

The Nuclear Dilemma Today: Avoiding Catastrophe in a World of Eroding Norms

*Presentation of the Western States Legal Foundation to the 2017 Preparatory Committee Meetings for the Nuclear Nonproliferation Treaty Review Conference**

When this body last met in 2015, we warned that ecological, economic, and political crises are generating tensions that raise the danger of war among nuclear-armed countries on a time-scale measured in months and years, not decades and decades. Two years on, these dynamics only have accelerated.

The ecological and economic challenges we face are intertwined with the deteriorating political conditions that drive international conflict. It has never been more clear that the path to improvements to physical security—to freedom from war and violence—lies through real human security, to assuring that everyone's material needs are met sufficiently to allow full and equal participation in their societies.

This task of improving human security is the work of all humanity, working together with our governments when they are willing and working to change their will when they are not. But declining security conditions are not an excuse to postpone working towards controlling and eliminating the most dangerous armaments—quite the opposite. It should bring us back with renewed urgency to what always has been the central thrust of nuclear disarmament efforts: the prevention of catastrophe.

It is essential that we remember the hard-won knowledge of the generation that experienced a world both before and after the advent of nuclear weapons—a generation that also experienced the horrors of the last round of great power war. The Emergency Committee of Atomic Scientists, which included Albert Einstein and several of the physicists who had participated in developing the atomic bomb, warned that

“Through the release of atomic energy, our generation has brought into the world the most revolutionary force since prehistoric man's discovery of fire. This basic power of the universe cannot be fitted into the outmoded concept of narrow nationalisms.”ⁱ

Yet today we see a rising tide of authoritarian nationalisms in many countries. Ruling elites always are tempted to harness these nationalisms to their own agendas, not least of which is displacing discontent generated by policies that harm the majority of their citizens. The creep of extreme nationalist elements in from the political margins narrows the range of foreign policy options, pushing governments into positions from which it is hard to climb down. Such forces now are in government or play a significant role in the politics of all the nuclear-armed states.

The dangers of a world of competing nuclear-armed nationalisms are intensified by a generation of national security elites that have grown accustomed in the post-Cold War period to being able to posture without risk for domestic audiences. In the United States, the most powerful of all nuclear-armed states, today's political and military leadership too often seems to view their nuclear weapons as a tool of intimidation and domination, allowing their unmatched

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conventional forces to posture or launch attacks, even when that might threaten the interests of other nuclear-armed countries. The nuclear confrontation of the Cold War was intolerable, but at least the leaders of the nuclear-armed states came to understand that nuclear weapons stand in a class by themselves, and that war between nuclear-armed states easily could tip into catastrophe. And even the Cold War theorists of nuclear deterrence understood that the terror at its heart was mutual: the danger that any miscalculation could drag both adversaries over the edge into the abyss.ⁱⁱ

In addition to this subtle erosion of the norms against nuclear weapons use, once rooted in a general awareness of the dangers that even the threat of use implies, there are disturbing signs that the foundational norms embodied in this Treaty are eroding as well. No nuclear-armed states are engaged in negotiations to control, much less eliminate, their nuclear weapons, and no such negotiations are on the horizon. A leading U.S. official on nuclear weapons matters has questioned whether “the goal of a world without nuclear weapons is in fact a realistic objective.”ⁱⁱⁱ There has been discussion in mainstream media outlets in countries in Northeast Asia and in Europe about the potential need for independent nuclear forces.

