AFTER FIFTY YEARS OF NUCLEAR AGE

Is a nuclear-weapon-free world feasible?

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1. Has an Oppotunity come?

Ever since the first test of the atomic bomb in Alamogordes and the atomic bombing of Hiroshima and Nagasaki in 1945, mankind has lived with nuclear weapons for five decades. Then what about the next five decades? Should We continue to live with nuclear weapons beyond the 20th century or be able to get rid of nuclear weapons and eventually to put an end to the nuclear age? This is one of the most crucial problems of our time.

Nuclear weapons have been inevitably connected with the Cold War between East and West, specifically between the United States and the former Soviet Union as well as the rivalry between them. While there has been no military confrontation between the two super powers, they have threatened each other by the very capability to carry out retaliatory attacks which means complete destruction of the opponent. The doctrine of nuclear deterrence or the Mutual Assured Destruction (MAD) has been one of the main characteristics of the nuclear age. But the Cold War is over and this has deprived the Super Powers of the main rationale for retention of huge nuclear arsenals. There seems to be a coming era of nuclear disarmament.

In December 1993, The U.S. and Russia signed the second Strategic Arms Reduction Treaty (START.II), not yet ratified, in which they agreed to reduce their strategic nuclear arsenals from the present level of 10,000 warheads each to 3,500 or 3,000. If this agreement is implemented as scheduled, by the early years of the 21st century, the numbers of warheads on both sides will be about one third of those at their peak. The two countries also declared the unilateral
reduction or withdrawal from the forefront deployment of theatre and tactical nuclear weapons which is now partially implemented. In spite of these facts, neither deeper cut beyond the scheduled level nor complete elimination of nuclear weapons has yet been planned. On the otherhand, the United Kingdom, France and China have not been participating in the disarmament negotiation process and have no plan to reduce their nuclear arsenals. In short, the five nuclear-weapon states, all of which are avowed to possess nuclear weapons by and now parties to the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), have no intention or program to abandon their nuclear weapons in the present international situation.

As long as we rely on the policy of the nuclear-weapon states in these circumstances, there would be no prospective for the complete elimination of nuclear weapons in the foreseeable future. The ending of the Cold War would be a necessary prerequisite for the elimination of nuclear weapons but not a sufficient condition for that purpose. There are many obstacles on the road to nuclear disarmament. It is therefore important for us to inquire about concrete steps towards nuclear disarmament and the conditions of establishing a Nuclear-Weapon-Free World.

2. The prohibition of the use of nuclear weapons

The first step toward abolishing nuclear weapons would be the prohibition of the use or the threat of use of nuclear weapons. This problem has two facets to be examined carefully.

The first is the illegality of the use or the threat of use of nuclear weapons. The second is conclusion of a treaty prohibiting the use or the threat of use of nuclear weapons. The first is prerequisite of the second and constitutes the background to it.

With regard to the first point, it can not be denied that international conventions or treaties are normally binding upon those states that are parties to them and there is no treaty explicitly outlawing the use of nuclear weapons. But there are many relevant international treaties, customary rules and general principles of law by which states should abide during the conduct of armed conflicts and for the protection of human rights and from which no derogation is permitted.

International conventions which constitute these rules and principles include the Declaration of St. Petersburg of 1868, the Hague Convention of 1899 and
1907, the Geneva Convention of 1949 and Protocol I to the 1949 Geneva Convention of 1977 as well as other formalities of norms including the Charter of the United Nations. On the basis of these and other international conventions, the general principles which have been established so far can be summarized as follows.

(1) It is prohibited to use weapons or tactics which would cause unnecessary suffering or aggravated devastation. (2) It is prohibited to use weapons or tactics which would cause indiscriminate harm between combatants and noncombatants, and military and civilian personnel. (3) It is prohibited to use weapons or tactics which violate the neutral jurisdiction of nonparticipating states. (4) It is prohibited to use weapons or tactics which would cause widespread, long-term, and severe damage to the natural environment. The customary rule of "proportionality" has also been codified by the Protocol I of 1977 to the Geneva Convention according to which weapons or military tactics that would cause excessive incidental civilian losses are condemned.

In addition to these general principles, several international conventions have been agreed upon to prohibit the use of or even to eliminate specific weapons or tactics in warfare which have been deemed to be the same kind of Weapons of Mass-Destruction as nuclear weapons. The Geneva Gas Protocol of 1925 which prohibits the use of asphyxiating, poisonous or other gases, and all analogous liquids, materials and devices, including bacteriological methods of warfare, has eventually have resulted in the conclusion of the Convention on Bacteriological Weapons in 1972 and the Convention on Chemical Weapons in 1993 which completely eliminate such weapons respectively. Other examples are the Convention on the Prohibition or any other Hostile Use of Environmental Techniques of 1979, and the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects of 1981. Among the weapons of Mass-Destruction, nuclear weapons have not yet been explicitly prohibited.

