

The illegality of nuclear weapons

John Avery, Danish Pugwash Group, www.pugwash.dk

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The enormous and indiscriminate destruction produced by nuclear weapons formed the background for an historic 1996 decision by the International Court of Justice in the Hague. In response to questions put to it by WHO and the UN General Assembly, the Court ruled that “the threat and use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and particularly the principles and rules of humanitarian law.” The only *possible* exception to this general rule might be “an extreme circumstance of self-defense, in which the very survival of a state would be at stake”. But the Court refused to say that even in this extreme circumstance the threat or use of nuclear weapons would be legal. It left the exceptional case undecided. In addition, the World Court added unanimously that “there exists an obligation to pursue in good faith *and bring to a conclusion* negotiations leading to nuclear disarmament in all its aspects under strict international control.”

Judge Fleischhauer of Germany said in his separate opinion, “The nuclear weapon is, in many ways, the negation of the humanitarian considerations underlying the law applicable in armed conflict and the principle of neutrality. The nuclear weapon cannot distinguish between civilian and military targets. It causes immeasurable suffering. The radiation released by it is unable to respect the territorial integrity of neutral States.”

President Bedjaoui, summarizing the majority opinion, called nuclear weapons “the ultimate evil”, and said “By its nature, the nuclear weapon, this blind weapon, destabilizes humanitarian law, the law of discrimination in the use of weapons. ... The ultimate aim of every action in the field of nuclear arms will always be nuclear disarmament, an aim which is no longer utopian and which all have a duty to pursue more actively than ever.”

Thus the concept of nuclear deterrence is not only unacceptable from

the standpoint of ethics; it is also contrary to international law. The World Court's 1996 Advisory Opinion unquestionably also represents the opinion of the majority of the world's peoples. Although no formal plebiscite has been taken, the votes in numerous resolutions of the UN General Assembly speak very clearly on this question. For example the New Agenda Resolution (53/77Y) was adopted by the General Assembly on 4 December 1998 by a massively affirmative vote, in which only 18 out of the 170 member states voted against the the resolution.¹ The New Agenda Resolution proposes numerous practical steps towards complete nuclear disarmament, and it calls on the Nuclear-Weapon States "to demonstrate an unequivocal commitment to the speedy and total elimination of their nuclear weapons and without delay to pursue in good faith and bring to a conclusion negotiations leading to the elimination of these weapons, thereby fulfilling their obligations under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT)". Thus, in addition to being ethically unacceptable and contrary to international law, nuclear weapons also contrary to the principles of democracy.

Having said said these important things, we can now turn to some of the other defects in the concept of nuclear deterrence. One important defect is that nuclear war may occur through accident or miscalculation - through technical defects or human failings. This possibility is made greater by the fact that despite the end of the Cold War, thousands of missiles carrying nuclear warheads are still kept on a "hair-trigger" state of alert with a quasi-automatic reaction time measured in minutes. There is a constant danger that a nuclear war will be triggered by error in evaluating the signal on a radar screen. For example, the BBC reported recently that a group of scientists and military leaders are worried that a small asteroid entering the earths atmosphere and exploding could trigger a nuclear war if mistaken for a missile strike.

A number of prominent political and military figures (many of whom have ample knowledge of the system of deterrence, having been part of it, ha,e expressed concern about the danger of accidental nuclear war. Colin S. Grey² expressed this concern as follows: "The problem, indeed the enduring problem, is that we are resting our future upon a nuclear deterrence system

¹Of the 18 countries that voted against the New Agenda Resolution, 10 were Eastern European countries hoping for acceptance into NATO, whose votes seem to have been traded for increased probability of acceptance.

²Chairman, National Institute for Public Policy

concerning which we cannot tolerate even a single malfunction.” General Curtis E. LeMay³ has written, “In my opinion a general war will grow through a series of political miscalculations and accidents rather than through any deliberate attack by either side.” Bruce G. Blair⁴ has remarked that “It is obvious that the rushed nature of the process, from warning to decision to action, risks causing a catastrophic mistake.”... “This system is an accident waiting to happen.”

