White Paper on a Fissile Material Cutoff Treaty," Geneva, May 18, 2006. Online at http://www.ipfmlibrary.org/usm06.pdf.
- 15 Permanent Mission of the U.S. to the UN in Geneva, "Treaty on the Cessation of the Production of Fissile Material for Use in Nuclear Weapons or Other Nuclear Explosive Devices," draft mandate and treaty text to the Conference on Disarmament, Geneva, May 18, 2006. Online at http://reachingcriticalwill.org/political/cd/speeches06/18MayDraftTreaty.pdf.
- 16 Weapons of Terror, pp. 104-105.
- 17 See Stephen Rademaker, "The Conference on Disarmament: Time is Running Out," *Arms Control Today*, December 2006.
- 18 Rebecca Whiteair and Seth Brugger, "BWC Protocol Talks in Geneva Collapse Following U.S. Rejection," *Arms Control Today*, September 2001. Online at http://www.armscontrol.org/act/2001_09/bwcsept01.asp.
- 19 Weapons of Terror, p. 146.
- 20 U.S. Air Force Space Command, *Vision for 2020*, February 1997. Online at http://www.fas.org/spp/military/docops/usspac/visbook.pdf.
- "As long as the potential for such attacks [against U.S. satellites] remains, our Government will continue to consider the role that space-related weapons will play in protecting our assets." John Monaco, Permanent Mission of the U.S. to the UN in Geneva, "Statement to the CD," Statement to the Conference on Disarmament, Geneva, June 13, 2006. Online at http://reachingcriticalwill.org/political/cd/speeches06/13JuneUS.pdf. This was likely a response to Russia's June 8, 2006 call to all states with military space technology to refrain from practical activities aimed at putting weapons in space.
- 22 Office of Science and Technology Policy, *U.S. National Space Policy*, Executive Office of the President, The White House, Washington, D.C., August. 31, 2006, p. 2. Online at http://www.ostp.gov/html/US%20National%20Space%20Policy.pdf.
- 23 *Space Security 2006*, Spacesecurity.org, July 2006, p. 148. Online at http://www.spacesecurity.org/SSI2006.pdf.
- 24 In October of 2004, Russia declared it would not be the first to put weapons in space, and has since repeatedly called on other states to make similar declarations. See Ambassador Leonid Skotnikov, Permanent Representative of Russia to the UN in Geneva, "Statement of the Russian Federation," Statement to the First Committee of the UN General Assembly, United Nations, New York, October, 5, 2005. Online at http://www.reachingcriticalwill.org/political/

- 1com/1com04/statements/Russia.pdf.
- 25 Kofi A. Annan, Secretary-General of the UN, 'We the Peoples': The Role of the United Nations in the 21st Century, United Nations Publications, New York, March 2000, p. 53.
- A summary of polls can be found at http://www.greenpeace.org/international/campaigns/peace:

US: A survey carried out in 1997 by Lake, Sosin and Snell found that 87% of those polled in the US felt, "the US should negotiate an agreement to eliminate nuclear weapons."

UK: A poll carried out by MORI in 2005, on behalf of Greenpeace, showed a majority (54%) of the British public oppose the development of a new nuclear weapons system. Only one in three (33%) support their development. [In addition, 87% of those polled in Britain by Gallup in 1997 agreed, "Britain should help to negotiate a global treaty to prohibit and eliminate nuclear weapons."]

Russia: In 1998 61% of Russians polled by Vox Populi commissioned by TASS said, "All nuclear weapons states should eliminate such weapons." **India:** 62% of Indians polled by The Hindu in 1998 said, "India should not produce nuclear bombs."

Japan: In a Japanese poll by Asahi Shimbun in 1998 78% agreed that, "all nuclear weapons states should eliminate such weapons."

Australia: A resounding 92% of Australians polled by Roy Morgan Research Co. in 1998 agreed, "Australia should help negotiate a global treaty to ban and destroy all nuclear weapons."

Norway: Similarly 92% of Norwegians polled in 1998 by 4 fakta A/S agreed "Norway should work actively for a ban on nuclear weapons."

Belgium: 72% of Belgian polled in 1998 by Market Response said they were for "an initiative on behalf of Belgium with an aim of initiating talks concerning a treaty for the abolition of nuclear weapons."

Canada: 93% of Canadians polled in 1998 by the Angus Reid Group agreed that, "Canada should take a leadership role in global negotiations to eliminate nuclear weapons."

Turkey: In 2004, an Infakto poll, commissioned by Greenpeace, found that 72% of Turkish people supported the idea of making Turkey a nuclear-free zone and 75% would support Turkey leading an international campaign for international nuclear disarmament.

A Greenpeace International-commissioned public opinion survey, carried out by Strategic Communications in April and May 2006, polled Europeans living in the six host countries for NATO U.S. nuclear weapons: Belgium, Britain, Germany, Italy, Netherlands, and Turkey. More than two-thirds said they want Europe to be free of nuclear weapons. "Two thirds of Europeans want Nuclear Weapon free Europe: Greenpeace calls upon Defence Ministers to send US nuclear weapons home," Press Release, Greenpeace International, May 30, 2006.