

Lawyers Committee on Nuclear Policy

Law's Imperative: A World Free of Nuclear Weapons

Honouring Peter Weiss, LCNP President Emeritus

Nuclear Disarmament and Security Council Reform

Address by

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This address will also be made available under "Selected Material" and "Disarmament" at <http://www.havc.se>.

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President Emeritus Peter Weiss,
Director Burroughs,
Fellow speakers,
Ladies and gentlemen,

First of all, let me say how pleased I was when I received the invitation to participate in this Forum honouring Peter Weiss, President Emeritus of the Lawyers Committee on Nuclear Policy.¹ Yes, Peter Weiss is President Emeritus, but he is certainly not retired from his activities. He is still in full swing!

He actually sent me and others an op-ed dated 25 February 2014 entitled *Nuclear Disarmament, the State of Play* where he describes the current status of nuclear disarmament as psychotic.² I tend to agree, although my concluding diagnosis is even more serious in view of the dramatic development that has occurred since he published his op-ed.

However, his references to the contrast between President Obama's statements in the past and the present situation and the fact that the Comprehensive Test Ban Treaty and the negotiation of a Fissile Materials Treaty, both of which the Obama administration favours, have been held up, one by the U.S. Senate, the other by another country, are telling. He stresses that reduction is not elimination and also maintains that the Defence Department and Department of Energy continue to pursue policies that are clearly incompatible with nuclear disarmament.

The title of my very brief address on this occasion is *Nuclear Disarmament and Security Council Reform*.³ My focus will be on the legal perspective, the political perspective, and the dilemma caused by the permanent five members of the Security Council, in particular in view of the latest development.

The legal perspective

The natural point of departure with respect to the legal perspective is the unanimous statement by the International Court of Justice in 1996 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 and effective international control.”⁴

The question is then whether the formulation of an agreement on nuclear disarmament including a provision on outlawing them would be complex from a legal point of view. The answer is that such a treaty would entail a number of complex provisions relating mainly to verification and control. In another context a few years ago, I said that these difficulties should be relatively easy to resolve; there are many experts in this field who can advise the contracting states.⁵ I also noted that there are treaties that can serve as models for the core elements in an agreement on the elimination of nuclear arms – by way of example:

¹ See <http://lcnp.org/>.

² *Nuclear Disarmament, the State of Play*. Inter Press Service, New York, Feb 25 2014 (IPS), available at <http://www.ipsnews.net/2014/02/op-ed-nuclear-disarmament-state-play/>.

³ Speakers agreed to limit themselves to 10-12 minutes.

⁴ International Court of Justice, Advisory Opinion of 8 July 1996 on the Legality of the Threat or Use of Nuclear Weapons, p. 267, available at <http://www.icj-cij.org/docket/files/95/7495.pdf>.

⁵ Corell, Hans *Is It Possible to Outlaw Nuclear Arms?* In: NOW IS THE TIME TO PROHIBIT NUCLEAR WEAPONS! A special edition of the journal of the Swedish section of International Physicians for the

- The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 1972 (170 parties);
- The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1992 (190 parties);
- The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 1997 (161 parties).

These conventions contain very similar provisions to the effect that each state party to the respective convention undertakes never under any circumstances to develop, produce, stockpile or otherwise acquire or retain the weapons regulated by the treaty. The same technical solution could be used in a convention outlawing nuclear arms. Proposals to this end have also been advanced.

On that occasion, I also drew the conclusion that disarmament and non-proliferation are best pursued through a cooperative rules-based international order, applied and enforced through effective multilateral institutions, with the UN Security Council as the ultimate global authority.

The political perspective

Let me now focus on the political perspective. John Burroughs drew my attention to a book edited by George Perkovich and James M. Acton, which I read with great interest: *Abolishing Nuclear Weapons: A Debate*.⁶

The two editors first present an analysis in several chapters – Adelphi Paper 396. Eighteen authors were invited to comment on the paper, among them former President of Mexico Ernesto Zedillo.

What struck me in this book was the focus on the Security Council, which of course is natural in view of the fact that the five permanent members of the Council are nuclear-weapon states and that they also have veto power as members of the Council.

