Sometimes satire brings you closer to the truth than bare facts. In 1964 a film was launched which few who have seen it will ever forget. It was called ‘Dr. Strangelove – How I Learned to Stop Worrying and Love the Bomb’ and dealt with a hypothetical nuclear war between the Soviet Union and the United States, set off as a first strike by an American general. Forty six years later, opinion in the nuclear weapons countries and their allies is still divided between those who believe that ‘the bomb’ has kept the peace between old and new enemies and those who fear that the longer nuclear weapons remain in the world’s arsenals the greater is the possibility, if not of a full-fledged nuclear war, at least of a nuclear explosion with dreadful consequences. But *grosso modo* the horror is gone. What was once called omnicide or nuclear winter has become another equation to be solved in the complex math of world governance.

This article will briefly trace the role which law has played in attempts to hold the bomb at bay and will then focus on a legal instrument through which this objective can be achieved, the Model Nuclear Weapons Convention (MNWC).\(^1\)

---

\(^*\) J.D. Yale 1952, President, Lawyers Committee on Nuclear Policy; Vice President and former President, International Association of Lawyers Against Nuclear Arms; Counsel to the Government of Malaysia in the ICJ Nuclear Weapons Case, 1995. This article is based in part on an earlier article by the same author, ‘Taking the Law Seriously: The Imperative Need for a Nuclear Weapons Convention’, 34 Fordham Journal of International Law 776 (2011). I have also greatly benefited from consulting an article to be published in the same issue, C. J. Moxley Jr./J. Burroughs/J. Granoff, ‘Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty’.

I. Early History

The first atomic explosion occurred at the US Army White Sands Proving Ground in the New Mexico desert on 16 July 1945. Its appalling enormity prompted Robert Oppenheimer, the scientist in charge of the atomic bomb project, to utter these words from the Baghavad Gita: ‘Now I am become death, the destroyer of worlds.’ A fission bomb was dropped on Hiroshima on 6 August 1945 and a thermonuclear bomb on Nagasaki on August 9. It is estimated that within five years at least 200,000 people died from the effect of the bombing of Hiroshima and about 150,000 died within five years in Nagasaki. The official version is that both drops were necessary to bring Japan to its knees, but this has been disputed by a number of historians.

The very first resolution adopted by the UN General Assembly on 24 January 1946 called for ‘The Establishment of a Commission to Deal with the Problem Raised by the Discovery of Atomic Energy’. It instructed the commission to make specific proposals for

a. extending between all nations the exchange of scientific information for peaceful ends;

b. the control of atomic energy to the extent necessary to ensure its use only for peaceful purposes;

c. the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction;

d. effective safeguards by way of inspection and other means to protect complying states against the hazards of violations and evasions.

The Faustian bargain between the first of these four elements – universal access to nuclear technology for peaceful ends – and the other three – ensuring that this new source of energy would not repeat the dreadful

---

2 See http://www.youtube.com/watch?v=n8H7Jibx-c0&NR=1 (last visited 15 August 2011).


5 UNGA – Res. 1 (I), The Establishment of a Commission to Deal with the Problem Raised by the Discovery of Atomic Energy, 24 January 1946, 1 UN – GAOR, 9, UN Doc. A/RES/1 (I).