It is within the historical process and the legal and humanitarian context of international law that the legality of the use of nuclear weapons must be assessed. Any use or threat of use of nuclear weapons would violate one or more of the established laws of war. The illegality of the use of nuclear weapons should be accepted in accordance with the principles of international law.

With regard to the second point, since 1961 many resolutions have been adopted by the General Assembly of the United Nations which declares the
illegality of the use of nuclear weapons. The 1961 U.N. General Assembly resolution, known as Res.1653 (XVI), reads as follows, among other things: “Any state using nuclear and thermonuclear weapons is to be considered as violating the Charter of the United Nations, as acting contrary to the laws of humanity and as committing a crime against mankind and civilization”. This resolution which got overwhelming support at the session has repeatedly been adopted in the subsequent sessions or cited in other resolutions of the U.N. General Assembly.

In 1982, a resolution of the U.N. General Assembly which was introduced by India and some other non-nuclear-weapon states and adopted by the majority of the member states had an annexed text of draft treaty of prohibiting the use of nuclear weapons. The Article 1 of the draft treaty reads as: “The State Parties to this convention solemnly undertake not to use or threat to use nuclear weapons under any circumstances”.

This resolution and annexed draft treaty, while the U.S., the U.K., France and some Western European countries have been against and some countries including Japan abstaining, has been adopted every year since then up to 1994 by the consecutive General Assembly sessions. It must be noted therefore that the majority of the international community has been supporting the conclusion of a treaty banning the use of nuclear weapons.

Although the resolutions of the General Assembly are not themselves legally binding, they represent the world public opinion and would serve as the basis for the negotiations leading to the conclusion of a treaty banning the use of nuclear weapons.

3. Deterrence during and after the Cold War

Apart from assessment of the legal aspect of nuclear weapons, analysis of the issue from political and military aspects would lead us to the conclusion that the use of nuclear weapons should not be accepted in any case.

The only rationale for the retention of nuclear weapons has been the doctrine of nuclear deterrence, the essence of which lies in the policy of threatening. And threatening depends not only on intent to terrify the opponent but also on deployment of nuclear weapons with intent to use them. Under the circumstances of confrontation between East and West, say during the Cold War period, it is alleged that, thanks to nuclear weapons or deterrence, peace has been maintained since 1945 and there has been no Third World War. But how can one
imagine that threats prevent wars? Threats may contain a war. At the same
time, threatening may provoke a counter attack of the threatened. Threatening
is a psychological process. No one can either prove or disprove that nuclear de-
terrence has worked effectively. Effectiveness and credibility of deterrence is a
supposition without proof which has gained credence by constant repetetion. In
any case, deterrence is an illusory strategy.

In reality, the policy based on the threat of retaliation has always been mo-
tivated by an overestimation of the potential strength of the enemy. Thus the
policy to deter the presumed agressor had provoked a corresponding arms
buildup of the other side, resulting in a vicious circle of endless escalation in the
nuclear arms race between the two camps. The nuclear arms race had been an
indispensable consequence of the Cold War and had forced the super powers as
well as the world community as a whole to live under constant instability and
insecurity.

With the end of the Cold War, both political and military situations of the
world have changed dramatically and Mutual Deterrence between the United
State and the former Soviet Union has disappeared. It is doubtful to be able to
continue the same deterrence policy as it was during the Cold War period.
Rather it becomes impossible or at least very difficult for the nuclear-weapon
states to cling to the old fashioned deterrence policy.

This brings us to the next topic with regard to limitation or avoidance of
the use of nuclear weapons.

4. The policy of non-use of nuclear weapons

Even if it is impossible to reach to an international agreement banning the
use of nuclear weapons in the near future without the consents of nuclear-
weapon states or their will to accept it, there are several alternatives, however,
to avoid the use of nuclear weapons. These alternatives have been debated for
more than two decades and a half in the international community, in particular
in the disarmament negotiation forum in the framework of the United Nations
since the NPT was concluded.

The first is an unconditional non-use policy. A pledge by all nuclear-weapon
states not to use nuclear weapons at all is of greater significance. But this
pledge is equivalent to the conclusion of an international agreement banning the
use of nuclear weapons and seems to be impossible to attain under the condition
that no nuclear-weapon states agree to it.
The second is non-first-use policy. A formal commitment of non-first-use of nuclear weapons by all nuclear-weapon states to all countries might lead to the renunciation of the nuclear option. Non-first use commitment does not exclude the retaliatory use of nuclear weapons. But it would be unnecessary, at least theoretically if not practically, to use nuclear weapons for retaliatory purposes because there should be no first attack. Assurances of non-first-use of nuclear weapons would amount to a retreat from the nuclear war-fighting doctrine and could lead to diminish the possible use of nuclear weapons. If non-first-use was generally recognized and strictly observed by all nuclear-weapon states, any use of nuclear weapons would be practically excluded.