In commenting on the authors' analysis, Ernesto Zedillo maintains that they rightly point out that there would be hardly any alternative to the UN Security Council to enforce a regime of abolished nuclear weapons. He further notes that their analysis also shows that the Security Council, if it were to continue as it has functioned until now, would be far from adequate. In his view, a Security Council that becomes deadlocked more frequently than not can hardly serve as an effective enforcement body or be a guarantor of disarmament. To perform this job

Prevention of Nuclear War. LÄKARE MOT KÄRNVAPEN 2010 # 120: 6-9, available at <http://slmk.org/wordpress/wp-content/uploads/2010/03/Lakare-mot-Karnvapen-120-ENG.pdf>.

⁶ The paper *Abolishing Nuclear Weapons* by George Perkovich and James Acton was first published by the International Institute for Strategic Studies as an Adelphi Paper in September 2008. *Abolishing Nuclear Weapons: A Debate* was published by the Carnegie Endowment for International Peace in 2009. It is available at <http://carnegieendowment.org/2009/02/13/abolishing-nuclear-weapons-debate/dty>.

adequately would require radical reform of the Security Council, which might be difficult in view of the fact that not even limited reform has been possible in more than forty years.

Perkovich and Acton claim that the issue of the veto would need to be addressed. However, they do not suggest possible avenues toward a solution.

Interestingly, Ernesto Zedillo maintains in this context that it is in some sense fortunate that past Security Council reform attempts that focused solely on enlargement have not gone forward. The reason, he explains, is that there is no obvious reason why an enlarged Security Council would inherently be more functional than the present one. Achieving consensus in a larger Security Council, with other things the same, would conceivably become harder, and therefore the probability of deadlock would become higher. He also argues that the success of partial reform – limited to enlargement – would probably make it even harder to undertake comprehensive reform later on.

This is precisely how I view the situation, although I have approached the problem in a more general perspective. For several years I have repeatedly focused on the duties of the Security Council under the UN Charter and the Council's inability to genuinely fulfil its mandate as required by the Charter.

Already in 2008, I wrote a letter to the members of the United Nations under the title: *Security Council Reform – Rule of Law More Important Than Additional Members*.⁷ In this letter and in subsequent contributions I maintain that the Council must remain an executive organ and that the most important element is that the members actually bow to the law that they are set to supervise, namely the UN Charter. In that letter I also presented a concrete proposal for a possible solution of the Council's shortcoming.

The dilemma caused by the permanent five members of the Security Council, in particular in view of the latest development

I now come to the third and last part of my address, namely the dilemma caused by the permanent five members of the Security Council, in particular in view of the latest development. The question is what impact this development will have on the possibilities of achieving a common understanding among the permanent five members of the Security Council. I am thinking of Russia's violation of the sovereignty of Ukraine.

As is clearly demonstrated by the manner in which the Council has dealt with the situation in Syria, it is difficult for the permanent five members to join hands even in a situation where it is absolutely necessary that the Council acts in accordance with its mandate. Are the declarations by the General Assembly and the Council itself with respect to the principle of responsibility to protect mere lip service?

It goes without saying that the latest developments will make it even more difficult for the five permanent members of the Council to join hands and act as required by the UN Charter. Russia's annexation of the Crimea peninsula is a flagrant violation of international law. So was the attack on Georgia back in 2008.

⁷ See under "Rule of Law" and "Security Council Reform and The Rule of Law" at www.havc.se.

But those who criticise the Russian Federation, and in particular the U.S., should remember that the attack on Iraq in 2003 was likewise a flagrant violation of international law. And in the discussions over the last couple of years about the situation in Iran and in Syria, it would seem as if some members of the U.S. Congress do not even understand that the UN Charter does not allow the use of force unless in self-defence, which is not the case here, or after a clear and unambiguous resolution by the Security Council.

Personally, I am seriously concerned at the negative effects that the Russian annexation of the Crimea peninsula will have on the political climate in the future. And we certainly do not know what President Putin may be up to next.

