

## TRANSCRIPT

### CLOSING REMARKS

*Speakers: Prof. Charles Moxley;<sup>1</sup> Prof. Jeffrey Biller;<sup>2</sup> Jonathan Granoff;<sup>3</sup> John Burroughs<sup>4</sup>*

*This is a transcript of the Closing Remarks of the 2023 conference “Nuclear Weapons and International Law: The Renewed Imperative in Light of the Ukraine War.” The speakers’ remarks have been edited for readability and clarity by the Georgetown Journal of International Law Digital Committee staff as well as by the speakers themselves.*

#### **The Law as a Means of Transformation**

PROF. CHARLES MOXLEY:

Today, we heard Professor Alan Robock talk about the five billion deaths that could result from an all-out nuclear war between the U.S. and Russia. We have heard and we have seen that the U.S. has not emphasized low-yield weapons. The U.S. has gone all-in in effect on high-yield nuclear weapons for deterrence.

We have heard the view that deterrence has worked and kept us from a big, bad war during the nuclear era. We also heard a rebuttal on that, and each of us has to make a judgment and look at it further. James Scouras, on the first panel, showed that we've had a lot of wars, even during the era of nuclear deterrence, although they've been to a great extent proxy wars, and it hasn't been so direct, but the risks are with us.

We heard that Russia and China at this time are not good players in terms of respecting international law. John Burroughs raised the issue and Jonathan Granoff mentioned in his remarks that, with Iraq, U.S. compliance with international law is questionable.

I do not think anyone is saying that we should unilaterally give up nuclear weapons. Many of us believe that the U.S. is a very strong potential influencer of international affairs. We can advance the rule of law. We can advance the approach towards law. It's not clear that we've done that in a full-throated way, particularly in a context where we're spending more on military each year than, I think, the next eight countries combined. The U.S. has thrown up its hands in some respects that it cannot deal with Russia and China in the realm of international law because of their non-compliance. We heard from Professor Oona Hathaway that there are, however, areas of compliance and that there is a potential to work with Russia and China on compliance with international law.

There is also a potential for rationality because of Alan Robock's numbers and James Scouras' point about the risks, which, even if we cannot quantify them with certainty, are huge. Such potential effects and risks are known to other countries, including Russia and China. So, at some point, there is a strong hope that some sense of self-interest in terms of survival can

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become a catalyst. For those of us who live in New York City, we come into contact with people from every place in the world every day or every week, when we get in a cab, when we get to our offices, when we work with others in the legal or business communities. A lot of us have a fundamental sense that there's a basic inherent rationality and reasonableness in people that can foster a different kind of regime.

Both Jacqueline Cabasso and Jonathan Granoff have spoken eloquently so many times as to the potential for us to foster an international regime focused on human security and safety. I think there's great potential to pick up on John Burroughs's comment that he is optimistic, although we heard from James Scouras that future prospects may not be as positive as it seems.

We heard from Jonathan Granoff that there have been so many near misses, so many instances of human or equipment error bringing us close to disaster, so many accidents. Seth Sheldon made the point that it's a kind of defense by luck. This is an inherent problem with the deterrence regime. We have so many nuclear weapons on hair-trigger alert, ready to be used in a matter of moments, unlike China's practice during much of the nuclear era of separating its warheads from its delivery systems. There are some indications that China is moving away from that more conservative second-strike approach to some extent, but there are so many things we could do to move the policies and practices of ourselves and other nuclear weapons states in a positive direction.

This goes to the point that Jeff Biller opened with, that we need to go further in terms of developing these issues and taking them to the next level. It is a wonderful thing. Look at the range and level of people we've had participating today, largely through Jeffrey Biller's help, and others. We had Colonel Theodore Richard, who is a major thought leader in the military on these issues, Navy Commander Leigha Groves, Major Kenneth Daniel Jones. We have something to build on and I think this is something Fordham's John Feerick talks about so much, and exemplifies through his lifetime of leadership in the New York bar—the role of law as transformative, that law can be a way out for us in addressing these issues.

I'm going to end with Jonathan Granoff's idea that, instead of being lawyers and litigators as so many of us are, arguing a legal point from the perspective of where we want to end up, we should look at the law as a way to get towards transformation, and with the hope that the U.S. can be a leader in moving towards compliance with NPT Article VI, moving towards disarmament and abolition.

Jonathan Granoff is coming next and then I certainly hope we'll hear from Jeff Biller on any comments he has on where we are and where we ought to go next, which is obviously the big question.

JONATHAN GRANOFF:

Let us talk about two successful strategies.

**The Coalition-Building Strategy of “Women Strike for Peace” and Martin Luther King Jr.**

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The most successful movement we have ever had was called “Women Strike for Peace.” The reason it was successful is that it was based on the strategy that the brilliant lawyer Bella Abzug came up with, which was to build a coalition of interests and then invite anyone who loved their mother to join. It was founded on the fact that strontium 90 was showing up in mothers’ breast milk. It was measurable in the teeth of infants. Those mothers—whether they were Republican or Democrat, no matter what political persuasion—adopted “Pure Milk, Not Poison.”

Environmentalists—particularly out West where cattle were getting sick from the radioactive fallout of testing in the atmosphere— joined in, as did all the major environmental groups, and of course SANE and the other disarmament groups. President Kennedy, in addition to being alerted to the horrific dangers of nuclear weapons by the Cuban missile crisis, [explicitly said](#) [in a news conference on Jan. 15, 1962] that that movement gave him political support to get us the limited Test Ban Treaty. Once the weapons were put underground, the strontium 90 stopped showing up in mother's milk except near some of the facilities. For the most part, the mothers went home, and the environmentalists went home, and we've been divided ever since.