So far, of the nuclear weapon parties to the NPT, only China has officially, even though its real intention is not clear, declared, when it exploded the first atomic bomb in 1964 and again at the first Special Session on Disarmament of the U.N. General Assembly (SSD.I) in 1978, that it would not be the first to use nuclear weapons at any time or under any circumstances. The former Soviet Union once agreed to adopt to the non-first-use policy when the SSD.II of the U.N. took place in 1982. But Russia, in the recent revamp of its nuclear strategy announced in 1993, denied to reaffirm the 1982 pledge by saying that the U.S. has not adopted such a policy.

The third is non-use of nuclear weapons against non-nuclear-weapon states, or negative security assurance.

As early as 1968, the year when the NPT was signed, the U.S., the U.K. and the Soviet Union pledged immediate assistance, based on a resolution adopted by the U.N. Security Council and in accordance with the U.N. Charter, to any non-nuclear-weapon state party to the NPT which was a “victim of an act or an object of a threat of aggression in which nuclear weapons are used”. These pledges, usually referred to as “positive assurance”, are deemed by many countries to be insufficient because it was only repetition of obligation under the Charter and may admit to the use of nuclear weapons by some permanent members of the Security Council.

Therefore, states which have forsworn nuclear weapons under the NPT, in particular those not belonging to the major military alliances have been demanding formal assurance that nuclear weapons would not be used against them. Such assurance is called “negative” because of its non-use obligation character. Uniform and unconditional negative security assurances without any reservations has been one of the constant demands of the non-nuclear-weapon
states in the debates at the Conference on Disarmament and the Review Conferences of the NPT for a long time. The nuclear-weapon states have been reluctant to commit themselves to this kind of non-use obligation. This problem has been a long term controversy between nuclear-weapon and non-nuclear-weapon states.

The nuclear-weapon states, except China, are not yet ready to assume complete obligation of negative assurance as an international agreement which would be uniform, unconditional and legally binding. The U.S., the U.K. and France announced, at the SSD.I of the U.N. General Assembly in 1978, that they would not use nuclear weapons against non-nuclear-weapon states, but they have maintained a reservation that the negative security assurance would cease to apply to states taking part in an aggression against a nuclear-weapon state in alliance or in association with another nuclear-weapon state, as well as to those seeking to acquire nuclear weapons. The former Soviet Union had once affirmed, at the SSD.I in 1978, the non-use obligation against non-nuclear-weapon states. But Russia, at the Conference on Disarmament in 1993, went back to the same position as the U.S., the U.K. and France by saying that it would not use nuclear weapons against any non-nuclear-weapon states party to the NPT except in the case of an attack on Russia or its allies by a state allied with, or attacking jointly with, a nuclear-weapon states. The new Russian doctrine matches almost word-for-word the 1978 commitment by the U.S.

For the West, the limiting condition to the assurance to non-nuclear-weapon states reflects the fact that the Western powers were not prepared to exempt themselves from the threat of a large-scale offensive, it is alleged, by those non-nuclear-weapon states that were party to the Warsaw Pact and especially those who might have Soviet nuclear weapons deployed on their territories during the Cold War period. But the collapse of the Soviet Union and the Warsaw Treaty Organization deprived the pretext of this kind. For Russia, the new reservation to negative security assurance is also unreasonable and unrealistic.

The end of the Cold War should now make it easier for the Western nuclear-weapon states as well as for Russia to give unconditional negative security assurances to all non-nuclear-weapon states party or not to the NPT. There is no imminent need that nuclear weapons should be used by nuclear-weapon states against any non-nuclear-weapon state which does not have such weapons stationed on its territory.

Once the non-use principle against non-nuclear-weapon states is established,
almost every region of the world would be free from the threat of nuclear weapons, and the possible use of nuclear weapons would remain only between the nuclear-weapon states. The negative security assurance could provide an opportunity to reach an agreement banning the use of nuclear weapons as much as, or even more, the non-first-use pledges.

The last issue is concerned with the doctrine of "the defensive use of nuclear weapons as a last resort". This doctrine was adopted by a summit meeting of the North Atlantic Treaty Organization (NATO) in 1990 and has been the official position of the U.S. and NATO countries since then. It is not a non-use policy but it seems to look like a response to the changing international arena, the post Cold War era. It must be examined in connection with the demand for a non-use principle.