At the same time, I am very critical of the behaviour of the Western powers when the Berlin Wall came down in 1989 and the Cold War ended. They had obviously completely forgotten the lessons from the two World Wars in the last century. The Peace of Versailles was a disaster in many ways.⁸ In a sense it humiliated Germany in a manner that it paved the way for Adolf Hitler. During the Second World War the Allied, and in particular the U.S., understood that it was necessary to create a partner of the former enemies and acted accordingly. The result is that, today, Germany is a leading actor in Europe and a member of both NATO and the European Union.

So, what happened when the Berlin wall came down? Did the Western powers engage with sufficient seriousness in contacts with Moscow? Did they go to Moscow explaining that the West and the Russian Federation have one overarching major common interest: we must not get into an armed conflict with each other! Instead, the West started going it alone and the U.S. even made plans for establishing rocket ramps in Poland and Chechnya, as if they had never heard of the Cuban crisis in the late 1960s. At that time the U.S. and the Soviet Union could have become engaged in a war, had not President Kennedy dealt with the matter as sensibly as he did.

The obvious lesson from the past century must be: after a war – also a Cold War – never ever humiliate your former enemy. I am not for a moment suggesting that this excuses President Putin's behaviour towards Ukraine. But had the West engaged with sufficient interest and energy in the Russian Federation from the very outset, maybe today the country could have been on a steady course towards true democracy and the rule of law.⁹

This brings me back to the Security Council and the role of the Council in establishing the rule of law at the international level. If permanent members of the Council violate the very law they are set to supervise, what signal does this send to the world? Rule of law at the national and international level is the only way ahead if we are to be able to deal with the formidable threats to humankind that we see emerging, generated by poverty, water shortage, diseases, the rising world population, climate change, rising sea levels, desertification,

⁸ See e.g. John Maynard Keynes *The Economic Consequences of the Peace* (1920), available at <http://www.gutenberg.org/files/15776/15776-h/15776-h.htm>.

⁹ Reference is made to a publication entitled *Rule of Law – A guide for politicians*. This is a guide elaborated under the auspices of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law at Lund University, Sweden, and the Hague Institute for the Internationalisation of Law (HiiL), the Netherlands. The guide is now translated into twelve languages, among them Russian. It is available at <http://rwi.lu.se/what-we-do/academic-activities/pub/rule-of-law-a-guide-for-politicians/>. The idea of this guide was born in a meeting of the InterAction Council of Former Heads of State and Government in 2008. Interestingly, former President Ernesto Zedillo participated in this meeting.

terrorism, transboundary crime, corruption, etc. It is in this context that we should also see the need for nuclear disarmament. But what are the prospects in light of the latest development? May I recall that in June 2006, the Weapons of Mass Destruction Commission, chaired by Dr Hans Blix, presented its report *Weapons of Terror – Freeing the World of Nuclear, Biological and Chemical Arms*.¹⁰ I am afraid that the analysis in the preface to the report is still relevant:

Some of the current stagnation in global arms control and disarmament forums is the result of a paralysing requirement of consensus combined with an outdated system of block politics. However, a more important reason is that the nuclear-weapon states no longer seem to take their commitments to nuclear disarmament seriously – even though this was a central part of the NPT¹¹ bargain, both at the treaty's birth in 1968 and when it was extended indefinitely in 1995.

The Weapons of Mass Destruction Commission presented 60 recommendations in its report, among them recommendation 20 that points to the special responsibility that Russia and the United States have in this context.¹²

In view of the latest development I am afraid that my diagnosis is that the current status of nuclear disarmament is not only psychotic – it is paralyzed, at least for the time being.

Sadly, this is yet another example illustrating the imperative that the five permanent members of the Security Council pull their act together.

Thank you for your attention!

¹⁰ *Weapons of Terror – Freeing the World of Nuclear, Biological and Chemical Arms*, p. 14. For electronic copies of the report, please visit <http://www.wmdcommission.org> or <http://www.blixassociates.com/>. The Chairman's preface, a synopsis and the recommendations of the Commission also appear in UN doc. A/60/934, available at http://www.un.org/ga/search/view_doc.asp?symbol=A/60/934.

¹¹ The Non-Proliferation Treaty.

¹² Report pp. 188-204.