“But nobody can predict that the fatal accident or unauthorized act will never happen”, Fred Ikle of the Rand Corporation has written, “Given the huge and far-flung missile forces, ready to be launched from land and sea on both sides, the scope for disaster by accident is immense. ... In a matter of seconds - through technical accident or human failure - mutual deterrence might thus collapse.”

Another serious failure of the concept of nuclear deterrence is that it does not take into account the possibility that atomic bombs may be used by terrorists. Indeed, the threat of nuclear terrorism has today become one of the most pressing dangers that the world faces, a danger that is particularly acute in the United States.

Since 1945, more than 3,000 metric tons (3,000,000 kilograms) of highly enriched uranium and plutonium have been produced - enough for several hundred thousand nuclear weapons. Of this, roughly a million kilograms are in Russia, inadequately guarded, in establishments where the technicians are poorly paid and vulnerable to the temptations of bribery. There is a continuing danger that these fissile materials will fall into the hands of terrorists, or organized criminals, or irresponsible governments. Also, an extensive black market for fissile materials, nuclear weapons components, etc., has recently been revealed in connection with the confessions of Pakistan’s bomb-maker, Dr. A.Q. Khan. Furthermore, if Pakistan’s less-than-stable government should be overthrown, complete nuclear weapons could fall into the hands of terrorists.

On November 3, 2003, Mohamed ElBaradei, Director General of the International Atomic Energy Agency, made a speech to the United Nations in which he called for “limiting the processing of weapons-usable material (separated plutonium and high enriched uranium) in civilian nuclear programs - as well as the production of new material through reprocessing and enrichment

³Founder and former Commander in Chief of the United States Strategic Air Command

⁴Brookings Institution

- by agreeing to restrict these operations to facilities exclusively under international control.” It is almost incredible, considering the dangers of nuclear proliferation and nuclear terrorism, that such restrictions were not imposed long ago. Nuclear reactors used for “peaceful” purposes unfortunately also generate fissionable isotopes of plutonium, neptunium and americium. Thus all nuclear reactors must be regarded as ambiguous in function, and all must be put under strict international control. One might ask, in fact, whether globally widespread use of nuclear energy is worth the danger that it entails.

The Italian nuclear physicist Francesco Calogero, who has studied the matter closely, believes that terrorists could easily construct a simple gun-type nuclear bomb if they were in possession of a critical mass of highly enriched uranium. In such a simple atomic bomb, two grapefruit-sized sub-critical portions of HEU are placed at opposite ends of the barrel of an artillery piece and are driven together by means of a conventional explosive. Prof. Calogero estimates that the fatalities produced by the explosion of such a device in the center of a large city could exceed 100,000.

We must remember the remark of U.N. Secretary General Kofi Annan after the 9/11/2001 attacks on the World Trade Center. He said, “*This time it was not a nuclear explosion*”. The meaning of his remark is clear: If the world does not take strong steps to eliminate fissionable materials and nuclear weapons, it will only be a matter of time before they will be used in terrorist attacks on major cities. Neither terrorists nor organized criminals can be deterred by the threat of nuclear retaliation, since they have no territory against which such retaliation could be directed. They blend invisibly into the general population. Nor can a “missile defense system” prevent terrorists from using nuclear weapons, since the weapons can be brought into a port in any one of the hundreds of thousands of containers that enter on ships each year, a number far too large to be checked exhaustively.

In this dangerous situation, the only logical thing for the world to do is to get rid of both fissile materials and nuclear weapons as rapidly as possible. We must acknowledge that the idea of nuclear deterrence is a dangerous fallacy, and acknowledge that the development of military systems based on nuclear weapons has been a terrible mistake, a false step that needs to be reversed. If the most prestigious of the nuclear weapons states can sincerely acknowledge their mistakes and begin to reverse them, nuclear weapons will seem less glamorous to countries like India, Pakistan, North Korea and Iran, where they now are symbols of national pride and modernism.