The meaning of the doctrine is ambiguous. If it means a retaliatory use of nuclear weapons against nuclear attack of another nuclear-weapon state, it would be a continuation of the deterrence doctrine during the Cold War period and can hardly be said a diversion from it. If it presupposes a large scale attack against a nuclear-weapon state or its allies by non-nuclear-weapon states in alliance with another nuclear-weapon state, it would be a false conception in the post Cold War period as was formerly discussed. Conceiving the use of nuclear weapons in conflicts between non-nuclear-weapon states or regional conflicts, or even in civil wars has been meaningless, because these conflicts could not be settled by nuclear weapons. In fact, no nuclear weapons have been used in the conflicts for five decades since the Second World War ended. No significant importance could be attached to the policy of the use as a last resort.

In any case, nuclear weapons have been the last resort under the regime of deterrence. There would be no room for the nuclear deterrence doctrine in the post Cold War era. While the nuclear-weapon states have not yet agreed to renounce the deterrence doctrine, it would not be an unrealistic utopia to demand them to accept a ban of the use of nuclear weapons.

5. Steps towards complete elimination of nuclear weapons

The U.N. General Assembly of 1994 adopted a resolution requesting the International Court of Justice (ICJ), the World Court, to render its advisory opinion on the question: "Is the threat or threat to use of nuclear weapons in any circumstances permitted under international law?" The draft, which was introduced by Indonesia on behalf of the Co-ordination Bureau of the Non-
Allied Countries, was adopted by 78 votes in favor, 43 against and 38 abstentions.

A similar resolution to ask the ICJ for an advisory opinion on the legal status of the use of nuclear weapons has been passed by the World Health Organization (WHO) on May 1993. In the 1993 session of the U.N. General Assembly, however, the same proposal which was introduced in the first Committee meeting was not adopted due to intense pressure from the U.S., the U.K. and France. The general Assembly resolution of last year, therefore, is of great significance and constitutes a real challenge to the nuclear-weapon states continuing to retain the policies of deterrence.

The U.N. General Assembly, the Security Council and other U.N. organs can only request the ICJ to render an advisory opinion on “legal matters” under Article 96 of the Charter. But Citizens’ organizations have played a key role in bringing about both the WHO and the General Assembly resolutions. The campaign to request the ICJ opinion, which is known as the World Court Project, was launched in 1992 by the three international peace organizations, the International Peace Bureau, IPPNW (physicians) and IALANA (lawyers) supported by more than 400 NGOs. In Japan too, many citizens’ groups and some local authorities, including those of Hiroshima and Nagasaki Municipal Governments, expressed their views that the Japanese Government should change its voting attitude in the U.N. General Assembly which has abstained to the resolution.

While the opinion of the ICJ is not necessarily binding, the court has authority as “the principal judicial organ of the United Nations” as provided for in the U.N. Charter. An ICJ ruling against the use of nuclear weapons would provide considerable legal, moral and political pressure on nuclear-weapon states to renounce the policies of deterrence and more strict restrictions on the use of nuclear weapons.

Needless to say that the final goal of the nuclear disarmament is the complete elimination of nuclear weapons from military arsenals all over the world. There are several measures to be taken to achieve this objective, such as the comprehensive test bans, reduction of strategic weapons beyond the 3,000-3,500 warheads limitations in the START.II agreement, addressing at an early stage the participation to a negotiation process of nuclear-weapon states with smaller nuclear weapons, the U.K., France and China, preventing the proliferation of nuclear weapons, stopping the production of materials for weapon purposes and
extension of international control and safeguard systems to military stockpiles of highly-enriched uranium and plutonium. But in parallel with or even preceding them, the prohibition of the use of nuclear weapons should be taken as the very first step. It would be one of the most feasible and realistic measures to be taken in the current international environment.

The prohibition of the use of some type of weapons could be a breakthrough toward the complete elimination of such weapons. This was, for example, the case of chemical weapons. After 70 years of the Geneva Gas Protocol in 1925 which prohibited the use of chemical weapons, an agreement was reached on chemical weapons in 1993. Under the terms of the Chemical Weapons Convention, the parties undertake “never to use nor to engage in any military preparation to use chemical weapons”, and farther “never, in any circumstances, to develop, produce, otherwise acquire, stockpile or retain chemical weapons or transfer directly or indirectly chemical weapons to anyone” and to destroy all the chemical weapons possessed by them. While the negotiation to avoid nuclear weapons would be difficult, as that of chemical weapons did, a ban of the use of the nuclear weapons would eventually lead to complete elimination of them.

During the Cold War period, the imminent goal of nuclear disarmament was to stop the nuclear arms race between the two super powers. But in the post Cold War era, an oppotunity has developed for farther steps toward nuclear disarmament, the complete elimination of nuclear weapons.