Martin Luther King’s strategy was a strategy of building the biggest tent he possibly could, starting at a very particular instance of lunch counters, then buses and transportation, then labor justice, then social equity, then antiwar and anti-militarism, and then pro-love. He basically invited anybody who cared about values to join his big tent. That was a very effective movement. That movement at that time was assailed by the FBI’s COINTELPRO, a counter strategy to push identity politics and split all the coalitions that were building on the new left at that time.

### **The “Mainstream” Strategy of the Freeze Movement**

Another successful movement was the nuclear “Freeze” movement. “Freeze” was a very low-hanging fruit, but all of us who were very involved in it, we all knew that we were pushing for abolition. This was a doorway; this was an entry point. Any reasonable person could say: “Let's stop the armed race, freeze it.” It was a great slogan. Again, a big tent coalition-building approach, which is one of the reasons that the Women Strike for Peace succeeded because it was a brilliant strategy to ground it in mother’s milk. The freeze movement, again, had a woman who was a brilliant strategist, Randall Forsberg. She created meetings of different coalitions and different groups that weren’t all on the same page, but everybody could agree on “freeze.” That was so reasonable that the Carnegie Foundation's head David Hamburg picked up on it and went out to other foundations and raised substantial money. There was substantial money behind the freeze movement. That was another strategy, which was to get as mainstream as possible.

### **Steps to Move Towards Disarmament**

I think it would be really valuable if we were to, from this conference, reach out to the different leading groups in human rights, now that the Human Rights Commission of the UN has declared the threat or use of nuclear weapons as a violation of human rights, the different environmental groups, there's no greater threat to the environment than a nuclear war, and any

other groups within our own community and maybe convene a series of strategy sessions. The fact is, we are not putting sufficient pressure on the governments in the United States and the rest of the world, to win. Certainly, the Treaty on the Prohibition of Nuclear Weapons is a major player, but I think the environmental issue requires cooperation. I think that dealing with pandemics requires cooperation.

The most powerful statement that was made to help end the Cold War and address this issue was in [paragraph two](#) of the Geneva Summit in which the United States and the Soviet Union said “a nuclear war can never be won and must never be fought.” But the last sentence in that paragraph was “neither party shall seek military advantage over the other,” no more arms racing. Let's look for common security. It is saving the planet. That is the kind of approach I'm hoping that we could maybe stimulate. Strategy discussions amongst the various groups.

PROF. CHARLES MOXLEY:

Terrific. Thank you, Jonathan, and there's an action plan there.

### **The Significance of Diverging Perspectives in Moving Towards what the Law Ought to Be**

PROF. JEFFERY BILLER:

Again, thanks Charlie for putting this on and for inviting myself and some of the other folks that I was able to strong arm into joining in. I mentioned this before but when Charlie and I first started working together on this, he mentioned to me several times that he wanted to include many different voices. He didn't just want people who all agreed with each other and who could just nod at each other and agree how smart all of us were.

To make real movement in anything, I think that's absolutely necessary. You have to invite people from all different disciplines, from different perspectives to participate in the conversation. From the legal side, I've always believed it starts with recognizing and being honest about where the law is currently at. We talk a lot about *lex lata* and *lex ferenda*—where the law is now and where we think the law ought to be—and there's room and scholarship for all perspectives.

We need to better understand what the reality is. States make law. Law professors don't make law. Not even international judges make law. States do it and we have to recognize what the reality is. Once we've recognized that and established the baseline, and that's a difficult thing to do in many cases, then we can be realistic about how to move forward towards that *lex ferenda*, where we want the law to be. But we cannot skip this step. Personally, I think that's a required step and the best way to do that is to get voices from across the spectrum together. I think that's what Charlie tried to do here, and I hopefully was able to help a little bit in that, and as such, I hope that we can continue to do this moving forward.

Charlie and I talked about perhaps extending this through a series of webinars beyond just this conference. As much as we love panels, sometimes having so many voices prevents going into depth on specific particular perspectives, views, or subjects. Perhaps, we can set up

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something moving forward where we can do that. What Charlie has done here is a good continuation and I hope that we can continue to do it going forward.

### **How Interested Lawyers Can Get Involved**

JOHN BURROUGHS:

If you are a lawyer or a law student and you want to be further involved in legal aspects of this work, just send an email to [contact@lcnp.org](mailto:contact@lcnp.org). One of the things that we would like to do is to make it possible for there to be further meaningful lawyer engagement in these issues. I was glad that Ed Lenci said: “One way you can do that is through your Bar Association.” I was glad too to hear Jules Zacher saying: “Yes, in fact, there is litigation.”

There are a lot of people, beginning with Charlie, to thank for this conference, but I want to thank particularly the New York State Bar Association and Ed Lenci for being the primary sponsor and providing the logistical infrastructure for this conference. In particular, I’d like to thank Carra Forgea for her work on this. I hope that unlike three years ago, you were not staying up overnight to accomplish all the things involved here.

PROF. CHARLES MOXLEY:

I don't want to put anybody on the spot, but I see that Major Danny Jones is still here. Major Jones, would you like to just make a few comments?

MAJOR KENNETH DANIEL JONES:

Charlie, I just want to say thank you to all the individuals who put this on. Today was a great opportunity. I was certainly lifted by Professor Hathaway’s comments. Sometimes, it's easy to get down as you face the news of a dangerous world and see what's going on. Hearing her talk about the consequences Russia has faced was certainly good for my spirit. So, thank you for that, and thanks for this opportunity.

PROF. CHARLES MOXLEY:

We do need to thank again, as John said, Carra and the New York State Bar, the other sponsors, Ed Lenci, the ABA, and everybody. So, thank you. We are adjourned, but hopefully shall regroup and take our efforts to address this issue to the next level!