



Disarmament, the United Nations, and the Rule of Law

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It is truly a humbling experience to speak about international law in the distinguished company of some of the world's foremost authorities in this field. Making matters worse for me is that many of these authorities are also experts in either disarmament or the United Nations—or both. What can I possibly say that they do not already know?

The best I can offer under these challenging circumstances is simply to offer some observations based on my own experience working on disarmament issues in the UN Secretariat, as well my earlier work outside the United Nations as an international peace and security analyst.

The United Nations is—let me be frank—badly misunderstood as an international institution. Some commentators find great fault with it because of its shortcomings in performing functions that even a world government would have difficulty performing. For example, we are blamed when wars occur, when weapons proliferate, when the climate warms, when terrorism persists, when people are hungry, and when the various resolutions and treaties we adopt are not observed. We have no army, no legislature, no currency, and no court with compulsory jurisdiction.

For those of you who know me, I am certainly not going to deny that the United Nations has shortcomings. I am more concerned about its strengths—what makes it unique in our troubled world, what enables it to inspire hope for a better future, and what gives it at least the potential to contribute significantly to tackling one of the most difficult challenges of our time: the elimination of nuclear weapons.

We know the problems. Some 20,000 nuclear weapons still remain in this world, 68 years after the General Assembly agreed on the goal of eliminating them all, and 44 years after the Nuclear Non-Proliferation Treaty entered into force. We know about the robust long-term programmes underway in the nuclear-weapon States to “modernize” their nuclear arsenals, and the absence of commitments to achieve disarmament within any agreed timeframe. We note the lack of disarmament plans, and the active opposition even to thinking about what a “nuclear weapons convention” would have to address. We note the persistence of “first-use” nuclear doctrines and hair-trigger alert postures. We wonder how a boundless faith in nuclear deterrence has persisted so long given the humanitarian and environmental effects of using such weapons.

I would propose now the fundamental question we should all be asking is, “what offers the most reliable guarantee against any future use of such weapons?”

And my answer is: global nuclear disarmament. This is the consensus view of the States Parties to the Nuclear Non-Proliferation Treaty, as repeatedly reaffirmed at its recent Review Conferences.

But, critics say, will not a world without nuclear weapons face the peril of encountering a cheater—a State that suddenly unveils its nuclear arsenal and can then dictate its terms to the world?

Such critics fail to understand that nuclear disarmament is not simply a blind act, motivated by hope alone. It is also driven by a profound understanding of self-interest.

Over the last 68 years, the studies, statements, resolutions, and treaties that emerged from the UN's disarmament machinery have not simply called for nuclear disarmament as a desirable goal. These instruments have spelled out five specific standards or norms that must be satisfied in any quality nuclear disarmament arrangement.

The first of these is verification. The comforting words of States are not accepted as sufficient to confirm that their commitments are in fact being observed. Although I cannot predict the final form of verification in some future nuclear disarmament pact, I can say that such a pact must contain some commitment by its parties to allow independent international inspection of its facilities to confirm the absence of nuclear weapons related activities. In the end, I believe this will require access satisfying an "anytime-anywhere-no notice" standard.

Second, a nuclear disarmament accord must be irreversible. We cannot have a stable peace with the knowledge that any State could, at its discretion, reverse its disarmament commitment and proceed with its nuclear weapons programme. A disarmament accord, therefore, must anticipate this risk, and incorporate specific means to prevent it. Foremost amongst these would be controls over fissile nuclear material—the material used in the bombs that devastated Hiroshima and Nagasaki. If all fissile material were accounted for, and if there were an international ban on the production of such material, then the question would arise: if terrorists or states wanted to produce a bomb, how could they do so without the necessary nuclear materials? Under a truly irreversible nuclear disarmament agreement, breakout would not only be unlikely, but impossible.

The third standard worked out over the years at the UN is transparency. This means that all States must publicly disclose the number of nuclear weapons and delivery systems, the quantities of fissile materials, and other nuclear weapons-related facilities. There must be no doubt about this, and I believe that verification controls will deal with any uncertainties about transparency.

The fourth standard is universality. Can anyone seriously believe that a global nuclear disarmament treaty can have only some states as its parties? If nuclear weapons are not legitimate weapons, how can they be possessed by anybody? The idea we can sustain forever a two-tiered system of nuclear-haves and nuclear have-nots is perhaps the most naïve fantasy ever conceived.

Finally, the UN has helped to register that any arrangement to achieve the global elimination of nuclear weapons must be legally binding. Winks, toasts, handshakes, and press releases would obviously not be sufficient as a basis for such an arrangement. Disarmament commitments must be anchored in law both because of the need for permanence and because they clarify explicit commitments. As the great legal scholar, Louis Henkin, once quipped, the problem with tacit agreements is that "one is not always sure that they exist".

Now, let me ask, if these five standards were in fact implemented, can anybody suggest a better way to prevent another use of nuclear weapons? What are the alternatives? Sanctions? Export controls? Deterrence? Endless increases in military spending at the expense of social and

economic development? Are these the attractive alternatives?

The obvious answer is no. You, my friends and colleagues, know that disarmament—despite its various public relations baggage—still offers the best solution to the problem of preventing another use of nuclear weapons.

Do I have grounds for hope that this goal can be achieved? Certainly I do. Why? A good part of the explanation lies in the very existence of enlightened, hard-working people like Peter Weiss. He embodies what I value most about civil society initiatives in disarmament. He is using his brain for peace. What more can I say in showing my respect for his lifetime contributions to disarmament, to the rule of law, to the United Nations, and to international peace and security?

Ladies and gentlemen, I rest my case.