All of this underscores an observation by the International Court of Justice in its 1996 Advisory Opinion on the Legality of the Threat and Use of Nuclear Weapons that today seems prophetic:

“In the long run, international law, and with it the stability of the international order which it is intended to govern, are bound to suffer from the continuing difference of views with regard to the legal status of weapons as deadly as nuclear weapons.”^{iv}

Twenty years on, nuclear weapons and the threat of their proliferation has been used as a stalking horse for the geopolitical agendas of the most powerful states, has sparked unlawful wars based on questionable intelligence, and has deadlocked virtually every international body that has attempted to bring them further under control. As the Court concluded in 1996,

“It is consequently important to put an end to this state of affairs: the long-promised complete nuclear disarmament appears to be the most appropriate means of achieving that result.”^v

The rejection by the nuclear-armed states and their allies of the effort by a large number of states to negotiate a treaty banning nuclear weapons attests to the continuing deep differences in views regarding nuclear weapons. But the Ban Treaty effort, together with the conferences on the humanitarian impacts that preceded it, constitutes an important affirmation of the norms against nuclear weapons threat and use, and of the underlying fabric of humanitarian law that makes the threat and use of nuclear weapons unlawful. We hope that the states negotiating the Ban Treaty will envision a Treaty organization that can provide a focus for governments and civil society to work together to develop new ideas, and to educate publics regarding the urgency of nuclear disarmament.

Finally, returning to the critical task of preventing disaster in a world of renewed confrontations among nuclear-armed states: another lesson learned during the Cold War was that

even when the prospects for a resolution seem dim, negotiations between nuclear-armed adversaries have other positive results. They allow the military and political leadership of the adversaries to better understand each other's intentions, and their fears. They build broader channels of communication between military and government bureaucracies that can be of tremendous value when tensions rise.

In addition, arms negotiations should be the only context where no types of weapons are "off the table." Arms racing has continued since the Cold War, with the development of a plethora of new means for accurate, powerful long-range strike, missile defenses, sensing and targeting technologies, and forms of electronic and cyber warfare that can disrupt other weapons systems. Control of high-tech non-nuclear weapons also helps reduce the complexity of crisis confrontations, and could play a significant role in lowering the risk of nuclear war.

Nuclear weapons pose unique dangers. When thinking, or negotiating, about them, it is useful to return again to the insights of those who saw the world disrupted by their arrival, here Lewis Mumford:

"You cannot talk like sane men around a peace table while the atomic bomb itself is ticking beneath it. Do not treat the atomic bomb as a weapon of offense; do not treat it as an instrument of the police. Treat the bomb for what it is: the visible insanity of a civilization that has ceased to worship life and obey the laws of life."^{vi}

ⁱ The Emergency Committee of Atomic Scientists, January 22, 1947. (Trustees: Albert Einstein, Chairman, Harold C. Urey, Vice Chairman, Hans A. Bethe, T.R. Hogness, Philip M. Morse, Linus Pauling, Leo Azilard, V.F. Weisskopf)

ⁱⁱ If "brinksmanship" means anything, it means *manipulating the shared risk of war*. It means exploiting the danger that somebody may inadvertently go over the brink, dragging the other with him. If two climbers are tied together, and one wants to intimidate the other by seeming about to fall over the edge, there has to be some uncertainty or anticipated irrationality or it won't work." Thomas C. Schelling, *Arms and Influence* (New Haven: Yale University Press, 1966), p.99.

ⁱⁱⁱ Christopher Ford, National Security Council senior director for weapons of mass destruction and Counterproliferation, quoted in Lizzie Dearden, "Donald Trump's administration to review decades-old US aim of world without nuclear weapons," *The Independent* (UK), Tuesday 21 March 2017 <http://www.independent.co.uk/news/world/americas/us-politics/donald-trump-nuclear-weapons-goal-world-without-reconsider-deproliferation-treaties-white-house-a7641706.html>

^{iv} International Court of Justice, Advisory Opinion on the Legality of the Threat and Use of Nuclear Weapons, 8 July 1998, para.98.

^v *Id.*

^{vi} Lewis Mumford, "Gentlemen: You Are Mad!" *The Saturday Review of Literature*, March 2, 1946; collected in Kai Bird and Lawrence Lifschultz, eds, *Hiroshima's Shadow: Writings on the Denial of History and the Smithsonian Controversy* (Stony Creek, CT: Pamphleteers Press, 1998) 284, 286.